

IN THE VI ADDITIONAL FAMILY COURT AT CHENNAI

Présent: Tmt.Roslyn Durai, B.Com., M.L.,

VI Additional Principal Judge, Family Court, Chennai

Thursday, the 19th day of December 2024

O.P. No.4177 of 2021



Jyotshna Rani Panda, D/o.Nilanchal Panda, Hindu, aged about 34 years, residing at No.45/123, Anna Street, Thiruvanmuyur, Chennai 600 041. ... Petitioner

/Vs/

1. Srikant Panigrahi, S/o.Binod Chandra Panigrahi, Hindu, aged about 41 years, residing at No.G-122, Marigold G Block, Embassy Residency Phase-2, Cheran Nagar, Perumbakkam, Chennai 600 100. ... 1st Respondent

2. Rachana Rani Panda, D/o.Nilanchal Panda, Hindu, aged about 34 years, residing at No.17-345, Rajeev Nagar, Sompeta, Srikakulam, Andra Pradesh 532 284.

... 2nd Respondent

This petition is filed under Sections 13 (1) (i-a) and 13 (1) (i) of Hindu Marriage Act, 1955, praying for dissolving the marriage between the petitioner and the 1st respondent which was solemnized on 21.11.2008 at Sri Tirumala Thirupathi Devasthanam, Gandhi Nagar, Sompeta, and registered vide Sl. No.04/2012 at the Registrar, Sompeta, Andhra Pradesh, by granting a decree of divorce on the grounds of cruelty and adultery, and for costs.

This petition filed on 05.10.2021, and came up for final hearing before me on 07.12.2024 in the presence of the petitioner and the 1st respondent, and the 2nd respondent remained exparte, and upon perusing the petition and material records and

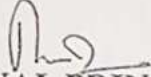
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evidence of the petitioner and 1st respondent, and on hearing both sides, this Court doth order and decree as follows:



1. that this petition is allowed for divorce.
2. that the marriage between the petitioner and the respondent solemnized on 21.11.2008 at Sri Tirumala Thirupathi Devasthanam, Gandhi Nagar, Sompeta, and registered vide Sl. No.04/2012 at the Registrar, Sompeta, Andhra Pradesh, is dissolved on the grounds of cruelty and adultery under Sections 13 (1) (i-a) and 13 (1) (i) of Hindu Marriage Act, 1955.
3. that there be no costs.

Given under my hand and the seal of this court on this day, the 19th day of December 2024.


 VI ADDITIONAL PRINCIPAL JUDGE
 VI ADDITIONAL FAMILY COURT

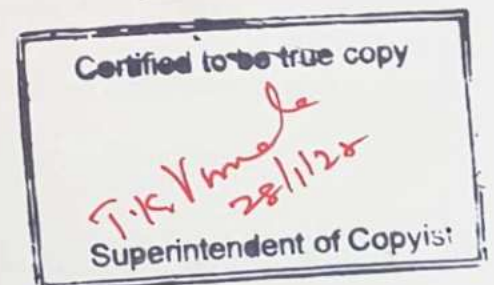
Decree in

O.P.No.4177/2021

Date: 19.12.2024

VI Additional Family Court

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IN THE VI ADDITIONAL FAMILY COURT AT CHENNAI

Present: Tmt.Roslyn Durai, B.Com., M.L.,

Additional Principal Judge, Family Court, Chennai

Thursday, the 19th day of December 2024

I.A No. 3 of 2023 and O.P. No.4177 of 2021

Jyotshna Rani Panda

... Petitioner in O.P/ respondent in I.A

/Vs/

1. Srikant Panigrahi

... 1st Respondent in O.P/ Petitioner in I.A

2. Rachana Rani Panda

... 2nd Respondent in both OP and I.A.

The O.P filed on 05.10.2021, and the I.A. filed on 30.11.2023 came up for final hearing before me on 07.12.2024 in the presence of the petitioner and the 1st respondent, and the 2nd respondent remained exparte, and upon perusing the petition and material records and evidence of the petitioner and 1st respondent, and on hearing both sides, this Court delivered the following:

COMMON ORDER

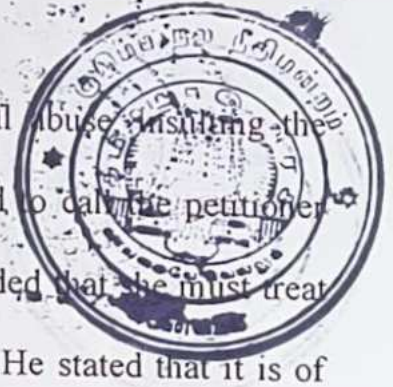
I.A. No.3 of 2023 is filed u/s.26 of Hindu Marriage Act, for visitation rights, of minor child. The OP No.4177/2021 is filed under Sections 13 (1) (i-a) and 13 (1) (i) of Hindu Marriage Act, 1955, praying for dissolving the marriage between the petitioner and the 1st respondent which was solemnized on 21.11.2008 at Sri Tirumala Thirupathi Devasthanam, Gandhi Nagar, Sompeta, and registered vide Sl. No.04/2012 at the Registrar, Sompeta, Andhra Pradesh, by granting a decree of divorce on the grounds of cruelty and adultery, and for costs.

2. THE AVERMENTS IN THE PETITION ARE AS FOLLOWS:-

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The petitioner and the 1st respondent were married on 21.11.2008 at Sri Tirumala Thirumala Devasthanam, Gandhi Nagar, Sompeta, in accordance with traditional Hindu rites and customs, in the presence of family, friends and relatives and the same was registered on 28.01.2012 vide Sl. No.04/2012 at the Registrar, Sompeta, Andhra Pradesh. The petitioner is residing within territorial jurisdiction of the court. She has completed her schooling at Government High School, Sompeta in the year 2003. She had pursued her undergraduate education at National Institute of Science and Technology, Behrampur, and graduated in the year 2009. She is currently working as a Project Manager in Ford Motor Pvt. Ltd. since 2015. The 1st respondent is currently a Senior Software Engineer at CGI, and has been working there since 2011. The marriage was arranged one. She had agreed to the marriage as the respondent had portrayed himself to be a gentleman. Prior to the marriage, the 1st respondent claimed to have completed his M.Tech degree. After the marriage, she came to know that 1st respondent was a graduate in a degree in Arts. The 1st respondent had lied to the petitioner, regarding his educational qualifications and lured the petitioner to marry him, by suppressing and misrepresenting facts. She repeatedly requested the 1st respondent for an explanation. However the 1st respondent had resorted to physically assaulting the petitioner, and abusing the petitioner in unparliamentary and uncouth language. The 1st issue between the parties is that the 1st respondent has a superiority complex and an extremely narcissistic attitude, was completely racist towards the color of the petitioner's skin, and subjected the petitioner to repeated verbal and physical abuse. He also resorted to

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blowing an ordinary wear and tear issue, into severe verbal abuse, insulting the petitioner and demeaning her on a daily basis. He had started to call the petitioner 'Kaali' by pointing at the petitioner's complexion, and demanded that she must treat the respondent like a king, since he had a fairer complexion. He stated that it is of utmost disgrace for the 1st respondent to be in the same frame as the petitioner, due to her complexion. For this reason, the petitioner and the 1st respondent do not have a wedding album together, the impetuous, arrogant and selfish behavior of the 1st respondent put the petitioner through severe mental cruelty. He treated the petitioner like a slave. He even refused to go out with the petitioner in public, claiming that he was ashamed to be in the company of the petitioner. She was subjected to severe mental cruelty, and was put to a state of depression within a month of their marriage due to the acts and words of the 1st respondent. During 2009, she was shocked to discover intimate messages between the 1st respondent and one Ms. Keerthi, who have been having a sexual relationship prior to the solemnization of the marriage between the parties. She questioned regarding his relationship with Ms. Keerthi, and he promised her that relationship with Mr. Keerthi was prior to the marriage. She was pregnant in June 2009, but 1st respondent was dejected and unhappy with the fact, and resorted to verbally abusing the petitioner and blaming her for not taking contraceptive pills to avoid the pregnancy. He blatantly refused to take her to the hospital during her pregnancy, and did not care to enquire regarding her check-ups or tests. She had developed severe complications during her pregnancy in her 2nd trimester. The 1st respondent left the petitioner to fend for herself. She was forced to

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seek lending hand from her parents to take care of her during pregnancy. She had developed more complications, and was hospitalized during this period. Unfortunately the child has passed away in her womb, and even during such difficult times the 1st respondent refused to even visit her, putting her to a state of depression.

Due to medical complications from the miscarriage, she had developed several other medical issues such as malaria, typhoid and a urinary tract infection, and the 1st respondent still failed to extend any sort of emotional, moral or financial support to the petitioner, and did not care even to visit his own wife. She was put to severe and irreparable misery. Soon after the hospitalization, she had met with an accident on October 2009, and sustained severe head injuries. But he did not care to enquire about her well-being. He did not even bother to call the petitioner. This caused severe mental cruelty and trauma. She had to single-handedly manage the household chores, take care of herself as she was undergoing post-operative pain, without any help or assistance from the 1st respondent. Despite pleading for hire some house help, the 1st respondent blatantly denied the same, and demanded that the petitioner must do all the chores by herself. The 1st respondent demanded that the petitioner can have food only after all the members of the house had their share, and the petitioner was permitted to consume what was left over. She was put to severe misery due to the 1st respondent, and she decided to support herself by pursuing her education further. All the gifts and jewelry given to the petitioner during the time of marriage were all taken by the 1st respondent, he refused to hand over any of the articles back to the petitioner. The 1st respondent even resorted to physically abusing the petitioner on

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several occasions, if she did not live up to the standard and instructions set by the respondent. She lived under the apprehension for her life in the company of the respondent. She was repeatedly harassed and insulted by him. During December 2018, he demanded the petitioner to make a cup of tea for him, and since the petitioner was managing other household work, she was delayed by a couple of minutes to hand over the tea, the 1st respondent as a punishment, poured boiling hot water on the petitioner's hand blaming her for bringing his tea late. The 1st respondent micromanaged every aspect of the petitioner's life. He even controlled the portion of food the petitioner was consuming, thus caused severe mental cruelty to her. He prohibited the petitioner from having any kind of social life by refusing her to visit her friends and family. He demanded her to disclose all her financial and other details to him, and that he must be given full access to her bank accounts, and demanded her to take care of all the household expenses. He demanded that the petitioner must pay for the monthly installments towards the purchase for their flat located in Chennai. She had fully paid for the down payment, payment for the interiors of the flat and other costs were solely borne by the petitioner; however, the 1st respondent receiving all the rent accruing from the flat. She had put up with the respondent's behavior solely for the sake of their child, and now even the child's safety is in danger due to the 1st respondent. On February 2011, the petitioner was pregnant. Like the previous time, the 1st respondent refused to help the petitioner in any manner. He was extremely abusive towards their son both physically and verbally, thus putting the petitioner and their son through irreparable mental and

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physical trauma and cruelty. On 25.11.2011, the petitioner was blessed with a son namely, Mr. Shriyash Panigrahi. She was under the honest belief that having a child would change the 1st respondent's attitude, and things would turn for the better. But his attitude changed for the worse. Despite just giving birth to their child, the 1st respondent demanded the petitioner to take up a job, as he refused to contribute financially towards taking care of their child. She was devastated when he had unreasonably ordered the petitioner to leave their three-month son, who was still breast-feeding. He refused to take care of their son nor did he support the petitioner financially and emotionally. She pleaded with the 1st respondent to let her stay with her child. He resorted to physically abusing the petitioner, by slapping her in the train before the co-passengers. The petitioner was to obey all 'orders' of the 1st respondent. Due to the immense pressure from the 1st respondent, she was forced to leave her three-month child, and take up a job in order to support herself and her son, and the petitioner's parents were forced to take care of their child. She was put to a state of depression and anxiety, due to the actions of the respondent. When their child was an infant baby of 10 months old, the 1st respondent hit their child in a violent and rigorous manner to the extent that the petitioner was forced to take their child to do an MRI, to ensure the safety of their child. On May 2016, things had turned for the worse, the petitioner and their son were physically abused by the 1st respondent, to the extent that their son had started bleeding from his nose, and she was forced to call police through their emergency contact number 100. The police officials had come to the parties residence, and warned the respondent for his violent actions. She

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had taken their child to the hospital, and the police authorities had even called the petitioner after a week to ensure their safety. The 1st respondent started getting more aggressive, started physically assaulting and abusing their child. She was put to severe mental cruelty due to the actions of the 1st respondent. He hit their son with a broomstick. On 31.10.2020, the 1st respondent unreasonably without any justification grabbed their son, and smashed him against the wall, causing their son to develop a temporary scar on his nose. When the petitioner defended their child by protecting him, the 1st respondent would immediately physically assault the petitioner by subjecting her to a brutal beating. Their son hates watching horror movies and movies filled with violence, drugs and nudity. The 1st respondent used to force the child to watch such movies, which has put their child through several sleepless nights which has in turn led to severe mental trauma. The petitioner lived under the fear that the 1st respondent would further physically and verbally abuse the petitioner and their son. The 1st respondent was an abusive father, so the petitioner must be appointed as the natural guardian of their child and granted permanent custody of their son. She had undergone another miscarriage on 02.05.2013 after the birth of their son. The 1st respondent did not help the petitioner in any manner. He did not even offer to take care of their son. He had continually engaged in extra-marital affairs, even to the extent of engaging in an extra-marital affair with the petitioner's own sister, the 2nd respondent. During May 2013, the petitioner was devastated to find out that the 1st respondent had been having an extra-marital affair with her own sister, when they started being unusually close to each other, and she saw the petitioner's sister



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keeping in the respondent. She had found a gift-wrapped box during February 2016 addressed to the 2nd respondent, and a bra-lingerie was inside the box. She had confronted the 1st respondent, and he slapped her with immense force causing the petitioner's ear-drum to be temporarily damaged. He openly accepted the affair, and stated that he was continuing his affair with the M/s.Keerthi as well. He stated that he would continue having his extra-marital affairs, and that the petitioner could do nothing about the same. He threatened the petitioner to ruin her name, if she chose to disclose the same and questions his ways. The 1st respondent even transferred money to the 2nd respondent, though he did not provide emotional, moral and financial support to the petitioner. On 02.01.2021, in an attempt to agitate the petitioner, the 1st respondent switched on the gas on the kitchen and threatened to kill the petitioner. She had to leave the company of the 1st respondent due to his irrational and unreasonable behavior and attitude. He persistently requested the petitioner to return to his company, however after numerous instances of being physically and verbally abused in the hands of the 1st respondent for 13 years, the petitioner for the sake of her child and her safety, refused to return to the company of the 1st respondent. He has withheld all the gold jewels and articles, and is refusing to return the said articles. She had done everything and it is only due to her efforts, that the marriage lasted this long. She has not condoned the mental and physical cruelty exerted by the 1st respondent on her. No efforts have made on behalf of the 1st respondent to have a happily married life. Hence the petition for divorce on the grounds of cruelty and adultery.

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3. THE AVERMENTS IN THE COUNTER ARE AS FOLLOWS:-

All the averments are denied except those specifically admitted. The petitioner has been filed to separate the family. I don't have the idea to get separated from my wife and son. I have completed my degree in Arts, and said the same to the petitioner regarding my educational qualification before marriage. Ms. Keerthi is my best friend even before my marriage. After my marriage, I don't have any contact with her. In June 2009, doctor only advised us to abort the child because of some medical issue occurs in baby's health, as per the advice of the doctor only, petitioner aborted the child, and I am unable to give physical support due to my job, but my family ready to help her at any time. The petitioner stated that she consume less and late food. It's not true, in a family all the members having rights to have their own food at their convenient time. She did not gave any gifts and jewels to me, that we both got at the time of marriage. Its not true that I have poured boiling hot water on the petitioner's hand, and I never treated her as a slave. I used to give respect and affection as a good husband always. For the flat in Chennai, I have paid the 50% of down-payment and sharing with petitioner in paying the monthly installment. I have given my full support and never forced the petitioner to go back to the job, when the baby was just 3 months old, that was the petitioner's decision. We have son namely Shriyan Panigrahi, I have never gave any difficulties to the child like cruelty. I never forced my son to watch violence and adults movies, and never hit or abused the child and the petitioner. I don't have any illegal affair with the 1st respondent, and she is just my sister-in-law. She's married and settled with her family. It's totally untrue statement that I switched

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on the gas in the kitchen and threatened to kill her. Me and petitioner had a peaceful matrimonial life for the past 13 years and affectionate son also. The above allegations mentioned by the petitioner are untrue and false. Hence seeks for dismissal.

4. Petition averments in I.A No.3 of 2023:-

The petitioner/ husband inter alia, contends that the first respondent has filed OP No.4177 of 2021 for dissolution of marriage registered on 28.01.2012 in Sl. No.4/2012 at Registrar, Sompeta, Andhra Pradesh, on the grounds of cruelty and adultery, with false and baseless allegations. They have a son Shriyaan Panigrahi born on 25.11.2011, and he seeks for interim custody of the child for three days in a week. The 1st respondent left the house on 11.04.2021 with minor child, and never showed him to me, inspite of many attempts, and he was devastated to see his child's message on 24.05.2021 stating, "I am missing you and I wanted to come home, mom kept me here by force. I do not know which location I am, mama is irritating me and I am getting bored. Come soon. Kanha." which made it clear that the 1st respondent trying to take away the child from me. Even I made several attempts to contact the child, but never given any reply for any mail. I was never allowed to visit my child, and respondent claimed that she would not send the child, since he is not willing to go to my place. The fact can be proved wrong by the mail extract. Such a conduct is very harmful to my son, and will result in total parental alienation. Moreover, respondent and her parents are acting against the welfare and best interest of the child, which will have serious impact on the mental and physical well-being. The child is 12 years, and

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he can understand and can make his own decisions, so he should be produced before this court to ensure he is happy state of mind. The child has a good relationship with me and my parents, and will be safe and have well rounded development in my home. Hence, seeks for visitation weekly thrice on Monday and Wednesdays post school one hour, and on every Sunday. Hence the petition.

5. Counter averments in I.A No.3 of 2023:- (1st respondent)

3. The respondent contends that, all averments are denied except those specifically admitted. The petition is not maintainable in law or on fact, and is liable to be dismissed in limini. My son ordinarily resides in Bangalore, and studying at the National Public school situated in Bangalore, since June 2022. Dispute of child custody can only be adjudicated by the court having jurisdiction where the child ordinarily resides. When the child ordinary resides in Bangalore, this court does not have jurisdiction to entertain a petition seeking custody or visitation rights of the child. Hence, petition may be posted for maintainability on the issue of jurisdiction. The petitioner may be directed to approach the court of competent jurisdiction. The petition seeking for visitation rights of the child has nothing to do with regard to the divorce petition pending between the petitioner and respondent. The petitioner has not paid single rupee towards maintenance or education expenses of the child. It is only me who has taken care of the child. My child and petitioner have no communication over the past three years, and the petitioner not even bothered to make any efforts to speak to the child. The petitioner and her child have no

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relationship whatsoever, as he never took care of the child. He not even bothered to file application seeking visitation for over a period of three years, and not contributed towards maintenance or education, which shows that he has no love, care or affection for the child. Hence, the petitioner may be directed to approach the court of competent jurisdiction. Hence seeks for dismissal.

6. In order to substantiate their contentions, the petitioner filed her proof affidavit and examined herself as PW1 and Ex.P.1 to Ex.P.20 were marked. The respondent examined himself as RW1 and Ex.R.1 to Ex.R.17 were marked. Heard both sides. The wife is referred as petitioner, and the husband is referred as 1st respondent in the common order, for the sake of convenience.

7. Point for determination:

- (i) Whether the husband entitled for visitation right to son, as sought for ?
- (ii) Whether the wife is entitled for divorce on the ground of cruelty and adultery, as sought for ?

8. Point -

The petitioner and the 1st respondent were married on 21.11.2008 at Sri Tirumala Thirupathi Devasthanam, Gandhi Nagar, Sompeta, as per Hindu rites and customs is established by the Ex.P1 marriage invitation. The same was registered on 28.01.2012 vide Sl. No.04/2012 at the Registrar, Sompeta, Andhra Pradesh is established by the Ex.P-3 marriage certificate. They have a child born on 25.11.2011, named Shriyaan Panigrahi is seen from the Ex.P-5 birth certificate. The petitioner and the 1st respondent last resided together at the address of the 1st respondent at Chennai,

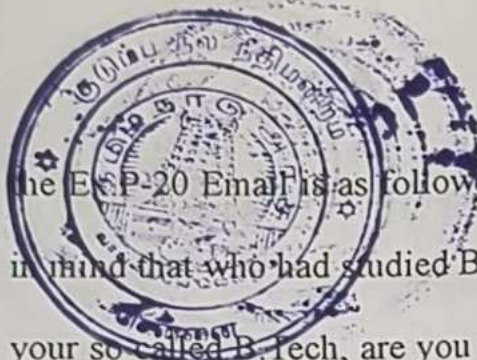
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and thereafter the petitioner resided at Thiruvanmiyur, Chennai, is seen from the Ex.P-7 licence deed. The petitioner contended that, the respondent ill-treated her, by referring to her darker skin colour in derogatory manner, and not supported her during her abortions, accident and child-birth, and compelled her to work and take care of expenses, and even managed her accounts, and developed extra-marital affairs, one of which is with her own sister, the 2nd respondent, and further he ill-treated the minor child, and hit him indiscriminately causing trauma, and hence she seeks for divorce on the ground of adultery and cruelty. She filed the Ex.P-8 MRI Report of child dated 26.09.2012, for complaints of involuntary movements, when the child is 10 months old. She filed the Ex.P-9 discharge summary dated 04.05.2013, which shows she had procedure for undergone miscarriage. The petitioner relied on the Ex.P-10 photo of child with bleed on nose to contend that the beatings by the 1st respondent caused such nose bleed. She relied on the Ex.P-11 photo of child to contend that the 1st respondent caused the swollen eye. She relied on the Ex.P-12 writing by the child with signatures by both parents, that he wants them to stop fighting. The petitioner relied on the Ex.P-13 allegedly written by the 2nd respondent, regarding the affair between her and the 1st respondent. It reads that there was sexual relationship between the 1st and 2nd respondents. She relied on the Ex.P-18 notification from bank to the 1st respondent, regarding payment of Rs.22,000/- on 11.02.2016 and Rs.10,000/- on 02.11.2015 to the 2nd respondent, to contend that due to the affair, the 1st respondent sent money to the 2nd respondent. The petitioner relied on the Ex.P-20 Email of the 1st respondent, wherein he has abused her. The extract of

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the Ex.P-20 Email is as follows : "Hope you are enjoying with my money, just keep in mind that who had studied B.A, his money you are enjoying today, what happened your so called B.Tech, are you not capable to earn money? I think you are not eating RICE, you are eating shit (GUOA), You do not have humanity and you only know money, I would say you are character less and money minded lady. You will not happy any more in your life. I am praying to god every day that on your next JANMA you take birth in prostitute house, this is my CRUSH on you. (I am saying because this JANMA you already behave like prostitute and taking money from others) As an husband I did everything to my family (my wife and child), I am proud myself, now I left everything to GOD KARMA will bounce back one day dear, you will get your end result just wait. GOD BLESS YOU and Be happy with money".

9. The 1st respondent, would oppose the petition, contending that he wants to live with the petitioner and child, and denied the petition averments, and objects for divorce. He relied on the Ex.R-3 photos taken at a party on 20.03.2021 just before the petitioner left the matrimonial home on 11.04.2021, to show that he and the petitioner had participated in a birthday function. He relied on the Ex.R-4 photos taken at a trip, where the petitioner, 1st respondent and child are seen with other persons. The Ex.R-8 is repeat document of Ex.R-4. He relied on the Ex.R-7 gratitude notes written by the petitioner dated 25.09.2020, 13.10.2020, 15.10.2020, and 28.10.2020, in which she expresses gratitude to the 1st respondent for being good support, understanding and good husband. He relied on the Ex.R-12 photos showing the petitioner and 2nd respondent are on good terms on outdoors visit. The Ex.R-12 also contains statement

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of accounts of the petitioner's bank account from 01.09.2019 to 25.05.2021 which shows amounts sent to the 2nd respondent by the petitioner. He produced the Ex.R-1 LIC policies (2 nos.), in favour of petitioner, with proof of payment of premiums from his account in 2018 and 2019 (totally 3 payments). The 1st respondent relied on the Ex.R-13 bank statement regarding he paid Rs.34 lakhs for the purchase of flat. The Ex.R-2 shows the amount of Rs.34 lakhs was deposited in petitioner's account in February 2018. The Ex.R-1 is bank statement of petitioner, which shows that in 2019, the 1st respondent has made payments into her bank account of Rs.1 lakh, and withdrawn Rs.6 lakhs. It shows that her salary in 2019 was Rs.1,03,056/- per month. The R-17 are bank statements of the 1st respondent from 01.01.2019 to 23.03.2021 and from 01.01.2012 to 31.12.2012. The Ex.R-14 is summary of the transfers from the 1st respondent to the petitioner from January 2019 to March 2021. The contention of the 1st respondent is that he was a good husband and father, but the petitioner taken his money and left him wantonly.

10.Point (i)

The child is born on 25.11.2011 as per Ex.P.5. birth certificate. He is now aged 13 years. The husband has come forward with this petition for visitation rights of the child, claiming that the respondent/ wife has not given access to the child since she left the matrimonial home in April 2021. The same is opposed by the wife, contending that she alone taken care of the child from birth, and the husband not sought to see the child till now, and filed petition belatedly after 3 years, and further

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since the child resides in Bangalore and studying there, this court is not competent to decide this issue and the petitioner has to approach the competent court.

Section 20 of the Family Courts Act provides that the provisions of this Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The section 7 of the Family Courts Act provides that, the Family Court shall have jurisdiction regarding suits and proceedings, including a suit or proceeding in relation to the guardianship of the person or the custody of or access to any minor. Thus, where the parties are before this court under Section 13 of the Hindu Marriage Act, the subsidiary and consequential proceedings relating to the access to the minor child, is also within the jurisdiction of the very same court, despite of the provisions of the Guardians and Wards Act, in view of the provisions of the Family Courts Act, as stated supra. Therefore, this proceeding for the visitation rights to minor is certainly maintainable before this court.

12. The child was produced to the court and enquired in the presence of both parents. He expressed apprehension that the 1st respondent would hit him, if visitation was allowed, and if it was absolutely necessary, it should be in court premises only. The child also said that when resided as a family, the father would hit him daily, for some reason or the other, and once chased him with broomstick from their floor to 2nd floor, that too clothed only in a towel, which was embarrassing for the boy, as so many people seen it. He further stated that the father made him eat snotty food, when he had accidentally sneezed into his food, inspite of his protests. He also says that he used to wet the bed in the night, for which the father hit him, and also made him to


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wash the bed clothes by hand on the next day. The petitioner said that the child had bed wetting due to the trauma caused by the 1st respondent, and she had to take him for counselling, after which the problem ceased. The child repeatedly said that he was traumatised by the daily beatings, for which the father says that, it was administration, and that other fathers drink and beat children, but he did not do so. The child asked the father that you were beating consciously, for which the father claimed that it was necessary for administration. On observing the interaction between the child and the father, it was clear that the child was not tutored, and he was narrating his own experience, and clearly showed his fear of the 1st respondent/father. The child was not even willing to disclose the details of his school, stating that the 1st respondent would come there and create trouble for him. The 1st respondent relied on the Ex.R.16 e-mail allegedly sent by the son, in which it is stated that he wants his father. This e-mail was not produced at the earliest, in order to give an opportunity for the petitioner, to either deny or admit the same. It was produced only after the cross of PW1, and at the time of evidence of RW1, by filing petition. The contention of the petitioner counsel that the chance of child of 10 years having recourse to e-mail is questionable, is acceptable. The 1st respondent has produced the Ex.R-8 and R-15 collage of photos, in which there are photos of the family by themselves and also with others. The 1st respondent also adverted to the photos in the interaction with the child. However, it was clear that the child, who is in his early teens, is only now recovering from the trauma caused by the earlier treatment meted out to him by his father. The welfare of the child is to be considered paramount,

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while deciding on the aspect of visitation or custody. In the circumstances, on the discussion supra, was found that the child will be put to further trauma, if visitation is ordered. Therefore, no merits found in the petition. This point found accordingly.

13. Point (ii):

The petitioner seeks divorce on the ground of adultery and cruelty. The 1st respondent simply denied the allegations of adultery with the 2nd respondent. He did not deny the averments of the Ex.P-13 letter by the 2nd respondent, either in the counter or the chief examination. He relied on the Ex.R-12 photos showing petitioner and 2nd respondent together, to contend that if adultery was true, the petitioner would not be on good terms with her sister. However the fact remains that the 2nd respondent is the sister of the petitioner. The PW1 on this aspect admitted that she not given any complaint for the extra-marital affair. The relevant portion of cross of PW1 is as follows: "Now my sister, 2nd respondent is married. I don't know whether 2nd respondent is working as on date. I attended 2nd respondent first marriage. 2nd respondent's second marriage was held in the year 2020 or 2022. I don't remember exactly when her 2nd marriage was conducted. After knowing that the 2nd respondent relationship with 1st respondent, I have attended the 2nd respondent first marriage. My parents know about the relationship between the 1st respondent and 2nd respondent. My parents warned the 1st respondent not to spoil their two daughters life, and arranged the 1st marriage of 2nd respondent. I did not file divorce petition immediately after coming to know about their relationship, because of society and in view of the promise given by the 1st

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respondent to cut off his relationship with 2nd respondent. I do not know the present residential address of second respondent. I given my parent's address as second respondent address in my petition". Even in this cross-examination, there was not even a suggestion that there was no such extra marital relationship between the 1st and 2nd respondents. The Ex.P.18 also shows that the 1st respondent transferring funds to the 2nd respondent, for which he claims that she had given him amounts for safe-keeping, but he not explained why she given him instead of to her sister. The relevant portion of cross of RW1 is as follows: "As per Ex.P.18, have I transferred Rs.22,000/- to 2nd respondent, the answer is yes, that was in 2016, she had given me that amount to keep in my bank account for safety, as she had no bank account at that time, and I returned it to her." But the 1st respondent did not produce any proof from his bank statements produced, that the amount was deposited by the 2nd respondent into his account for safe keeping. The 2nd respondent has avoided to appear, but the documents produced by the petitioner, and the lack of denial of Ex.P.13 letter by the 1st respondent in his evidence, lead to conclude that there was adultery committed by the 1st respondent with the 2nd respondent.

14. The petitioner contends that the 1st respondent abused her physically. She contended that she had to do the household works without any house help. The petitioner who is working and earning well, if she is made to do the housework additionally without help, it amounts to cruelty can be accepted. The 1st respondent though denied her averments, not stated that any house help was available to the

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petitioner, though he admits that he could not help her. The petitioner filed the Ex.P.6 to show that the 1st respondent had slapped her, and it affected her eardrum. The document shows that she has been referred for audiological evaluation on 22.02.2016 and the result of the audiometry examination is that she is having minimal hearing loss in right ear, and mild conductive hearing loss in left ear. The 1st respondent has not let in even oral evidence in chief examination that the Ex.P.6 mentioned hearing loss was not occasioned by his physical assault.

15. The petitioner claims that the 1st respondent had control of even her bank accounts and finances, and this is established by the fact that her bank statements are produced by the 1st respondent as part of Ex.R-12, even for the period after separation. The petitioner also relied on the Ex.P.20 which shows that by email dated 27.03.2022 after the separation, the 1st respondent has abused her, saying that she is like a prostitute. The same was put to the RW1 in cross-examination, for which he did not deny the mail, but claimed it was given in frustration and other emails expressing his love and affection were not produced. However, the 1st respondent in his evidence, though produced so many bank statements, even that of the petitioner, did not file the alleged emails showing his love and affection. Therefore no such emails exist can be inferred. The tenor of the 1st respondent's attitude to the petitioner, and his manner of addressing her can be inferred from the Ex.P.20 Email. Such an allegation constitutes mental cruelty can be accepted. It also shows that the 1st respondent was more concerned about money than about re-joining the wife and child. The 1st respondent relied on the Ex.R.7 gratitude notes by the petitioner. It is

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relevant to see that though Ex.R.1 to Ex.R.6 were marked in cross-examination of PW1, the Ex.R.7 was not then marked. So there is no explanation available from PW1 on the Ex.R.7 marked belatedly. However, it can be noted that probability is more that persons who have anxiety or stress issues, will be advised to write gratitude notes. This does not help the case of 1st respondent.

16. The petitioner contended that the 1st respondent used to physically assault the child and the same caused her mental agony, and when she attempted to prevent, she was also beaten. In discussion in point (i) supra, it is found that the child also adverted to daily beatings by the father. The child has to be disciplined is not in dispute, but daily beatings amount to abuse, which will have the effect of causing mental agony to the mother/ petitioner can be accepted. Cruelty is defined as conduct that causes such mental suffering or physical pain that it endangers the life, limb or health of the petitioner or makes it impossible for the petitioner to carry on living with the respondent. In *Samar Ghosh Vs. Jaya Ghosh* (2007) 4 SCC 511, the Apex Court, has been held that there is no uniform standard for guidance as to what constitutes cruelty, but it include, sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable the life of the spouse. It was held that feelings of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other, for a long time, may lead to mental cruelty. In this case, the cruelty by indiscriminate beating of child, the physical abuse of the petitioner, the verbal abuse of the petitioner, the extra-marital affair, controlling the money of the petitioner, amounts to cruelty can be accepted. The fact that they also

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had and trips will not detract from the cruelty. Thus the ^{1st} respondent has treated the petitioner with cruelty is concluded. Therefore, the petitioner has established that the 1st respondent committed adultery with the 2nd respondent, and that he subjected the petitioner to mental and physical cruelty, and hence she has established her case. Hence, she is entitled to divorce on the grounds of cruelty and adultery. This point is found accordingly.

IA No.3/2023

In the result, this petition for visitation of minor child is dismissed. No costs.

O.P. No.4177/2021

In the result, this petition is allowed for divorce. The marriage between the petitioner and respondent, solemnized on 21.11.2008 at Sri Tirumala Thirupathi Devasthanam, Gandhi Nagar, Sompeta, and registered vide Sl. No.04/2012 at the Registrar, Sompeta, Andhra Pradesh, is dissolved on the grounds of cruelty and, adultery under Sections 13 (1) (i-a) and 13 (1) (i) of Hindu Marriage Act, 1955. No costs.

Directly dictated to my steno typist and typed by her in the computer directly to my dictation, corrected and pronounced by me in the Open Court, on 19th day of December 2024.


VI ADDITIONAL PRINCIPAL JUDGE
VI ADDITIONAL FAMILY COURT

List of Witnesses examined on the side of the petitioner:

PW1 Jyotshna Rani Panda

List of Exhibits marked on the side of the petitioner:

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- Ex.P.1 - Copy of Marriage Invitation
- Ex.P.2 - Marriage photo
- Ex.P.3 - Copy of Marriage extract
- Ex.P.4 - Copy of Aadhaar Card of petitioner
- Ex.P.5 - Copy of birth certificate of child
- Ex.P.6 - Copy of medical report of petitioner
- Ex.P.7 - Copy of deed for permissive occupation
- Ex.P.8 - Copy of MRI report of child, dated 26.09.2012
- Ex.P.9 - Copy of discharge summary dated 04.05.2013 of abortion
- Ex.P.10 - Photo of petitioner with child
- Ex.P.11 - Photo of child's swollen eye
- Ex.P.12 - Copy of letter of child
- Ex.P.13 - Copy of letter by 2nd respondent to 1st respondent (with English translation)
- Ex.P.14 - Copy of Aadhar card of 2nd respondent
- Ex.P.15 - Copy of certificate of Andhra Bank, dated 10.12.2012 for repayment of loan
- Ex.P.16 - Copy of Provisional BA certificate of 1st respondent
- Ex.P.17 - Copy of MIT certificate of 1st respondent
- Ex.P.18 - Copy of cash transaction receipts of 1st respondent to 2nd respondent
- Ex.P.19 - Photo of petitioner with child
- Ex.P.20 - Copy of E-mail message, dated 27.03.2024

List of Witnesses examined on the side of the Respondent:

RW1 Srikant Panigrahi

List of Exhibits marked on the side of the Respondent:

- Ex.R.1 Copy of ICICI Bank statement of petitioner
- Ex.R.2 Copy of Print out of ICICI Bank statement of petitioner
- Ex.R.3 Print out of photographs
- Ex.R.4 Copy of print out of photographs

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- Ex.R.5 Copy of visa process of petitioner
- Ex.R.6 Copy of email of petitioner to the visa agent
- Ex.R.7 Copy of gratitude notes of the petitioner
- Ex.R.8 Copy of print out of photographs (same as Ex.R.4)
- Ex.R.9 Copy of receipt from Embassy residency to petitioner, dated 14.06.2021
- Ex.R.10 Copy of incomplete complaint to police by petitioner's father (without mentioning the police station) dated 06.07.2021, with copy of Aadhar card.
- Ex.R.11 Copy of LIC policies in the name of petitioner, with bank account statement of 1st respondent
- Ex.R.12 Copy of photos and bank statement of petitioner
- Ex.R.13 Copy of Bank statement of 1st respondent and Bank statement of petitioner
- Ex.R.14 Copy of Bank statement of petitioner
- Ex.R.15 Copy of family photos
- Ex.R.16 Copy of e-mail sent from petitioner's son, dated 24.05.2021
- Ex.R.17 Copy of Bank statement of Citi Bank

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 VI ADDITIONAL PRINCIPAL JUDGE
 VI ADDITIONAL FAMILY COURT

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Common order in
 Draft/Fair in
 O.P.No.4177/2021 and
 IA No.3 of 2023
 Date: 19.12.2024
 VI Additional Family Court

