



C.M.A.(MD)No.434 of 2019

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

C.M.A.(MD)No.434 of 2019

... Appellant

Vs.

... Respondent

Prayer : Civil Miscellaneous Appeal is filed under section 19 of Family Court Act, to allow this civil miscellaneous appeal and to set aside the order passed in H.M.O.P.No.165 of 2017 on the file of the Family Court, Sivagangai dated 11.08.2018.

For Appellant : Mr.P.Aju Tagore

For Respondent : Mr.S.Bharathy Kannan



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JUDGMENT

**(Judgment of the court was delivered by
G.R.SWAMINATHAN, J.)**

The question that calls for consideration is whether in a petition filed for divorce on the ground of adultery under the Hindu Marriage Act, 1955, the alleged adulterer must be impleaded as a co-respondent ?.

2.The Division Bench of the Delhi High Court in the decision reported in **2024 SCC OnLine Del 5078 (Shivi Bansal vs. Gaurav Bansal)** held that the alleged adulterer is not a necessary party as a decree can be passed in his or her absence and that the adulterer is not a proper party since the issue concerning adultery can be adjudicated without making the adulterer a party to the cause. This was followed by the Madhya Pradesh High Court in the decision reported in **2024 LiveLaw (MP) 240**. The Karnataka High Court in the decision reported in **AIR 2003 Karnataka 508 (Arun kumar Agarwal vs. Radha Arun)** took the view that the alleged adulterer is not a necessary party but a proper party. However, the Andhra Pradesh High Court in the decision reported in AIR 2000 Andhra Pradesh 328



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(Mirapala Venkata Ramana v. Mirapala Peddiraju) declared that

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the adulterer is a necessary party and failure to implead him will lead to non-suiting the petitioner. The Division Bench of the Andhra High Court followed the judgment of the Allahabad High Court in **Udai Narain Bajpai v. Smt.Kusum Bajpai (AIR 1975 All 94)**. The recent decision of the Telengana High Court in **Phani Raghavalu Meduri vs. Lakshmi Meduri (CRP No.2192 of 2023 dated 08.04.2024)** is also on the same lines.

3.As many as three Single Judge Benches of the Madras High Court have taken the view that the petition would be not maintainable if the alleged adulterer is not impleaded. [**(2001) 1 MLJ 318 (Easwaran Vs. Mani), 2005 (2) CTC 28 (M.Mallika Vs.M.Raju) and C.M.S.A.No.16 of 2013, dated 08.02.2021 (Kala Vs. E.N.Ramesh)**].

4.We propose to take a nuanced stand. The Madras High Court had framed Rules under Section 21 of the Hindu Marriage Act, 1955 to regulate the proceedings under the Act. Rule 4(vi) (1) reads as follows : -

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“4.Contents of petition:- (a) Every petition shall state -
(i) to (v) xxxxxxxx

(vi) If the petition for divorce or judicial separation, the matrimonial offence alleged or other grounds upon which the relief is sought, together with the full particulars thereof so far as such particulars are known to the petitioner, e.g :

(1) In the case of adultery, the specific acts of adultery and the occasion when and places where such acts committed, together with the name and address of the person with whom such adultery was committed.”

The Rule does not mandate that the alleged adulterer must also be made a co-respondent.

5.It would be useful to have a look at the statutory scheme applicable in this regard under the Divorce Act, 1869. Section 11 of the said Act is as follows :

“[11. Adulterer or adulteress to be co-respondent.— On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds, namely:—



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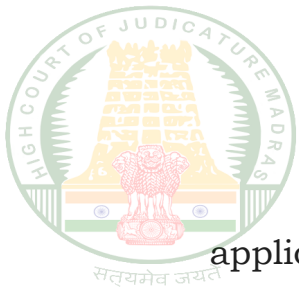
(a) that the wife, being the respondent is leading the life of a prostitute or the husband, being respondent is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;

(b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;

(c) that the alleged adulterer or adulteress is dead.]”

The Andhra Pradesh High Court as well as the Karnataka High Court have held that Section 11 of the Divorce Act is mandatory and that the petitioner must obtain leave of the court for not impleading the alleged adulterer as co-respondent.

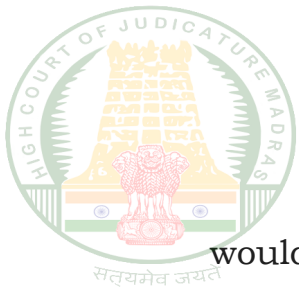
6. We can conceive of cases and situations wherein one of the spouses failed to keep the vows of marital fidelity. It could be a solitary lapse. He or she could have gone for what is called in current parlance as “one night stand”. This could have been subsequently discovered by the other spouse. A person committing a mistake often leaves a trail inadvertently. Sometimes there could even be a confession due to pangs of conscience. If the other party is unforgiving, he or she may choose to snap the marital tie on this ground. But then, the



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applicant will not have knowledge or details of the person with whom the adultery was committed. Even making due efforts may be in vain. In such circumstances, insisting on making the adulterer a co-respondent would lead to unfair results. The latin maxim *Lex non cogit ad impossibilia* (law does not compel the impossible) can very well be invoked in such cases. We, therefore, hold that if the petitioner is aware of the details of the alleged adulterer, he or she must be made a co-respondent. Failure to implead would be fatal and the petitioner will have to be non-suited summarily at the very threshold. If according to the petitioner, the name of the adulterer or adulteress is not known or if the alleged adulterer or adulteress is dead, the petitioner can be excused from the requirement of impleading the alleged adulterer. The petitioner must of course get leave from the court for being so excused.

7.The principal reason that leads us to hold that the alleged adulterer must in normal circumstances be made a co-respondent is that it is the most appropriate thing to do. Some Judges have taken the view that it will amount to invading the privacy of the third party. We do not think so. Accepting the case of the petitioner suing for divorce on the ground of adultery



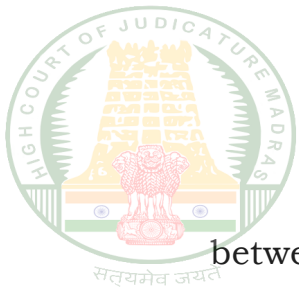
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would result in casting stigma and aspersion on the character of the person with whom the respondent is said to have had an adulterous relationship. Opportunity ought to be given to the said individual to disprove the allegation made by the petitioner. Otherwise, he would stand condemned behind his back. Administrative law is not the exclusive domain for application of the principles of natural justice. They do permeate the other branches of law too. After all, it is only just and fair that a person is heard before he is condemned. Certainly, in our culture, to be branded an adulterer is not a badge of honour.

8. Yet another reason for taking the above view is that it would discourage one from making reckless allegations. If making the alleged adulterer as co-respondent is made mandatory, one would think twice before putting forth baseless allegations.

9. Let us come to the facts on hand. The marriage between the appellant and the respondent was solemnized on 10.11.1999 at Kambanoor as per Hindu rites and customs. Two children were born through the wedlock. The marital relationship

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between the parties came under strain. /husband filed

WEB COPY H.M.O.P No.165 of 2017 on the file of the Family Court, Sivagangai for dissolving the marriage on the ground of adultery.

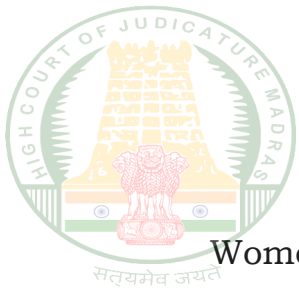
/wife filed H.M.O.P No.166 of 2017 for restitution of conjugal rights.

10. examined himself as PW.1. Two other persons were examined on his side. He marked Exs.P1 to P5.

examined herself as RW.1. No document was marked on her side. After considering the evidence on record, the Family Court, Sivagangai vide order dated 11.08.2018 allowed H.M.O.P No.165 of 2017 and dismissed H.M.O.P.No.166 of 2017. As a result, the marriage tie stood snapped. Aggrieved by the same, filed CMA(MD)Nos.434 and 435 of 2019.

11.The alleged adulterer, namely, was not made as a party. The contents of the petition filed in HMOP No. 165 of 2017 by the husband do not satisfy the requirements of Rule 4(a)(vi). The allegations are vague. Even the address of the adulterer had not been mentioned. It is true that a complaint was made by the husband before the Inspector of Police, All

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Women Police Station, Thiruppathur. Even in the said

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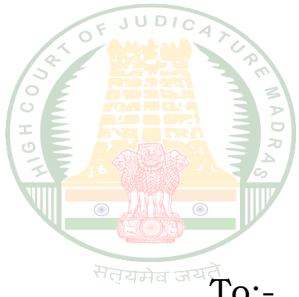
complaint, except making an allegation that the appellant / wife was having illicit intimacy and leading an adulterous life with one Jagadeesan, specific details were not spelt out. It is not the case of the respondent herein that the alleged adulterer is not known to him. He has been described as a bus conductor operating on a particular route. If only the respondent herein had made due efforts, he could have definitely secured the address particulars. In these circumstances, the Court below ought to have held that the divorce petition was fundamentally defective and straightaway non-suited the husband-petitioner.

12.In this view of the matter, the impugned order dated 11.08.2018 allowing H.M.O.P No.165 of 2017 is set aside and C.M.A.(MD)No.434 of 2019 is allowed. No costs.

**(G.R.S. J.) & (R.P. J.)
28.01.2025**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-
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The Family Court,
Sivagangai.



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**G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.**

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