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C.M.A.No.3249 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on <u>22.06.2022</u>	Pronounced on 05.07.2022
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CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI  
and  
THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**C.M.A.No.3249 of 2017**

C.Sivakumar

... Appellant

**Vs.**

A.Srividhya

...Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, to set aside the decree and the judgment dated 15.06.2016 rendered in H.M.O.P.No.604 of 2014, on the file of the Family Court at Erode, by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Subbiah  
Senior Counsel for M/s.P.Raja

For Respondent : Mr.S.Vijayaraghavan



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## **J U D G M E N T**

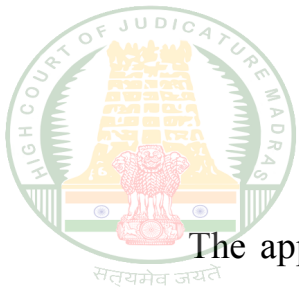
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(Judgment of the Court was delivered by **S.SOUNTHAR, J.**)

Aggrieved by an order dismissing the petition for divorce filed on the ground of cruelty by appellant/husband the present appeal is filed.

2. The appellant/husband sought for divorce on the ground of cruelty in H.M.O.P.No.604 of 2014, on the file of the Family Court, Erode. According to him the marriage with the respondent took place on 10.11.2008. At the time of marriage he was working as a Lecturer in Vivekanandha Medical College and the respondent/wife was working as a Teacher in Government School. They lived together for 2 and 1/2 years in the parental home of the appellant and out of wedlock a female child Sreedhanya was born. According to appellant, the respondent/wife developed suspicion about the appellant's conduct and character and humiliated him by connecting him with his female colleagues. A false complaint was preferred by respondent/wife against appellant/husband before Thiruchengodu All Women Police Station, and the same was marked as Ex.P.2 and thereafter on advise by the police both the parties set up nucleus family in the first floor of appellant's parental home.

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The appellant/husband also averred in his petition that the respondent/wife with the evil intention of tarnishing the image of the appellant came to his work place (college) and had spoken ill of him by connecting him with other female lecturers. The respondent/wife also said to have given another complaint before Erode, All Women Police Station on 08.11.2011. On the advise of the police, the appellant/husband set up a separate new matrimonial home at Erode, but the respondent/wife made unreasonable demands and got separated from appellant/husband without any reasonable cause. Hence, according to appellant/husband they have been living separately from January 2011 onwards. The appellant also submitted that all his attempts for reunion resulted in failure and hence he was constrained to file the above petition for divorce on the ground of cruelty.

3. The respondent filed her counter statement wherein she admitted that the appellant is working as a Professor in Thiruchengodu, Vivekanandha Medical College and the respondent was working as a Teacher in Government School. The respondent denied various allegations found in the petition for divorce. The respondent specifically raised a plea that the petitioner was



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having illegal intimacy with other working women and he used to talk with them through cell phone till mid night. According to the respondent, the petitions filed by her before police were only for reunion and she wanted to live with the appellant having welfare of female child in her mind. She also expressed her willingness to work as dutiful wife of the appellant and also give respect to the elders of the appellant's family. On these pleadings she sought for the dismissal of the divorce petition.

4. Before the Family Court, the appellant was examined as P.W.1 and one Senthilkumar, colleague of the appellant working in the same college was examined as P.W.2. The respondent was examined as R.W.1. On behalf of the the appellant, Exs.P1 to P6 were marked and no document was marked on behalf of the respondent.

5. The Family Court on consideration of the evidence available on record, came to the conclusion that the appellant failed to prove cruelty pleaded by him and dismissed the divorce petition and aggrieved by that the above appeal is filed by the appellant/husband.



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**WEB COPY** 6. On the basis of the pleadings oral and documentary evidences, order passed by the lower Court and contentions of the counsel for both the sides, the following points are arising for consideration in this appeal.

*"(i) Whether the appellant/husband proved his plea of cruelty as a ground for divorce?"*

*"(ii) Whether the findings of the lower Court, on the basis of the evidence available on record calls for any interference?"*

**Points No.(i) and (ii)**

The learned Senior Counsel for the appellant submitted that the wife suspected the character of the husband without any basis and lowered the image of her husband, by visiting his work place and connecting him with other female colleagues. He also submitted that the respondent/wife preferred two complaints against appellant in different police stations and harassed him. According to him these acts of respondent/wife will certainly constitute mental cruelty within meaning of 13(i) (ia) of Hindu Marriage Act. In order to substantiate his arguments he took us to the evidence of the P.W.1 and the independent evidence of P.W.2 who happens to be the colleague of appellant / husband. He also took us to the admissions of respondent/wife in her



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pleadings and also in her evidence as R.W.1. The learned counsel also

submitted that even according to the admission made by R.W.1, at the time of the separation, she removed her *thali* and tossed it towards appellant/husband as a token of her intention to put a full stop to the marital knot.

7. The learned Senior Counsel for the appellant relied on the following decisions in support of his contention that the conduct of respondent/wife would amount to mental cruelty.

*"(1) K.Srinivas Rao Versus D.A.Deepa, reported in (2013) 5 Supreme Court Cases 226;*

*(2) K.Srinivas Versus K.Sunita, reported in (2014) 16 Supreme Court Cases 34;*

*(3) Raj Talreja Versus Kavita Talreja, reported in 2017 (4) CTC 208;*

*(4) V.Santhi Versus K.Kumar, reported in 2018 (6) CTC 590;*

*(5) Narendra Versus K.Meena, reported in 2016 (6) CTC 440;*

*(6) Dr.Anusha Versus Dr.Arjun, reported in 2017 (5) LW 165;*

*(7) Vallabhi Versus R.Rajasabhai, reported in 2017 (1) MWN (Civil) 128;"*

8. The learned counsel for the respondent/wife submitted that the



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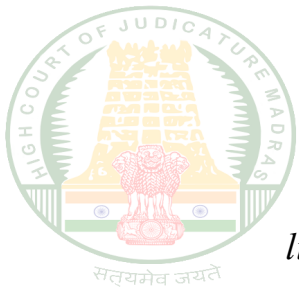
respondent preferred complaint to police, only with a good intention of

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seeking reunion and hence same cannot be termed as causing mental cruelty to the husband. He took us to the evidence of R.W.1 and submitted that if the evidence of R.W.1 is taken as a whole, her intention to live with her husband is explicit and hence the appellant has not made out any case for granting divorce. He also submitted that the appellant has not stated in his evidence specifically the date in which respondent/wife alleged to have visited his college and created scene there and hence the evidence of P.W.1 and P.W.2 with regard to the said fact cannot be accepted.

9. The appellant herein sought for divorce on the ground of cruelty. The expression cruelty was very well explained by the Apex Court in a case law ***A.Jayachandra versus Annel kaur, reported in (2005) 2 Supreme Court Cases 22*** . The relevant observations of the Apex Court explaining concept of cruelty is as follows:

*"10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to*

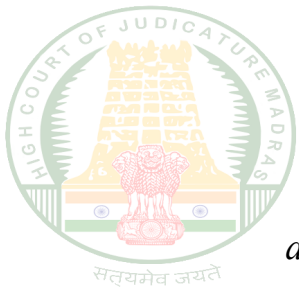


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*life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complaint spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not*



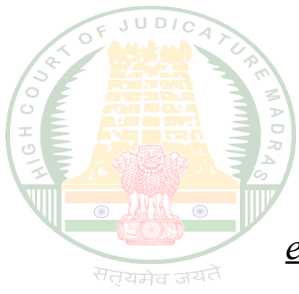


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*at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.*

*11. The expression "Cruelty" has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be*



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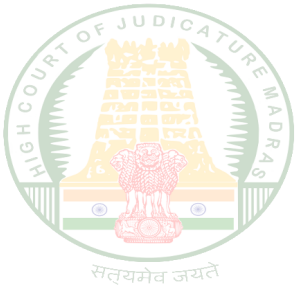
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enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.(See ***Shobha Rani V.Madhukar Reddi.***)" (Emphasis supplied)

10. In the light of above observations of the Apex Court it is clear that cruelty includes mental cruelty and it need not be physical. In some cases even the very conduct complained of itself is sufficient to infer mental cruelty and the impact of injury caused by said offending act of the other spouse need not be enquired into or considered.

11. In the case on hand, in the divorce petition of the husband it was specifically pleaded that wife suspected his character and she visited his work place and created scene there by using filthy language and connecting the appellant with other female teaching staff working with him, in the presence of students and other colleagues in the college. Though, the respondent made a general denial of the same in her counter, she made a specific plea in her pleadings in paragraph 4 and the same is as follows:

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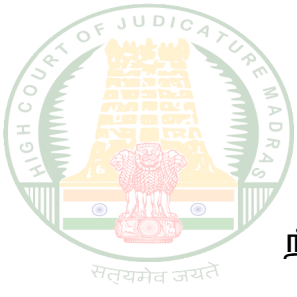
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*"But the petitioner having illegal intimacy with other working womens and he was speaking till the midnight is every day night. The petitioner was beaten blue and black while she made enquiry regarding cell phone conversation till midnight."*

12. When the respondent was examined as R.W.1, she admitted that she had given a complaint against the appellant/husband as he had illegal relationship with another lady without naming her. She had specifically admitted that she did not know the specific name of the lady with whom her husband had illicit relationship. She further admitted that she went to the college in which the appellant was working. She also admitted that husband used to talk in cell phone and he had no other bad habits. The Vernacular extract of the said admissions are as follows.

"31.07.2011 அன்று மனுதாரர் மீதும் அவரது பெற்றோர்

மீதும் திருச்செங்கோடு அனைத்து மகளிர்  
காவல்நிலையத்தில் புகார் கொடுத்தேன் என்றால்  
எதிர்மனுதாரர்க்கு வேறொரு பெண்ணோடு தொடர்பு  
இருப்பதாக புகார் கொடுத்தேன். அந்த பெண்ணின் பெயர்  
எனக்கு தெரியாது. நான் கொடுத்த புகாரின் பேரில் காவல்



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நிலையத்தில் நடவடிக்கை எடுக்கவில்லை என்றால்

சரிதான். நான் மனுதாரரை சந்திக்க கல்லூரிக்கு

சென்றேன் என்றால் உண்மைதான்

.....

..... நான் கடைசியாக வரும்போது திருமணத்தில் போட்ட

வெறும் தாலிக்கொடியை மட்டும் கழற்றி கொடுத்துவிட்டேன்

என்றால் சரிதான். தாலி என்னிடம் தான் உள்ளது. நான்

எதிர்மனுதாரரிடம் சண்டையிட்டு வரும்போது தாலியையும்

செயினையும் தூக்கி எறிந்துவிட்டு தற்போது உண்மைக்கு

புறம்பாக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல.

மனுதாரர் எந்த எந்த பெண்களோடு தொடர்பு உள்ளது என்று

குறிப்பாக சொல்லவில்லை என்றால் சரிதான். கெட்ட

பழக்கங்கள் மனுதாரர்க்கு இல்லை என்றால் சரிதான்.

ஆனால் போனில் பேசிக்கொண்டே இருப்பார்."

13. The appellant/husband was examined as P.W.1 and he deposed in support of his pleadings in his divorce petition. In order to prove his

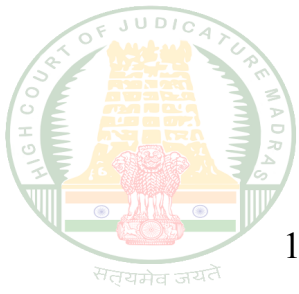


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allegations that the respondent visited the appellant's work place and created

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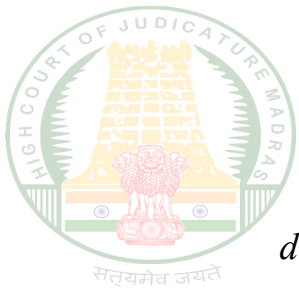
scene there, he examined his co-employee working in Vivekanandha Medical College as P.W.2. He deposed that respondent came to college during the second week of June, 2011 at about 04.30. P.M. and scolded the appellant with filthy language in front of other teaching staffs and students. On going through the admissions of the respondent in her pleadings and also in her oral and documentary evidence, which was corroborated by the evidences of P.W.1 and P.W.2, we can safely infer that the respondent/wife visited the college in which the appellant/husband was working and she created a scene there by connecting the appellant with other female teaching staff in the presence of other staff members and students. Certainly this act of the respondent would amount to mental cruelty within the meaning of Section 13(1)(ia) of Hindu Marriage Act as explained by the Apex Court in the case law *A.Jayachandra versus Annel kaur* cited supra. We can also add that this act of respondent would certainly cause serious, irreparable injury to the image of the appellant in the minds of his colleagues and students.



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14. The respondent herself admitted in her pleadings, as well as, oral evidence that she had given a police complaint before All Women Police Station, connecting the appellant with other women employees of the college in which he was working without specifically naming anybody. Suspecting the character of other spouse and making complaint to police would certainly amount to mental cruelty, when it is not substantiated by any evidence. In the case on hand, the respondent herself admitted that she did not know the name of the lady with whom the appellant was allegedly having illegal intimacy. A careful reading of the oral testimony of the respondent/wife makes it clear that she assumed illegal intimacy only because appellant used to talk with his female colleagues over cell phone. From the facts culled out above, there is no difficulty for us to come to the conclusion, the doubt created in the mind of respondent is nothing but an assumption without any reasonable basis. It would be useful to refer to the observation of the Apex Court in a case law ***Dr.Anusha Versus Dr.Arjun, reported in 2017 (5) LW 165*** relied on by the learned counsel for the appellant. The relevant observations are as follows:

*"35.....The respondent is admittedly holding a*



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*dignified post and such an incident in from his staff would have caused untold mental agony and physical discomfort to him. When the appellant herself admitted that such an incident had taken place when she visited the office of the respondent, the contention that none of the staff of the respondent were examined to prove the incident does not arise. It is needless to mention that facts which are admitted need not be proved by the other side .....*

*37. In the present case, admittedly, the appellant went to the work place of the respondent and caused commotion and chaos in the midst of the staff working with the respondent. During the conversation, according to the respondent, the appellant pulled his spectacles and when it had fallen on the ground, she stamped it with her legs. Of course, such a statement was denied by the appellant. However, the fact remains that the appellant went to the work place of the respondent on the relevant day and she also apologized for what has happened by way of an e-mail to the respondent. This incident, undoubtedly, would have developed a deep scar in the mind of the respondent. While that be so, we hold that the respondent has established that he was subjected to cruelty at the hands of the appellant."*



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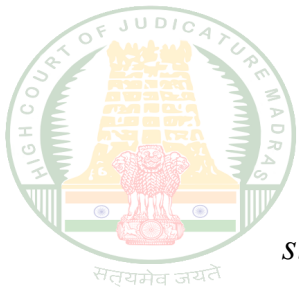
WEB COPY 15. It is appropriate to refer to the observations of the Apex Court in a case law, ***K.Srinivas Rao Versus D.A.Deepa, reported in (2013) 5 Supreme Court Cases 226***, and the same is as follows:

*"16.....Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the Court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse"*

16. The impact of baseless and reckless allegations about the extra marital affair was explained by the Apex Court in a case law, ***Narendra Versus K.Meens, reported in 2016 (6) CTC 440***. The relevant observations of the Apex Court is as follows:

*"12.....We have carefully gone through the evidence but we could not find any reliable evidence to show that the Appellant had an extra-marital affair with someone. Except for the baseless and reckless allegations, there is not even the*





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*slightest evidence that would suggest that there was something like an affair of the Appellant with the maid named by the respondent. We consider leveling of absolutely false allegations and that too, with regard to an extra-marital life to be quite serious and that can surely be a cause for mental cruelty."*

17. In the light of the decisions referred above, we have no hesitation in holding that in the present case, the respondent /wife caused mental cruelty to husband by suspecting his character and making false allegations of extra marital affair in the presence of his colleagues and students and also before the police. We are given to understand that the appellant and the respondent are living separately from 2011 onwards and there is no evidence available on record to show that respondent has made any attempt for reunion during this period.

18. Hence in the facts and circumstances of the case and also in view of our finding that the respondent /wife by her act caused mental cruelty to the husband, we propose to put a full stop to the marital tie by granting decree dissolving the marriage between the petitioner and the respondent that took



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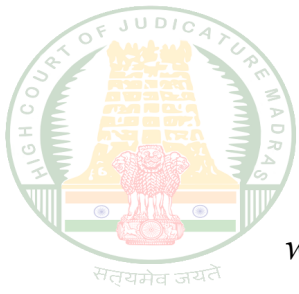
place on 10.11.2008.

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19. When the respondent/wife was examined as R.W.1, she admitted that at the time of separation, she removed her *thali chain* (Sacred chain worn by wife as a token of having married). Though she proceeded to explain that she retained *thali* and only removed the chain, the act of removing *thali* chain had its own significance. The learned counsel for the respondent by taking us to ceremonious for Hindu Marriage referring to Section 7 of Hindu Marriage Act submitted that tying of *thali* is not a necessary one and hence removal of *thali* by respondent, even assuming it was true, would not have any impact on the marital tie. But, it is a matter of common knowledge that tying of *thali* is an essential ritual in marriage ceremony that takes place in this part of the world. It is useful to refer, the observations of a coordinate Bench of this Court in ***Vallabhi Vs. R.Rajasabahi reported in 2017 (1) MWN (Civil) 128.***

The Observations of the Division Bench of this Court is as follows:

*"33. From the materials available on record, it is also seen that the petitioner has removed the "Thali"(Mangalsutra) and it is also her own admission that she has kept the same in Banck locker. It is known fact that no Hindu married woman*



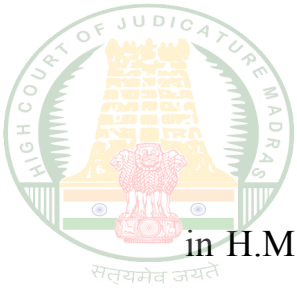
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*would remove the "Thali" at any point of time during the lifetime of her husband. "Thali" around the neck of a wife is a sacred thing which symbolises the continuance of married life and it is removed only after the death of Husband. Therefore, the removal of "Thali" by the petitioner/wife can be said to be an act which reflected Mental Cruelty of highest order as it could have caused agony and hurted the sentiments of the respondent."*

20. The removal of *thali chain* is often treated as an unceremonious act. We don't say for a moment that removal of *thali chain* per se sufficient to put an end to the marital knot, but the said act of respondent is a piece of evidence in drawing an inference about the intentions of the parties. The act of respondent in removal of *thali chain* at the time of separation coupled with various other evidences available on record, compel us to come to a definite conclusion that the parties have no intention to reconcile and continue the marital knot.

21. In the light of the above discussions the Civil Miscellaneous Appeal is allowed and the fair and decretal order passed by the Family Court, Erode



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in H.M.O.P.No.604 of 2014 is set aside. The decree for divorce is granted in

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favour of appellant/husband by dissolving the marriage that took place

between the appellant and the respondent on 10.11.2008. In the facts and

circumstances of the case there is no order as to costs.

**(V.M.V., J)**

**(S.S., J)**

05.07.2022

Internet : Yes / No

Index : Yes / No

Speaking Order / Non-Speaking Order

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To

1.The Family Court,  
Erode.

2.The Section Officer  
VR Section  
High Court  
Madras.



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C.M.A.No.3249 of 2017

**V.M.VELUMANI,J.**  
**and**  
**S.SOUNTHAR,J.**  
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Pre-Delivery Order  
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05.07.2022