

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, TIRUVANNAMALAI,
TIRUVANNAMALAI DISTRICT.

PRESENT: Tmt. C. THIRUMAGAL, M.L.,
Principal District Judge,
Tiruvannamalai.

Tuesday, the 19th day of January -2021.

INDIAN DIVORCE ORIGINAL PETITION NO. 44/2020

A. Sagaya Jayaprakash .. Petitioner
-Versus-
S. Jackline Jancy Rani .. Respondent

(Initially this petition was filed before Principal District and Session Court, Villupuram on 31.07.2019 and same was numbered as DOP.No.140/2019, then it was transferred from Villupuram to this court as per order of the Hon'ble High court, Madras in Transfer CMP.No.824/2019 dated 28.1.2020 , in Dis.No.3969/2020 dated 13.08.2020 and the same was taken on file before this court in DOP.44/2020.)

This petition had come for final hearing before me on 07/01/2021 in the presence of Thiru. D.Arockia Vinoth Prince, learned Advocate for the Petitioner and Thiru P.A. Inbaraj, learned Advocate for the respondent, at the stage of PW.1 cross the respondent called absent set exparte and upon hearing petitioner side, upon perusing the petitioner side documents, this court delivers the following :-

ORDER

The petition was filed by the petitioner u/s 10 (1) (ix) (x) of the Indian Divorce Act 1869, prays to dissolve the marriage between the petitioner and the respondent on 14.05.2003 by a decree of divorce and for cost.

2) The brief averments of petition :-

Both the petitioner and respondent are Christian by religion and had entered into arrange marriage on 14.05.2003. The marriage was performed as per the Christian rites and customs was solemnized at our Lady Periyanyagi Church, Nangathur, in the presence of the relatives and the friends of both sides. The petitioner herewith places the marriage certificate provided by the Parish Priest, Nangathur and photo of the petitioner and the respondent and craves. At the time of the marriage the petitioner was a bachelor and the respondent was a spinster.

The marriage between the petitioner and the respondent through the lawful marital wedlock, female child by name Gogul Aparna Hashani Mary was born on 18.03.2004. The second another female child by name Sathiya Jaya Prakathy was born on 07.01.2006 and the third male child by name Yujith Renald was born on 22.10.2009. At the time of marriage the respondent had just completed her Diploma nursing, whereas after the marriage the petitioner had educated the respondent to a B.Ed degree. The Respondent is now working as the staff Nurse in the health Department of Tiruvannamalai District and monthly earning around Rs. 26,000/-. The petitioner was a lovable and caretaking husband to the respondent but the respondent was not with the same attitude towers the petitioner. The petitioner had an old aged mother, who suffered with many kinds of illness after the marriage and the same mother was not taken care by this respondent. The petitioner was an Army person he was happened to be in his service and as the respondent happened to be the elder daughter in law of the family, the responsibility and the duty of the family lied on the head of the respondent and the same duty and responsibility has been neglected by this respondent.

The attitude and the behavior of the respondent has been converted by day to day and it became worst and the respondent totally withdrawn from her family responsibility and wanted to enjoy the life away from Nangathur Village, therefore the respondent had forced the petitioner to shift to Vettavalam Village, therefore the respondent had forced the petitioner to Vettavalam Village, which happen to be the birth place of this respondent. The sake of the family, the petitioner had left his aged and sick mother in Nangathur and started his life in Vettavalam Village with the respondent.

From the day one of the matrimonial life in the respondent native village was hell to this petitioner and the respondent was supported by her parent and family members and with the dare support of the family members and the relatives the respondent started to ill-treat the petitioner and for unknown reason started to use filthy language toward this petitioner and his family members which is nothing but the mental cruelty.

The respondent was cruel in nature and ill-treated the petitioner with the support of the family members of the respondent, the petitioner out of love and affection purchased a vacant land in favor of the respondent name and build a home in Vettavalam, now the respondent and her children are living in the home and the current value of the home and property is around Rs.70,00,000/- and the petitioner had also purchased three vacant flats in favor of the respondent and one among them was sold by this respondent and the value has been spent lavishly by this respondent, the second was settled to the children of this petitioner and the respondent through the settlement deed and the same has been accepted by this petitioner. whereas the third property was malpractice by the respondent such a way that the respondent had executed settlement deed in favour of her mother in 2015, which is an il-legal transaction. Originally the source for buying the property was from the

petitioner.

There was problem in the Vettavalam, the petitioner shifted himself to Nangathur with the important document and went to his duty to Army, in 2016 when the petitioner came to his native for vacation, it was found that the respondent came to Nangathur and taken all the necessary documents with her, when the same was asked by this petitioner had no chance none other than giving complaint in the respective Police station, Kanjanur Police Station, the xerox copy of CSR No: 91/2016 as extract.

The petitioner serves in the Indian Army and the petitioner had annual vacation every year and when the petitioner comes to the home the respondent created quarrels with the petitioner and beaten the petitioner with the help of the respondent family members, which is a physical cruelty and the respondent had given many complaints in Vettavalam, Police Station. The xerox copy of the CSR No: 186/2016 an extract. As the respondent is the women and she has the man power in her native village and utilizing her womanhood as her strength, the respondent converted the ambiance in her favor and filed many complaints and harassed the petitioner in multiple ways and the petitioner had bared the agony for the betterment of the family but the cruelty of this respondent has been increased day by day but not reduced at any stage.

Whenever the petitioner and the respondent was alone the respondent created problems for unknown reasons and used filthy language and had beaten this petitioner vigorously and the respondent declared that the respondent is not willing to live with this petitioner and the respondent forced the petitioner to die. The petitioner had spent his sleepless nights with painful heart and entire ovation went with unexplainable pain. At one stage the petitioner was afraid to live with this respondent, therefor the petitioner had filed

the Divorce OP in Tiruvannamalai District Court in 2017 and the divorce OP was numbered as I.D.O.P. 2/2017 and the respondent had filed the affidavit that she is ready to live with the petitioner and after the completion of 10th standard of the first child and the same has been accepted by this respondent, therefore the petition was decreed as "both the petitioner and the respondent are ready to reunion, therefore this petition is dismissed" the petitioner places the xerox copy of the Decree copy as extract.

The petitioner is willing to live in his native place for the same he had constructed a new home in his native village and the petitioner requested the respondent for the matrimonial life in the said home at his native but the same was neglected by this respondent and the petitioner had requested the respondent for the matrimonial life in the said home but the respondent was not willing to live and scolded the petitioner with the filthy language.

The petitioner believing the affidavit filed by the respondent whenever the petitioner approached this respondent in Vettavalam to live his matrimonial life peacefully in the petitioner native and she created problems and this time the children also joint with the respondent and scold the petitioner with the filthy language and beaten the petitioner and filed the complaint the Police station, the xerox copy of the FIR No. 779/2018 is filed as extract.

The respondent had taken too another step that to spoil the peaceful service of the petitioner, therefore the respondent had forwarded many complaints to the MEG center, Bangalore and stated allegations about the petitioner and the respondent had also sent complaints to 15 Engineer Regiments, Rajasthan, there also the Respondent send many allegations about the petitioner and the respondent had also sent the complaint to the Army

HeadQuarters, New Delhi, stated wrong allegations through the complaints and finally the respondent also sent the complaint to the AWAY Centre (Army Family Welfare Center), New Delhi. The ultimate aim of the respondent to destroy the peace and the happy of the petitioner to execute the same the respondent had sent various complaints to the petitioner's department heads and the respondent is also ordered for 33% of the petitioner's salary as the maintenance.

On 12.07.2019 the petitioner try to bring back the respondent and the children to Nangathur but the same was neglected by this respondent and the petitioner had filed complaint in the Kanjanur Police station and the respondent stated that she is not willing to reunion, the petitioner places the xerox copy of the CSR No. 402/2019 copy as extract. The petitioner humbly submits that he had taken maximum steps to reunion with this respondent but all the output are failure and the ultimate goal of this respondent and the children are only money and the properties earned by this petitioner and they want the death of this petitioner and the petitioner is also afraid that they will force him to suicide or they will case him death.

From May 2014, the respondent had deserted the petitioner without just cause. The petitioner states that the respondent has committed physical as well as mental cruelty from time to time. If the petitioner is asked to reunion with the respondent, the respondent and the family members will join together case the petitioner to death. The petitioner and the respondent are staying separately for more than 5 years. The petitioner states that under the above mentioned facts and circumstances the present petitioner seeking divorce on the ground of cruelty and desertion.

3) Counter Statement Filed by the Respondent.

The petition is false, frivolous, vexatious and is unsustainable either on question of law or on facts and is liable to be dismissed in limine. This respondent does not admit any of the allegations contained in the petition, save those that are specifically admitted herein and puts the petitioner to strict proof of the same.

The averments contained in Para 1 and 2 are true. The averments contained in para 3 are totally false. This respondent's parents alone borne out all the educational expenses including B.Ed Decree. This respondent is not a staff nurse. She has completed only ANM course and not earning Rs. 26,000/- as stated by the petitioner. It is false to allege that this respondent did not take care of the petitioner's mother. As the petitioner served in the Army during that period, this respondent alone took care of the petitioner's mother at various hospitals namely Mathakadipattu Hospital, Villupuram Mundiyaikkam Hospital and PIMS Hospital at Puducherry. During that period the petitioner's brother and his wife were working at Coimbatore. The respondent alone without anyone's help single hardly looked after the petitioner's mother till her last breathe.

The averments contained in paras 4 and 5 are totally false. This respondent hails from a orthodox Christian family and well nurtured by the parents always stood behind the petitioner at all the downfall times faced by him. It is he who put the respondent down and never showed any love and care. Due to the alcoholism, the petitioner always irresponsible and indulge in domestic violence against this respondent and the children. The family elders and the Nagathur Church Parish council members advised the respondent to shift the residence for safety and mental cruelty. The petitioner being a chronic alcoholic used to beat the respondent brutally for the reasons best known to him.

The averments contained in para 6 and 7 are totally false. This respondent never ill-treated the petitioner and as a woman she is always very kind with fellow human beings. She is not a cruel natured women as stated by the petitioner. The vacant site has been purchased by this respondent with the financial support of her parents. The value of the house stated by the petitioner is beyond one's imagination. The petitioner has been torturing this respondent to settle the house property in his name. But quite contrary to his expectations, this respondent had settled the house property by way of settlement deed in favor of her three children in the year 2015. The settlement deed executed by this respondent in favor of her mother was a local arrangement for the hand loan of Rs. 3,00,000/- obtained to complete the house constructions and also for meeting the house warming ceremony. The petitioner has not even spent single pie for the purchase of house plot at Vettavalam. The averments contained in para 7 are false and the alleged CSR 01/2016 has been created to suit the occasion.

The averments contained in para 8 and 9 are far from truth and they are cooked up stories except the CSR No. 186/2016. This respondent always submissive to her husband and never created any problem with the petitioner. She never declared that she is not willing to live with the petitioner. On the other hand, the petitioner not at all interested to live with the respondent sine he has illegal contacts with many women. Further it is submitted that to crown all these the petitioner had filed divorce O.P. No. 2/2017 before this Honourable Court and the same was dismissed on account of this respondent was adamant to live with this petitioner. The alleged sleepless nights, painful head and unexpected pain are all concocted version of the petitioners to give a colour of reality with malafied intention.

That the averments contained in paras 10,11 and 12 are partly correct and partly false. It is true that the petitioner filed a divorce OP.2/2017 before this Honourable Court and the same was dismissed as this respondent expressed her willingness to reunion with this petitioner. Accordingly, this respondent and her children went to Kalimpong Army Camp, Sikkim and lived with the respondent. Even when they were living together under one roof, this petitioner brutally beat this respondent. As a result of complaint preferred by this respondent, the petitioner was in quarter guard for one night and then they have released him after severe warning.

The averments contained in paras 13 and 14 are all false and they are nothing but myth. This respondent never spoiled the peaceful service of the petitioner. On the other hand as the petitioner deserted the respondent and the three children and left them in the streets, for the sake of welfare of the three children, this respondent knocked the doors of the Army Headquarters for justice. The alleged CSR No. 492/2019 of Kanjanur, Police Station has been created by the petitioner and rest of the allegations are far away from truth.

The averments contained in para 15 are false and they are nothing but myth. The petitioner being the military officials usually comes once in a year and most of the leave occasions, the petitioner used to develop quarrels and leave the matrimonial home without any responsibility. Untill 2018, this petitioner lived with the respondent. This is evident from the First Information Report No. 779/2018 dated 01.12.2008. This respondent undertake to file the copy of FIR information report in Cr. No. 779/2018 on the file Vettavalam Police station at the time of trial. In the above said FIR it is clearly stated that this petitioner came to matrimonial home on account of holidays and misbehaved with his own daughter. This fact itself going to show that the petitioner and the respondent lived

together till 2018 and not five years of separation as stated by the petitioner. The rest of the allegations contained in the petitioner are baseless and they are fabricated and created to reach the unreachable. This respondent always ready and willing to live with the petitioner at least for the sake of the children. It is therefor prayed that this Honourable Court may be pleased to dismissed the petition with costs of this respondent.

4) The point for consideration in this petition is "**Whether the petition has to be allowed or not?**

5) **POINT:-** Heard. The petitioner/husband seeks divorce from his wife/respondent on the ground of cruelty and desertion and refusal to give conjugal happiness to the petitioner. The respondent was called absent and was set exparte. The averments in the petition remains unchallenged, and the respondent has not entered the witness box, nor cross-examine the petitioner. The petitioner examined himself as PW1 and marked Ex.P1 to Ex.P12. Ex.P1, is the Marriage certificate of the petitioner and the respondent. Ex.P2, Photograph of petitioner and Respondent. Ex.P3 is Birth certificate of Gokul Aparama Hashani Mary. Ex.P4 is Baptisms Certificate of Sathiya Jaya Prakathy. Ex.P5 is Baptisms Certificate of Yujith Renald. Ex.P6 is settlement deed executed by the Respondent infavour of her. Ex.P7 is CSR.91/2016 filed by the petitioner in Kanjanur P.S. Ex.P8 is CSR.186/2016 filed by the Respondent in Vettavalam P.S. Ex.P9 is Order of the IDOP.No.2/2017 in PDJ Court, Tiruvannamalai. Ex.P.10 is FIR.779/2018 of Vettavalam P.S. Ex.P.11 is CSR.No.402/2019 filed by the petitioner in Kanjanur P.S. Ex.P.12 is Aadhar card of the petitioner.

6) On perusal of the oral and documentary evidence, the claim of the petitioner is proved. Accordingly, the original petition is allowed.

In the result, the petition is allowed and the marriage solemnized between the petitioner and the respondent on 14.05.2003 is dissolved by decree of divorce. No costs.

This order is dictated by me to the Steno-typist, typed by the Steno-typist directly in computer, corrected and pronounced by me in open court, on this, the 19th day of January 2021.

**Sd/- C.Thirumagal
Principal District Judge,
Tiruvannamalai**

List of witness on the side of petitioner

P.W.1 Tr. Sagaya Jayaprakash

List of exhibits on the side of petitioner :-

Ex.P.1	16.07.2019	Marriage certificate of the petitioner and the respondent
Ex.P.2	--	Photograph of petitioner and Respondent
Ex.P.3	18.03.2004	Birth certificate of Gokul Aparama Hashani Mary
Ex.P.4	05.02.2006	Xerox copy of Baptisms Certificate of Sathiya Jaya Prakathy
Ex.P.5	23.11.2009	Xerox copy of Baptisms Certificate of Yujith Renald
Ex.P.6	21.06.2013	Xerox copy of settlement deed executed by the Respondent infavour of her
Ex.P.7	11.06.2016	Xerox copy of CSR.91/2016 filed by the petitioner in Kanjanur P.S.
Ex.P.8	15.06.2016	Xerox copy of CSR.186/2016 filed by the Respondent in Vettavalam P.S
Ex.P.9	05.01.2018	Xerox copy of Order of the IDOP.No.2/2017 in PDJ Court, Tiruvannamalai
Ex.P.10	01.12.2018	Xerox copy of FIR.779/2018 of Vettavalam P.S
Ex.P.11	12.07.2019	Xerox copy of CSR.No.402/2019 filed by the petitioner in Kanjanur P.S
Ex.P.12	--	Xerox copy of Aadhar card of the petitioner.

List of witness and exhibit on the side of Respondent:- Nil-

**Sd/- C.Thirumagal
Principal District Judge,
Tiruvannamalai**