

A. Sukumar Vs. K.S. Chitra

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Court : Chennai

Decided On : Aug-16-2012

Judge : C. Nagappan & R. Karuppiah

Appeal No. : C.M.A. NO. 887 OF 2010 & MP. NO. 1 OF 2010

Appellant : A. Sukumar

Respondent : K.S. Chitra

Advocate for Pet/Ap. : For the Appellant: S. Soundararajan for K.S. Natarajan, Advocates. For the Respondent: D.J. Venkatesan, Advocate.

Judgement :

(Prayer: This Civil Miscellaneous Appeal is preferred against the fair and decretal order, dated 27.10.2009, passed in F.C.O.P.No.918 of 2003 on the file of the Principal Family Court, Chennai.)

JUDGMENT

R.KARUPPIAH,J.

1. This Civil Miscellaneous Appeal is directed against the fair and decretal order, dated 27.10.2009, passed in F.C.O.P.No.918 of 2003 on the file of the Principal Family Court, Chennai. The respondent in the petition is the appellant herein. In this Judgment, for the sake of convenience, the parties are referred to as arrayed

in the petition.

2. The respondent/petitioner, who is the wife of the appellant, has filed petition for divorce on the ground of cruelty under Section 13(1)(i)(a) of the Hindu Marriage Act, 1955 and also for permanent alimony of Rs.10 lakhs.

3. Briefly, the case of the petitioner/wife is that the marriage between the petitioner and the respondent was solemnised on 26.1.1996 according to Hindu rites and customs and out of wedlock, a daughter viz. Varshini, aged 6 years and a son viz. Sanjay, aged 1 years, were born. The respondent is employed as Reservation Clerk in Southern Railway and the petitioner is employed as Clerk in Indian Bank, Perambur.

4. According to the petitioner, at the time of marriage, the respondent's father informed that all his sons were settled in life and they were all living in their own house and on believing the abovesaid fact, the petitioner's parents consented for the marriage, but his elder brother Kirubakaran, who was married and having children, was unemployed and the entire family was depending upon the respondent and the respondent's father had chosen the petitioner in the interest of her income from employment. Further, the respondent's father and brother insisted the petitioner and the respondent to vacate the house since they wanted to rent out that portion and to utilise the rental income for the said Kirubakaran's family.

5. It is further stated in the petition that the respondent raised loan and purchased house at No.49, Janagiram Reddy Colony, Villivakkam and as there was insufficiency of funds to purchase the house, he forced the petitioner to collect money from her parents and he had beaten up the petitioner black and blue everyday for not asking money from her parents. The petitioner has further stated that the respondent went to the extent of dashing the face and head of the petitioner on wall by holding her hair in his hands and unable to bear the torture, the petitioner requested her parents, who had helped her by giving Rs.1 lakh from their pension. It is further stated that the petitioner was not even permitted to see or handle the pass-book or cheque books and her jewellerys in the bank locker maintained by the respondent and thus the petitioner was subjected to cruelty both physically and mentally by the respondent.

6. It is further stated in the petition that after vacating from own house, the respondent's father constructed shops in the building and arranged for permanent income to the said Kirubakaran and for those construction, the respondent, his father and brother jointly humiliated the petitioner to ask for money from her parents and also encouraged the respondent to beat the petitioner severely and also the respondent's father and brother threatened the petitioner in indecent manner even in the presence of the respondent.

7. The petitioner has further averred in the petition that the respondent had behaved brutally in the sexual life and he used to wake up the petitioner during mid night and had violent sex with her and when the petitioner refused or expressed her tiredness due to over work, the respondent kicked and assaulted the petitioner and also blackmailed the petitioner to subject herself for violent sexual acts otherwise he will bring call girls to home and he will have sex with them in the presence of the petitioner. It is further stated that the respondent was always suspicious and teased the petitioner and also doubted each and every act of the petitioner and the respondent has refused to purchase the necessary provisions for family and also refused even to give Rs.10 extra as pocket money to the petitioner and on many occasions, inspite of ill-health and tiredness, the petitioner was not able to have a cup of coffee or tea at her working place. The petitioner has further stated that harassment and tortures were increasing day by day and the petitioner was waiting with confidence that the respondent will realise his mistakes and correct himself, but the respondent had taken advantage of the goodness and he started her teasing her through the female child by persuading the child.

8. It is further stated in the petition that on 25.4.2003, the respondent forced the petitioner for sex in the early morning and when the petitioner was not willing, he assaulted her severely and threw her out from the matrimonial home by saying that she was not useful for his sexual life and she has to bring Rs.2 lakhs from her parents, otherwise he will not accept her and therefore the petitioner was living with her parents.

9. The petitioner has further stated that on 27.4.2003, when the petitioner was standing in Villivakkam Railway Station, the respondent shouted at her in most indecent manner by using unparliamentary words and hence the petitioner returned her home and took her brother and escorted her to reach her work place and on the same day, after the petitioner left the house, the respondent's father and brother entered her parents' house and abused them in the filthy language and threw their chappals on the petitioner's parents. While the petitioner's maternal uncle tried to prevent the situation, he was assaulted by the respondent's father and brother and hence the petitioner lodged police complaint on 28.5.2003 with W-5 All Women Police Station, Anna Nagar, Chennai which has been proved futile and therefore the petitioner has filed this petition to grant a decree of divorce dissolving the marriage between the petitioner and the respondent and also to grant permanent alimony of Rs.10 lakhs for children.

10. The respondent-husband has filed detailed counter and denied the averments in the petition and stated that there are no sufficient grounds for the grant of divorce and according to Hindu Law, marriage is a sacrament and the relationship of the husband and wife cannot be severed on such flimsy and frivolous allegations. According to the version of respondent, the marriage was held only after enquiring about status of the respondent by petitioner's father. Further, respondent's brother viz. Kirubakaran is a technically qualified person and at the time of marriage, he was working in private concern at Ambattur Industrial Estate and his earning was more than sufficient for entire family expenses and he was never depending upon the income of the respondent and therefore the allegations that Kirubakaran was unemployed and his family was depending upon the respondent are all false. The respondent has also denied the allegation that the petitioner was treated by the respondent's elder brother Kirubakaran and his father as a money lending machine. According to respondent, his father was a retired Railway employee and he is getting pension and also agricultural income and it is sufficient for his retired life and he is not dependent either on the petitioner or respondent's income.

11. It is further averred in the counter that at the time of marriage, the petitioner was working at Golden Rock Railway Station, Tiruchirapalli till March, 1998 and

the respondent was in Chennai and during the weekends, the respondent used to visit Trichy and similarly the petitioner also used to visit Chennai to spend holidays with the respondent. It is further stated in the counter that the petitioner got transferred in April 1998 and thereafter both the petitioner and the respondent stayed together and led a happy life.

12. The respondent has further stated in the counter that the allegations made in the petition that the petitioner was beaten up by the respondent black and blue every day for not asking money from her parents and he went to the extent of dashing the face and head of the petitioner against the wall are all absolutely false and the respondent never been any rude or atrocious behaviour and in fact the respondent on several occasions has shown his love and affection towards the petitioner in abundance. The respondent has further denied the averment that the petitioner was not even permitted to see or handle the pass book, cheque book and jewellery in the bank locker and the petitioner was never restricted to operate her bank account by the respondent being an Either or Survivor account. It is further stated in the counter that the respondent's father sold his agricultural land of 3 acres at Magarai village and out of the above said amount and also the loan of Rs. 3 lakhs from Ramakrishnapuram Building Society Limited, Villivakkam, he constructed shops near the existing building and it is false to state that the respondent availed loan for the construction and it is constructed for providing a permanent income to the respondent's brother Kirubakaran. The respondent has also denied the allegation that the respondent's father and brother jointly humiliated and harassed the petitioner and insisted her to ask money from her parents and the petitioner never suffered any cruelty through the respondent or by his relatives and also denied the averment that the respondent was always suspicious and teased the petitioner without any limitation. It is further stated in the counter that the respondent had never made any harassment and torture to the petitioner and also denied the allegation that the respondent teased her through female child by pampering the child.

13. The respondent has further stated in the counter that since the petitioner had an aversion in joint family, the respondent availed housing loan of Rs.3 lakhs on 5.8.1998 from his bank, Rs.75,000/- from Ind Bank Housing Limited, received

Rs.50,000/- from petitioner's mother as a hand loan and received Rs.40,000/- from his father and purchased a flat for Rs.4,65,000/- and occupied on 6.9.1998 and the petitioner and the respondent jointly lived for five months from April, 1998 to August, 1998. It is further stated that the respondent had repaid the hand loan obtained from the petitioner's mother and his father. The respondent has further stated that he availed another housing loan of Rs.1,50,000/- during November, 2001 from his employer for alteration and interior decoration of his flat and repaid the loan amount as Rs.2,200/- pm. The respondent has specifically denied the averment made in the petition that the respondent forced the petitioner to collect money from her parents either for purchase of flat or for repayment of loan and also denied the allegation that petitioner's parents gave Rs.1,00,000/-.

14. The respondent has further stated in the counter that the alleged incidents happened on 25.4.2003 are false and cooked up for the petition. According to respondent, on 25.4.2003, the respondent planned to go to Thiruttani Temple along with his family and he requested the petitioner to accompany them but the petitioner refused and asked him to take only her children and the respondent requested again and again but the petitioner shouted and quarreled with the respondent. It is further stated that the petitioner has no faith in Hinduism and therefore the respondent had cancelled the programme and went to his office and the petitioner also went to her office without preparing any food and on that day, she went to her parents' house. The respondent has further stated that he tried to talk with the petitioner over phone but the petitioner refused. It is further stated that besides humiliating the respondent, the petitioner gave strict instruction to her parents not to talk with the respondent and it is clear proof for her bad behaviour with the respondent.

15. It is further stated in the counter that on 27.4.2003, being a holiday, the respondent met the petitioner at Villivakkam Railway Station on her way to office and tried to compromise but she refused to talk with him and returned to her parents' house. The respondent has further denied the allegation in the petition that the respondent's father and brother entered the petitioner's parents' house and abused them in filthy language and threw chappals on the petitioner's parents and in fact, the petitioner's father went to petitioner's house to persuade the

petitioner to live with the respondent and lead a happy married life. The respondent has further stated that the petitioner, on a strong influence of her parents, does not desire to continue the marital tie with ulterior motive.

16. The respondent has also stated in the counter that the petitioner lodged a false police complaint on 28.4.2003 and the police conducted enquiry and tried to compromise them but it failed since the petitioner was adamant. It is further averred in the counter that the female child S.Varshini was staying with the respondent and another male child S.Sanjay was staying with the petitioner and the petitioner never allowed to see the child and it clearly shows the amount of cruelty caused to the respondent by the petitioner. The respondent has further stated in the counter that inspite of various allegations against the respondent, the respondent is for reunion only and the petitioner is not showing any indication to live with the respondent. It is further stated by the respondent that the permanent alimony claimed in the petition is only to harass the respondent and put in mental agony and torture on the petitioner's hands and at any rate, the claim of permanent alimony is high and not maintainable and therefore prayed for dismissal of the above said petition.

17. Before the trial Court, on the side of the petitioner/wife, she has examined herself as PW.1 and marked 4 documents as Exs.P1 to P4 and on the side of the respondent/husband, he has examined himself as RW.1 and marked 13 documents as Exs.R1 to R13. The Trial Court, after analysing the entire pleadings and evidence on record, came to the conclusion that the contention of the petitioner/wife that the respondent/husband has caused mental and physical cruelty to the petitioner/wife is proved and therefore the petitioner/wife is entitled for divorce on the ground of cruelty. The Trial Court has further held that the petitioner/wife is entitled for permanent alimony of Rs.5 lakhs from the respondent/husband. Aggrieved with the above said order, the respondent/husband has preferred this appeal.

18. The points for determination in this appeal are:

"1. Whether the petitioner-wife is entitled to divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955?

2. Whether the petitioner-wife is entitled to permanent alimony as claimed by her in the petition?"

19. Heard the learned counsel on either side and perused the entire materials on record.

20. The learned counsel for the respondent/husband has submitted that the Trial Court came to erroneous conclusion that the respondent/husband continued to demand more money from the petitioner/wife without any oral and documentary evidence and the trial Court without applying its mind and believing the evidence of petitioner-wife, without any proof to the same, has held that the respondent has doubted the act of the petitioner and also the respondent/husband had behaved brutally in sexual life and violent with her. He has further submitted that the Trial Court has failed to consider the evidence of the respondent/husband that the respondent/husband was leading marital life as dutiful husband as well as much abundant of love and affection towards his wife and children beyond doubt, but the Trial Court only based on the police complaint dated 28.4.2003 came to the conclusion that the alleged incidence of cruelty was proved by the petitioner/wife. The learned counsel for the respondent/husband has further contended that the respondent has not caused any mental or physical cruelty to the petitioner as alleged in the petition and the petitioner/wife has failed to prove the alleged incidences of cruelty by any sufficient oral and documentary evidence. He has further submitted that the Trial Court has failed to consider the fact that petitioner/wife was Central Government employee and other material facts and arbitrarily awarded Rs.5 lakhs as permanent alimony and therefore prayed for setting aside the above said order and decree passed by the Trial Court.

21. Per contra, the learned counsel for the petitioner-wife has submitted that the petitioner has alleged several incidences of cruelty in the petition and the petitioner has deposed to prove the same and since the above said incidences happened between the husband and wife, the petitioner-wife alone is competent to speak about the alleged cruelty and the Trial Court has correctly discussed and held that the petitioner-wife has proved the alleged cruelty and granted divorce on the ground of cruelty and also the permanent alimony awarded by the Trial Court is

just and reasonable and no need to interfere with the above said findings of the Trial Court.

22. It is not in dispute that the marriage between the petitioner and respondent was solemnised on 26.1.1996 according to Hindu rites and customs and out of wedlock, a daughter viz. Varshini and a son viz. Sanjay were born and it is also not in dispute that both the husband and wife were employees and lived together as husband and wife till 25.4.2003.

23. The incidences of cruelty alleged by the petitioner/wife are as under:

(1) The entire family of the respondent/husband was depending upon the income of the respondent and his elder brother Kirubakaran who was married and having children was unemployed and the respondent's father had chosen the petitioner in the interest of income from her employment and the petitioner was treated by cruelty.

(2) The respondent-husband forced the petitioner/wife to collect money from her parents when the respondent raised loan and purchased house at No.49, Janagiram Reddy Colony, Villivakkam as there was insufficiency of funds to purchase the house and the respondent/husband beaten the petitioner/wife black and blue everyday for not asking money from her parents and the respondent/husband went to the extent of dashing the face and head of petitioner/wife on wall by holding her hair in his hands and unbearable with the above said tortures, the petitioner-wife requested her parents, who had helped her by giving Rs.1 lakh from their pension.

(3) After vacating the respondent/husband and petitioner/wife from the own house, the respondent's father constructed shops and at that time, the respondent, his brother and father have jointly humiliated and harassed the petitioner to ask for money from her parents and also encouraged the respondent to beat the petitioner-wife severely so that she will collect money from her parents.

(4) the respondent had behaved brutally in sexual life and he used to wake up the petitioner during the mid-night and had violent sex with her and when the petitioner

refused and expressed her tiredness due to over work, the respondent-husband kicked and assaulted his wife and also the respondent blackmailed the petitioner to subject herself for violent sexual life otherwise he will bring call girls home and he will have sex with them in the presence of petitioner-wife.

(5) The respondent was always suspicious and teased the petitioner and the respondent doubted each and every act of the petitioner and also the respondent refused to purchase necessary provisions for the family.

(6) On 25.4.2003, the respondent-husband forced the petitioner-wife for sex in the early morning and when she was not willing, the respondent assaulted her severely and threw her from matrimonial home by saying that she was not useful for his sexual life and also asked to bring Rs.2 lakhs from her parents otherwise he will not accept her.

(7) On 27.4.2003, when the petitioner-wife was standing in Villivakkam Railway Station, the respondent shouted at her in most indecent manner by using unparliamentary words and hence the petitioner-wife returned back home and took her brother to escort her to reach her work place and on the same day, after the petitioner-wife left the house, the respondent's father and brother entered the petitioner-wife's parents house and abused them in filthy language and threw chappals on the petitioner-wife's parents and therefore the petitioner-wife lodged a complaint on 28.4.2003 with W.5 All Women Police Station.

24. The learned counsel for the appellant/respondent has relied on the following decisions:

"1. DR.N.G.DASTANE Vs. MRS. S. DASTANE (AIR 1975 SC 1534)

2.P.ABIRAMI Vs. D.E. TAMILARASAN (2012 (2) CTC 607) and

3. SAMARGHOSH Vs. JAYA GHOSH (2007 (3) CTC 464)"

and contended that the burden of proof lies only on the petitioner to establish her case and also contended that mere trivial irritations, quarrels and normal wear and tear of married life, which happens in day to day life would not be adequate for

grant of divorce on the ground of mental cruelty and the petitioner has not pleaded with material particulars like date and month and also not pleaded and proved the specific acts of cruelty and therefore the petitioner-wife is not entitled to the relief of divorce on the ground of cruelty.

25. Per contra, the learned counsel for the petitioner-wife relied on the following decisions:

"1. **SATISH SITOLE Vs. SMT. GANGA (AIR 2008 SC 3093)**

2. **SAPNA Vs. B. PRADEEP KUMAR (MANU/TN/0823/ 2012 = II (2012 DMC 35)**

3. **VISHWANATH S/O SITARAM AGRAWAL Vs. SAU. SARLA VISHWANATH AGRAWAL (MANU/SC/0513/2012)** and

4. **SAMARGHOSH Vs. JAYA GHOSH (2007 (3) CTC 464)"**

and would submit that the petitioner-wife has clearly stated the incidences of mental and physical cruelty in the petition and also the petitioner has testified the above said facts at the time of evidence and further submitted that the marriage between the petitioner and the respondent was solemnised on 26.1.1996 and on 25.4.2003 onwards the petitioner and respondent were not living together and the petition was filed on 14.5.2003 and it would not be possible for them hereafter to live as husband and wife unitedly and the marriage between the petitioner and the respondent had completely broken down beyond repair and therefore it is a clear case of irretrievable break down of marriage between the parties and therefore the petitioner-wife is entitled to obtain a decree of divorce and the trial Court has correctly dissolved the marriage by granting divorce on the ground of cruelty.

26. In the decision relied on by the respondent-husband in **DR.N.G.DASTANE Vs. MRS. S. DASTANE (AIR 1975 SC 1534)**, it is observed in para No.23 as under:

"23. First, as to the nature of burden of proof which rests on a petitioner in a matrimonial petition under the Act. **Doubtless, the burden must lie on the petitioner to establish his or her case for, ordinarily the burden lies on the party which affirms a fact, not on the party which denies it. This principle**

accords with commonsense as it is so much easier to prove a positive than a negative. The petitioner must therefore prove that the respondent has treated him with cruelty within the meaning of Section 10(1)(b) of the Act. "

In the above said decision, the Honourable Supreme Court has clearly laid down the principle that the burden of proof lies on the petitioner to establish his or her case and therefore the petitioner must prove that the respondent has treated her with cruelty.

27. The learned counsel for the respondent-husband has relied on another decision of a Division Bench of this Court in **P.ABIRAMI Vs. D.E. TAMILARASAN (2012 (2) CTC 607)**, in which, para 16 reads as under:

"16. As far as the allegation of mental cruelty is concerned, as rightly submitted by the learned counsel for the Appellant, the acts alleged against the Appellant, which according to the Respondent, amounts to causing mental cruelty, have not been pleaded with material particulars like the date and month. No specific acts which amounted to causing mental cruelty have been pleaded with material particulars. Only general allegations have been made against the Appellant by the Respondent in the Petition. In the Petition before the Court below, it has not been stated that due to the Appellant's higher education and wealth and due to superiority complex what was the nature of the behaviour and what was the activity of the Appellant, which caused mental cruelty to the Respondent. Though it has been alleged in the Petition that the Appellant failed to act as a dutiful wife from the date of marriage till the date she left the matrimonial home, the Petition is silent as to what was the duty that was not performed by her."

In the above decision, this Court has clearly held that as far as the allegation of mental cruelty, the alleged acts have not been pleaded with material particulars like date and month and no specific acts which amounted causing mental cruelty have been pleaded with material particulars and only general allegations have been made and therefore this Court has set aside the decree of divorce granted on the ground of mental cruelty.

28. Further, in the decision of the Honourable Supreme Court in **SAMARGHOSH Vs. JAYA GHOSH (2007 (3) CTC 464)**, relied on by both the learned counsel for the petitioner/wife and the respondent/husband, it is held in para 74 as under:

"74. (ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty."

In the above said decision, the Honourable Supreme Court has held that mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

29. In the instant case, the petitioner-wife has filed petition for divorce on the ground of cruelty and therefore as per the law laid down by the Honourable Supreme Court in the above decision relied on by the respondent/husband, the petitioner/wife has to prove the alleged incidences of cruelty by adducing reliable evidence.

30. Admittedly, to prove the above said incidences of cruelty, on the side of the petitioner/wife, she has not examined any other witness except the interested testimony of the petitioner. Further, on the side of the petitioner, she has marked the marriage invitation as Ex.P1, marriage photo as Ex.P2 and the copy of alleged police complaint dated 28.4.2003 as Ex.P3, given by the petitioner 16 days prior to filing of the petition for divorce and copy of receipt dated 29.4.2003 as Ex.P4 and therefore the oral testimony of the petitioner alone is available to prove the alleged incidences of cruelty. On the side of the respondent/husband, to falsify the contention of the petitioner, the respondent has deposed as RW.1 and also marked Exs.R1 to R13. Admittedly, the marriage was solemnised after six months of betrothal and both the petitioner and respondent's parents' houses are situated nearby. Further, the petitioner herself has admitted in her evidence that the petitioner and respondent were not living along with other family members and immediately after marriage, a separate portion was allotted for them and the parents of the respondent and one brother of the respondent viz. Ravikumar were living in another portion and another elder brother of the respondent viz.

Kirubakaran was living in upstairs portion separately and both the petitioner and the respondent were living only for six months in the above said house and then constructed a new house and lived separately.

31. Further, it is an admitted fact that the respondent's father viz. Appadurai is a retired Railway employee and getting his pension and also having agricultural lands. It is also revealed that the elder brother of the respondent viz. Kirubakaran is a technically qualified person and he was working in private concern at Ambattur Industrial Estate. Further the petitioner has admitted in her evidence that there is no quarrel between her and the parents of the respondent while living separately in respondent's parents' house and after shifting to new house also, the parents of the respondent came there and the petitioner and respondent also used to visit the respondent's parents' house and also admitted that even after vacating the house, only the brother of the respondent viz. Kirubakaran was living in the portion and not rented out to anybody.

32. In the above circumstances, on the side of the petitioner, she has not stated any specific incident of demanding money from the petitioner by the family members of the respondent, particularly, by the respondent's elder brother Kirubakaran. Therefore the allegations of the petitioner that the respondent's father has chosen the petitioner only in the interest of her income from employment and the entire family of the respondent was depending upon the income of the respondent are not proved by reliable documentary evidence except the interested testimony of the petitioner and as rightly contended by the learned counsel for the respondent, the particulars of demand of money from the petitioner like date, month etc. are not stated in the petition and also not deposed at the time of evidence by the petitioner and therefore the above said incidences of cruelty alleged by the petitioner are not proved.

33. The second and third incidences of cruelty alleged by the petitioner are that the respondent had beaten the petitioner black and blue everyday for not asking money from her parents at the time of purchasing the house at No.49, Janagiram Reddy Colony, Villivakkam and also the respondent went to the extent of dashing the head of the petitioner on the wall by holding her hair in his hands and tortured

the petitioner and hence the petitioner requested her parents, who helped by giving Rs.1 lakh from the pension and the respondent and his parents humiliated the petitioner and beaten severely. To prove the above said allegations, except the oral testimony of the petitioner, there is no other oral and documentary evidence. The petitioner has not stated any reason for non-examining the parents of the petitioner to prove the above said demand of money and payment of Rs.1 lakh amount as demanded by the respondent. Further, a perusal of oral evidence of the petitioner reveals that she has deposed completely contradictory with the averments in the petition. In one place, she has stated that before registering document, as demanded by respondent, Rs.25,000/- and after that another Rs.25,000/- was given by her mother and Rs.50,000/- was given by her father and totally Rs.1 lakh was given and after retirement, her father had given Rs.50,000/- i.e., after 2002. The above said fact is not stated in the petition. The same petitioner had again deposed contrary to the above said fact that at the time of purchase of the above said house, the father of the petitioner has not given any amount and only after retirement, he has given amount to the respondent. Admittedly, the above said flat purchased in the year 1998 and the father of the petitioner was retired only in the year 2002 and hence out of retirement benefits, Rs.1 lakh was given to purchase flat is proved as false. The parents of the petitioner alone are competent persons to speak about the facts but they were not examined by the petitioner. Therefore a perusal of oral testimony of the petitioner reveals that the petitioner has falsely deposed about the demand of money as alleged in the petition. The learned counsel for the respondent has further submitted that in the year 1998, the flat was purchased for Rs.4,65,000/- by availing housing loan for Rs.3 lakhs on 5.8.1998 from respondent's bank under the capacity of an employee and to prove the same, Ex.R2 loan sanction letter has been marked and the respondent has availed Rs.75,000/- from Ind Bank Housing Limited on 17.8.1998 and to prove the same, Ex.R3 was marked and the petitioner's mother gave hand loan of Rs.50,000/- and the respondent's father gave hand loan of Rs.40,000/- and the respondent has repaid the hand loan of the petitioner's mother and also the respondent's father on instalment basis. The oral and documentary evidence adduced by the respondent reveal that the allegation of the petitioner that Rs.1 lakh was paid for purchase of the above said flat is false

and therefore the alleged second and third cruelties are not proved.

34. With regard to fourth and fifth incidences of cruelty are concerned, except the oral testimony of the petitioner, no other evidence was adduced to prove the above said allegations. The learned counsel for the petitioner would contend that the above said incidences happened between the husband and wife and therefore the petitioner alone is competent to speak about the said fact. Per contra, the learned counsel for the respondent has submitted that if really the above said incidences happened, certainly the petitioner would have informed her parents or relatives or co-workers, but in this case, except the petitioner nobody was examined to prove the above said allegations.

35. Further, the petitioner has stated in her evidence that the respondent assaulted the petitioner and caused injuries and taken treatment in the hospital but she has not produced any document and not examined the doctor or parents of the petitioner or neighbour to prove the above said incident. It is further contended that the petitioner was forced to collect money from her parents and the respondent has beaten black and blue everyday for not asking money from her parents and also alleged that the respondent, his brother and father have jointly humiliated and harassed the petitioner to ask for money from her parents and also encouraged the respondent to beat the petitioner to collect money from her parents. The above allegations are all not proved by adducing reliable evidence. Therefore the fourth and fifth incidences of cruelty are not proved by the petitioner as rightly contended by the learned counsel for the respondent.

36. With regard to sixth and seventh incidences of cruelties are concerned, except the oral testimony of the petitioner, no other evidence like parents, brother, neighbour, co-worker who are competent witnesses was adduced to prove the above said allegations. As already discussed, the marriage between the petitioner and the respondent was held on 26.1.1996 and they were living as husband and wife till 25.4.2003. During the above said period, no complaint of any harassment or any complaint to the police was filed and therefore as contended by learned counsel for appellant/respondent the above said allegations have been made in the petition only for filing the petition for divorce and therefore the above said sixth

and seventh cruelties are also not proved.

37. The Trial Court, only relying on the oral testimony of the petitioner, who is interested witness, granted divorce as if the alleged incidences were proved. The Trial Court has not considered the contentions of the respondent and the oral and documentary evidence adduced on the side of the respondent to disprove the contentions of the petitioner. Therefore, a careful reading of oral and documentary evidence adduced by both sides reveal that the petitioner has not proved the alleged incidences of cruelty by reliable oral and documentary evidence, but the Trial Court has wrongly held that as if the petitioner has proved the alleged incidences of cruelty.

38. At the time of argument before this Court, the learned counsel for the petitioner has contended that the marriage was held on 26.1.1996 and from 25.4.2003 onwards both husband and wife were not living together and therefore the marriage between the petitioner and the respondent has completely broken down beyond repair and it is a clear case of irretrievable break down of marriage between the parties and on that ground, he prayed for divorce. To substantiate the above said contention, he relied on two decisions as already stated. In the decision reported in **SATISH SITOLE Vs. SMT. GANGA (AIR 2008 SC 3093)**, the Honourable Supreme Court has observed in para 12 as under:

"12. In the said circumstances, following the decision of this Court in Romesh Chander's case (supra) we also are of the view that since the marriage between the parties is dead for all practical purposes and there is no chance of it being retrieved, the continuance of such marriage would itself amount to cruelty, and, accordingly, in exercise of our powers under Article 142 of the Constitution we direct that the marriage of the appellant and the respondent shall stand dissolved, subject to the appellant paying to the respondent a sum of Rupees Two lakhs by way of permanent alimony. In addition, the appellant shall also pay the costs of this appeal to the respondent assessed at Rs.25,000/-. The appeal is disposed of accordingly."

39. As rightly contended by the learned counsel for the respondent, the Honourable Supreme Court has exercised the power under Article 142 of the

Constitution and held that since for 14 years the appellant and respondent lived separately and all attempts for re-union failed, the marriage has been broken down irretrievably and dissolved the marriage in the above decision.

40. In another decision in **SAPNA Vs. B. PRADEEP KUMAR (MANU/TN/0823/2012 = II (2012 DMC 35)**, relied on by the learned counsel for the petitioner, this Court also held that the marriage between the wife and husband has completely broken down beyond repair and it is clear case of irretrievable break down of marriage between the parties and therefore granted divorce.

41. In the instant case, the marriage was held on 26.1.1996 and both the respondent and petitioner were living together till 25.4.2003 as husband and wife and out of the said wedlock, they have two children. On the side of the petitioner, she has not proved the fact that the marriage has broken down irretrievably and on that ground alone the petitioner is not entitled to divorce.

42. From the above discussion, we are of the view that the petitioner/wife has not proved the alleged incidences of cruelty by her husband by adducing reliable evidence and the Trial Court has erroneously held that the alleged incidences of cruelty were proved and granted divorce and therefore the above said order of the Trial Court on the ground of cruelty is liable to be set aside.

43. We are also of the considered view that the petitioner wife is not entitled to any amount as permanent alimony since the petition filed by the petitioner/wife for divorce is not maintainable as already discussed in earlier paragraphs. Therefore the petitioner is not entitled for permanent alimony as prayed for in the petition and we answer the points accordingly.

44. In the result, the Civil Miscellaneous Appeal is allowed and the order and decretal order dated 27.10.2009 passed by the Trial Court in F.C.O.P.No.918 of 2003 are set aside and the petition in F.C.O.P.No.918 of 2003 is dismissed. Considering the relationship of the parties, there shall be no order as to costs. Connected MP.No.1 of 2010 is closed.