

WEB COPY

CMA No. 2264 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 27-04-2026**

CORAM

**THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN**

**AND**

**THE HON'BLE MR.JUSTICE K.RAJASEKAR**

**CMA No. 2264 of 2022**

~~Mr. ~~xxxxxx~~~~

..Appellant

Vs

1. ~~Rxkx~~
2. ~~Rxxxxx~~

..Respondents

Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act, 1955 and Section 19 of the Family Courts Act, 1984 to allow the appeal and to set-aside the judgment and decree passed by the Family Court, Villupuram in HMOP.No.48 of 2019 dated 01.08.2022.

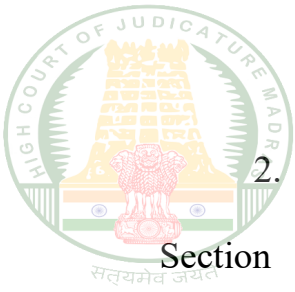
For Appellant: Mr.I.Sharukumar

For Respondents: Mr.M.Karthick for  
Mr.A.R.Ilavarasan for R1

### **JUDGMENT**

**(Judgment of the Court was delivered by C.V.Karthikeyan J.)**

The petitioner in H.M.O.P.No.48 of 2019 on the file of the Family Court, Villupuram, aggrieved by the dismissal of the said petition by judgment dated 01.08.2022, is the appellant herein.

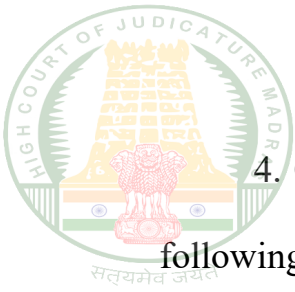


2. The said petition in H.M.O.P.No.48 of 2019 had been filed under Section 13(1)(i) of the Hindu Marriage Act. In the petition, it had been contended that the marriage between the petitioner and the first respondent was solemnized on 24.01.2011. The petitioner was working in Central Reserve Police Force (CRPF) as Constable. It was further contended that the first respondent did not perform her moral obligations and there were frequent quarrels between the parties. It was further stated that the petitioner had earlier given a complaint before the All Women Police Station at Villupuram in the year 2015 with respect to non-performance of marital duties. There were several rounds of conciliation talks conducted by the Social Welfare Department officials to bring about reconciliation between the parties. The petitioner had also constructed a separate house for continuing the marital life. The petitioner came back to his native place in February 2018 and was there on vacation till March 2019. At that point of time, the first respondent did not take care of the petitioner or moved with him as was expected. It was also contended that two daughters born to the petitioner and the first respondent. It was also contended that the first respondent had developed an illicit relationship with the second respondent. This fact came to be noted in the entire village and the second respondent, was also a married person. His wife had given a complaint before the All Women Police Station at Gingee complaining about the illicit relationship between the second respondent and the first respondent. She had also stated that the second respondent was demanding dowry. The said



complaint had been assigned with C.S.R.No.378 of 2018. It had been contended that the petitioner herein suffered mental agony over the behaviour of the first respondent. The petitioner contended that he had issued a notice on 19.7.2019 directly imputing the first respondent that she had relationship with the second respondent and therefore, the petitioner would be seeking dissolution of the marriage. It had been stated that the first respondent did not give any reply to the said notice. In such circumstances, the petition had been filed seeking dissolution of marriage under Section 13(1)(i) of the Hindu Marriage Act, 1955.

3. The first respondent had filed a counter specifically denying the allegations. It was contended that she never had any illicit relationship with the second respondent and that all the allegations relating to the same are concocted. It was also contended that the petitioner was employed in CRPF. He would come home only twice a year. She also raised allegations against the conduct of the brother of the petitioner. She contended that in the absence of the petitioner, all his relatives continuously tortured her demanding dowry. She also contended that in this regard, she had also lodged a complaint against the petitioner and his relatives. It was, therefore, been contended that the petition should be dismissed.



4. On the basis of the above pleadings, the Family Court had framed the following points for consideration:-

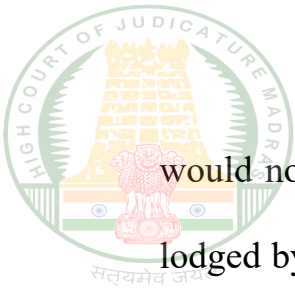
- 1) *Whether the petitioner is entitled for divorce on the ground of adultery as prayed for?*
- 2) *To what other relief if any the petitioner is entitled for?"*

5. During trial, the petitioner had examined himself as PW1 and also examined four other witnesses as P.Ws.2 to 5. PW5 was the Inspector of Police at Gingee. The petitioner had also marked Exs.P1 to P9. Ex.P3 is the copy of the legal notice issued by the petitioner and Ex.P4 is the acknowledgement card. Ex.P5 is the photograph of the first respondent with the second respondent. Ex.P6 is a copy of the complaint given by the wife of the second respondent and Ex.P7 is the copy of the CSR issued thereon. Ex.P8 is the copy of the statement given by the wife of the second respondent before the All Women Police Station, Gingee and Ex.P9 is the copy of the statement given by the second respondent before the All Women Police Station, Gingee. The first respondent examined herself as RW1 and she marked Ex.R1, copy of an FIR. The second respondent did not participate in the judicial proceedings though he had received summons and therefore, the second respondent was set ex parte.



6. The learned Trial Judge, on the basis of the oral and documentary evidence adduced and on the basis of the pleadings, stated that P.Ws.2 to 4 had been examined to speak about the alleged illicit relationship between the first and second respondent. It was also observed that the said witnesses had spoken that they had seen the first and second respondent together several times. However, PW2 did not come forward to subject herself for cross-examination citing health reasons. With respect to the evidence of P.Ws.3 and 4, the learned Trial Judge stated that they had seen the first and second respondent together in the school and in the hospital on several occasions. With respect to the photograph, it had been observed by the Family Court that production of a photograph would not be sufficient to prove the allegation of adultery. It had been further observed that it is a very difficult task to prove the allegations of adultery since the physical relationship between the parties had to be established. In view of these reasons, it had been held that the evidence of P.Ws.3 and 4 are not sufficient to hold that dissolution of marriage must be granted under Section 13(1)(i) of the Hindu Marriage Act, 1955.

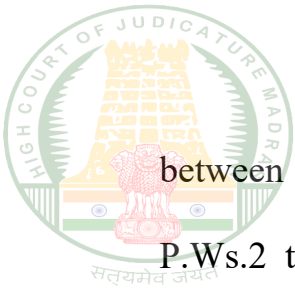
7. The further contention of the petitioner with regard to the complaint lodged by the wife of the second respondent was also considered by the Trial Judge and it was observed that she had lodged a complaint alleging that the second respondent was talking with the first respondent and when questioned, the second respondent had assaulted her and it was opined that this statement



would not indicate that the respondents were in relationship and the complaint lodged by the wife of the second respondent does not establish the allegation of adultery levelled against the first respondent. Holding as above, the learned Trial Judge dismissed the petition necessitating the petitioner therein to file the present appeal.

8. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

9. The learned counsel for the appellant submitted that the appellant had produced sufficient evidence particularly through the evidence of PW2 to PW4, who had consistently deposed that they had seen the first and second respondent having conversations on several occasion. The learned counsel submitted that PW2 did not subject herself for cross examination since she was not well. However, the learned counsel would place reliance on the evidence of PW3 and PW4 and particularly on the evidence of PW4, who had also taken a photograph of the first and second respondent, sitting together in close proximity and talking with each other. The said photograph was also marked as Ex.P5. The learned counsel argued that the Family Court, having observed that it is very difficult to prove the allegations of adultery and that it can be proved only through circumstantial evidence, erred in ignoring such circumstantial evidence viz., Ex.P5, photograph depicting the proximity and the illegal relationship



between the first and second respondent and the oral evidence adduced by P.Ws.2 to 4 in consonance thereof. The learned counsel submitted that the learned Trial Judge had not properly appreciated the evidence and therefore, argued that the judgment and decree of the Trial Court should be set aside and the Appeal should be allowed.

10. The learned counsel for the first respondent, however, disputed all the allegations relating to illicit relationship with the second respondent and contended that the second respondent was admitted in hospital and the first respondent only visited him in the hospital and there was no illegal relationship between them. The learned counsel submitted that the learned Trial Judge had appropriately appreciated the evidence and the ground for seeking divorce had not been established and therefore, contended that the appeal should be dismissed.

11. We have considered the submissions made by the learned counsel appearing for the parties and perused the materials available on records.

12. The petitioner was employed as Constable in CRPF. The marriage between the petitioner and the first respondent was solemnized on 24.01.2011. The petitioner can get leave in his service only twice a year. Therefore, in view of the nature of the service in CRPF, he would, necessarily, have to be away



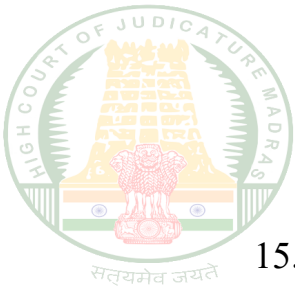
from the marital house owing to his duty. It had been contended that he had received information that the first respondent was having illicit relationship with the second respondent. The second respondent is also a resident of the same area. Incidentally, the second respondent is also a married person. The wife of the second respondent had lodged a complaint before the All Women Police Station at Gingee. In this connection, PW5, who was the Inspector of Police, All Women Police Station, Gingee, had been examined. Though she had stated that she did not conduct any enquiry directly on the complaint, she spoke on the basis of the records. The complaint, which had been lodged by the wife of the second respondent had been marked as Ex.P6. The complaint had been taken on record and CSR had been issued and the same was marked as Ex.P7. The statement of the wife of the second respondent given before the All Women Police Station was marked as Ex.P8 and the statement of the second respondent was marked as Ex.P9.

13. The fact that the wife of the second respondent had lodged a complaint has been established through the oral evidence of PW5, Inspector of Police, Gingee and by production of records viz., copy of the complaint and the statements recorded thereon. In Ex.P6, the complaint lodged on 22.10.2018, the wife of the second respondent had very specifically alleged that on 21.10.2018, in the evening at 5.00 pm, she found that the second respondent was in a long and continuous conversation with the first respondent and therefore, she had



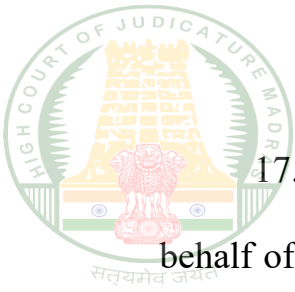
questioned him as to why he was behaving in such a manner for which, the second respondent had abused her and beaten her. She had further stated that not only her husband but also, the father of the first respondent had joined together in abusing her and threatening her with dire consequences if she made any further complaint. On the basis of the said complaint, since it was a complaint of family dispute, CSR 378/2018 had been issued and a copy of the same had been marked as Ex.P7. Thereafter, a statement was also recorded from the wife of the second respondent. In that statement, she had confirmed the allegations she had levelled against her husband.

14. In this regard, it would only be appropriate to examine the evidence of P.Ws.3 and 4. PW3, Muthukrishnan, in his evidence, had very specifically stated that the first respondent was having illicit relationship with the second respondent. He also stated that protesting such relationship, the wife of the second respondent had given a complaint before the All Women Police Station, Gingee against the first and second respondents. He further stated that the first and second respondents were speaking to each other in the school ground. PW3, in his cross examination, again confirmed the said facts. He was asked questions about the names of the villagers and he was able to withstand such cross examination. He further stated in the cross examination that he directly saw the first and second respondents speaking to each other. He denied that he was giving a false statement on behalf of the petitioner.



15. PW4, Kaliaperumal, an ambulance driver, in his evidence, stated that he had seen the first and the second respondent in Mundiambakkam Hospital on two occasions and when he informed the same to the brother of the appellant, he asked for the proof for the same and therefore, when he saw them for the third occasion, he took them a photograph with his cell phone. The said photograph was also marked as Ex.P5. During his cross examination, a specific suggestion was put that the Mundiambakkam Hospital was a crowded place and therefore, the respondents could not have indulged in any relationship. However, he denied such a suggestion. He also denied that he was giving false evidence.

16. The first respondent, in her evidence as RW1, admitted that on 19.07.2018, the appellant had sent a notice to her and that she had also received the said notice. She also admitted that in that notice, it had been very specifically alleged that she was having illicit relationship with the second respondent Ramesh. She also admitted that she had not issued any reply to the said notice. She stated that since a complaint was lodged before the All Women Police Station, she had not issued any reply notice. She denied that she was having any illicit relationship with the second respondent in her cross examination.



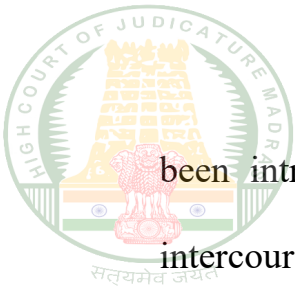
17. In the notice under Ex.P3, it had been very specifically stated on behalf of the appellant herein that the respondent was in illicit relationship with the second respondent, ~~Ramesh~~. His address had been given and the name of his father was also given.

18. Therefore, the point that has to be considered in this Appeal is whether the evidence adduced on behalf of the appellant is sufficient to grant the relief of dissolution of marriage under Section 13(1)(i) of Hindu Marriage Act.

19. Section 13(1)(i) of the Hindu Marriage Act is as follows:-

*"Any Marriage solemnized, whether before or after the commencement of this act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party (i) has, after the solemnization of the marriage, had voluntarily sexual intercourse with any person other than his or her spouse;"*

20. Prior to the amendment of the Hindu Marriage Act, the ground of adultery was taken into consideration for granting the relief of dissolution of marriage. Subsequent to the amendment, the words "sexual intercourse" had



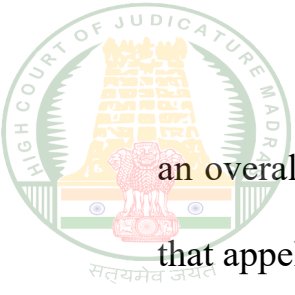
been introduced. It has to be pointed out that direct evidence on sexual intercourse could never be adduced by any party. In the instant case, the appellant herein had examined P.Ws.3 and 4. Both of them had stated that they had seen the respondents in conversation with each other. It must also be borne in mind that the appellant and the respondents are of the same area. If the first and second respondent were in conversation for a continuous period of time in close proximity with each other, it would only lead to further talk among everybody in the village and even in the town and this is what actually happened. This would have certainly caused mental agony to the appellant. As a matter of fact, even the wife of the second respondent had been deeply disturbed by the acts of the second respondent, necessitating her to lodge a complaint alleging that he was having illicit relationship with the first respondent. The complaint lodged by the wife of the second respondent is very significant. In the statement before the police, she had specifically stated that there were marital issues between her and the second respondent.

21. The next evidence directly available is that of PW4, who had also taken a photograph, Ex.P5 showing the proximity of the first and second respondent. A copy of the photograph was forwarded to this court. It shows that the first and second respondent sitting in close proximity with each other. Such proximity was not at all required to be done and totally unwarranted. Such conversation, particularly in a closed area in a Village/Town, where it



would also easily be noted by everybody as every other person would know them either directly or indirectly. The learned counsel for the appellant raised a presumption how far they could have proceeded together when nobody had seen them, if in the face of such openness, the respondents were to talk.

22. It is also to be noted that adultery itself is an act of secrecy. It is extremely difficult to produce any direct evidence on the issue of adultery or sexual intercourse. In the instant case, the appellant herein was a Constable in CRPF, who came home only twice a year and it is to be noted that when he came home, he was informed of the close relationship which had been maintained by his wife the first respondent with the second respondent. Naturally, he would raise those allegations directly against her. He had raised those allegations in the notice issued under Ex.P3. The said notice had been received by the first respondent, as evidenced by the acknowledgment card, Ex.P4, but, she had not replied to the same. Even in her evidence, she admitted that she had received the notice, however, she did not reply to the same since she had lodged a complaint with the police. That notice contained very serious allegations of her having illicit relationship with a named individual. PW3 and PW4 had spoken about watching directly the first and second respondent together. We are conscious that dissolution can be granted only when sexual intercourse is proved. But, again, we have to reiterate that it would be extremely impossible to get direct evidence on sexual intercourse. We hold on



an overall analysis of the evidence and the circumstances, particularly, the fact that appellant was a Constable in CRPF and he was away from the marital home on his duty and could visit his home only twice a year by availing leave, the possibility of development of illegal relationship by the first respondent with the second respondent cannot be ruled out.

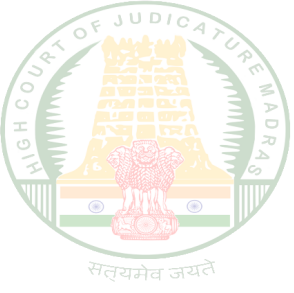
23. In view of these reasons, we hold that the judgment and decree of the Family Court has to be set aside and the Appeal has to be allowed. Accordingly, the Civil Miscellaneous Appeal stands allowed. The marriage between the appellant and the respondent solemnized on 24.01.2011 stands dissolved. No costs.

(C.V.K.,J.) (K.R.S.,J.)  
27-04-2026

Index: Yes  
Speaking order  
Neutral Citation: Yes/No  
ssk

To

Judge,  
Family Court, Villupuram



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**C.V.KARTHIKEYAN, J.  
AND  
K.RAJASEKAR, J.**

**ssk**

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