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CMA(MD) No. 967 of 2021



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19-08-2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE M.D.SUMATHI

CMA(MD) No.967 of 2021

Vs

..Petitioner(s)

..Respondent(s)

Prayer : Civil miscellaneous appeal filed under Section 19 of the Family Courts Act, to set aside the judgment and decree dated 15.09.2021 made in HMOP No.6 of 2014 on the file of the Family Court, Sivagangai and allow this Civil Miscellaneous Appeal.

For Petitioner(s): Mr.S.Srinivasa Raghavan

For Respondent(s): Mr.C.Suresh Kannan

JUDGMENT

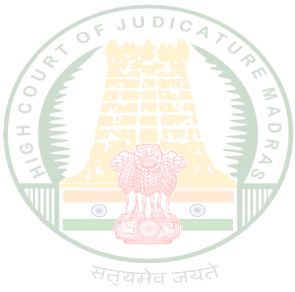
(Judgment of the Court was delivered by G.R.Swaminathan J.)

A Hindu marriage can be dissolved in one of the modes set out in Hindu Marriage Act, 1955. Section 13(1)(i) of the Act states that adultery is



a ground for seeking divorce. The statute provides a few more grounds also. But the Court before granting the relief sought for must be satisfied that the petitioner is not taking advantage of his or her own wrong (Section 23(1)(a)). This provision embodies the maxim "***Nullus Commodum Capere Potest De Injuria Sua Propria***". The expression "wrong" is not an esoteric word. It only means serious or grave misconduct. It is an act contrary to the rule of Right and Justice. It is a violation of law. It is something that is not right or equitable.

2. But the trial Judge had his own take on the above provision. The appellant / husband in his petition pleaded that the respondent was having an adulterous relationship with one Manoharan. Manoharan was not made a party. When adultery is pleaded, the paramour must be made a party. Failure to do so is fatal (***C.M.A.(MD)No.434 of 2019 vide order dated 28.01.2025 (Meenakshi Vs. Kannan)***). The trial Judge could have rejected this allegation on the ground of non-joinder of necessary party. He did not do so. Instead, he held that the appellant was taking advantage of his own wrong. Well, what was the wrong committed by the appellant? The appellant had left Sivagangai seeking employment elsewhere. He was working in Mumbai. To the trial Judge, this constituted a fundamental breach of marital obligation. He spoke thus:



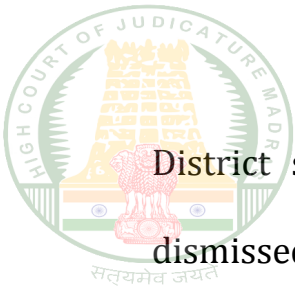
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“Legally speaking, the husband is bound to maintain his wife. It is highly impracticable for any one to overcome the impulse of sexual desire. Therefore, it remains the solemn duty of every husband that wherever he goes, he shall take his wife with him and he shall not be a cause for adultery or for any rumor for adultery. Therefore, this Court is of the view that if the husband is living jointly with the wife, satisfying her sexual desire, then he can raise the plea of adultery or cruelty as the case may be. But when the husband fails to take the wife with him for any reason whatsoever, he shall not be entitled to even plead adultery as he is one of perpetrator of the crime and hence can't be allowed to take advantage of his own wrong.”

Radical feminists may applaud the revolutionary approach of the trial Court. We say with regret that we cannot give our imprimatur. It may not always be feasible to take the wife along. Suppose the husband is a soldier, it is not possible to set up a marital home in the army barracks. The wife could be gainfully employed. She cannot be expected to conduct herself like the pug in the unforgettable vodafone ad.

3. Enough of detour. The marriage between the appellant and the respondent was solemnised on 10.09.1992 at Thevarambur as per the Hindu rites and customs. Four children were born through the wedlock. H.M.O.P.No.6 of 2014 filed by him before the Family Court, Sivagangai



District seeking dissolution of his marriage with the respondent was dismissed.

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4. The question that calls for consideration is whether the Court below was justified in denying the relief to the petitioner.

5. The appellant is aged 67 years. The parties are remaining separate from each other for full 16 years. The respondent has not taken any step for rejoining. Even a formal letter or notice was not sent by her. We are more than satisfied that the relationship between the parties has broken down beyond repair. The Hon'ble Supreme Court in the decision reported in **2023 SCC OnLine SC 497 (Shri Rakesh Raman Vs. Kavitha)** had held that the long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the parties has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. In a given case where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other.

6. Considering the nature of allegations and the counter allegations,



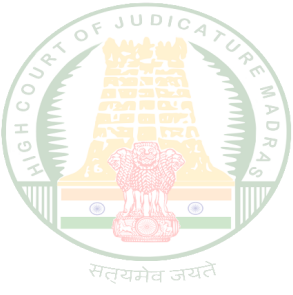
we are satisfied that there is so much of bad blood that there is simply no possibility of reunion. We had an interaction with the parties to arrive at an amicable settlement. Our efforts ended in vain. It would be more appropriate and fit to snap the marital tie. We declare that the marriage between the appellant and the respondent that was solemnised on 10.09.1992 at Thevarambur as per the Hindu rites and customs is dissolved. Divorce is granted.

7. Section 25 of the Hindu Marriage Act enables the Court to provide for payment of suitable alimony. Taking into account the overall facts and circumstances, we direct the appellant to pay a sum of Rs.7 Lakhs (Rupees Seven Lakhs only) to the respondent. This decree of divorce will come into force only on deposit of the said amount to the credit of H.M.O.P.No.6 of 2014 on the file of the Family Court, Sivagangai. It can be withdrawn by the respondent, thereafter. The impugned order passed by the Court below is set aside. This civil miscellaneous appeal is allowed on these terms. No costs.

(G.R.S.,J.) (M.D.S.,J.)
19-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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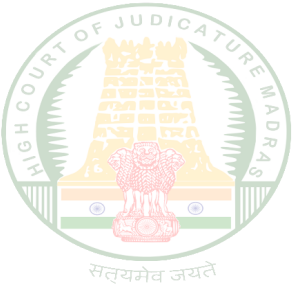
To:

The Judge,
Family Court, Sivagangai.

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The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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M.D.SUMATHI, J.
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