



IN THE HIGH COURT OF KERALA AT ERNAKULAM

2024:KER:53560

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

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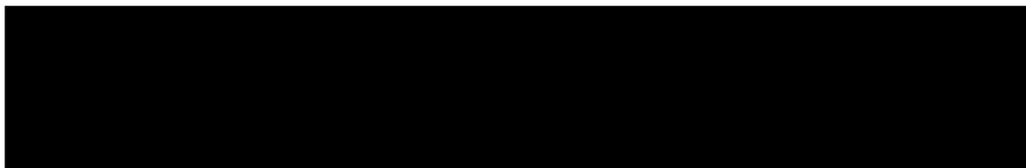
THE HONOURABLE MR. JUSTICE P.M.MANOJ

FRIDAY, THE 5TH DAY OF JULY 2024 / 14TH ASHADHA, 1946

MAT.APPEAL NO. 762 OF 2023

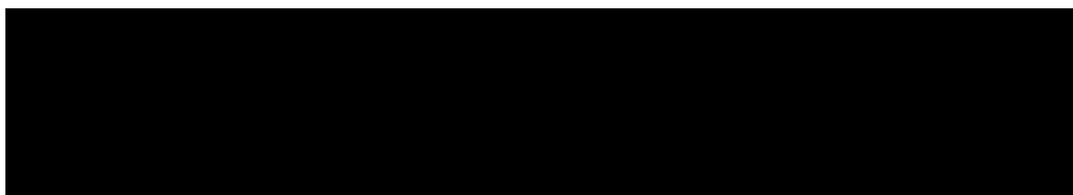
AGAINST THE ORDER/JUDGMENT DATED 14.07.2023 IN OP NO.1385 OF
2016 OF FAMILY COURT, THIRUVANANTHAPURAM

APPELLANT/APPELLANT/PETITIONER:



BY ADVS.
MATHEW KURIAKOSE
MONI GEORGE
J.KRISHNAKUMAR (ADOOR)
C.N.PRAKASH
SHAJI P.K.
ARUN.S.
PREETHU JAGATHY

RESPONDENT/RESPONDENT:



SRI ARUN THOMAS, FOR PARTY RESP.

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
05.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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"C.R."

J U D G M E N T

P.M. Manoj, J.

The above Mat. Appeal is preferred by the wife challenging the judgment dated 14.07.2023 in O.P.No.1385/2016 on the file of the Family Court, Thiruvananthapuram. The Original Petition was preferred by the wife seeking dissolution of marriage on the ground of cruelty. The Original Petition was dismissed holding that the appellant had failed to prove matrimonial cruelty.

2. A perusal of the records disclosed that the marriage between the appellant and the respondent was solemnized on 29.01.1997. Two children were born in the wedlock. At the time of marriage, the respondent was working as an employee at Vijayalakshmi Cashews, Tamil Nadu.

3. The wife contended that the respondent was a spendthrift and never looked after her and her two children. It was contended that serious differences of opinion occurred between the spouses after the wife had acquired B.Tech. Degree and secured a job in the KSEBL. The husband had only basic



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qualifications and his job status was inferior to that of his wife. This led to the respondent acquiring an inferiority complex. He started physically and mentally abusing his wife alleging that she was having 'chovva dosham', meaning thereby that she had a problem with astrological signs and by marrying her, he has acquired bad luck. When it became difficult for her to sustain the relationship, she approached the Family Court, Thiruvananthapuram, and filed a petition seeking divorce on the ground of cruelty.

4. The respondent appeared before the Family court and denied the entire allegations. He denied that he had treated the wife or the children with cruelty. He contended that he had not received any gold ornaments. He stated that false allegations are being levelled after numerous years solely to set up a false case against him. The wife has filed M.C.No. 260 of 2016 seeking maintenance which was settled in the Adalat. The respondent had agreed to pay a sum of Rs.6000/- towards maintenance. However, the appellant failed to provide the Account Number so as to enable him to deposit the amount. He stated that at the time of marriage and still, he was employed in Tamil Nadu and



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sought for dismissal of the petition.

5. The evidence adduced before the Family Court consisted of the oral evidence of the appellant and her daughter who were examined as PW1 and PW2. On their side, Exts.A1 to A4 were marked. The respondent gave evidence as RW1 and his brother-in-law was examined as RW2.

6. The Family Court, after evaluating the evidence, came to the conclusion that the version of the appellant as well as her daughter cannot be believed as they failed to provide specific instances and dates as regards the cruelty alleged against the respondent.

7. We have heard Sri. Mathew Kuriakose, the learned counsel appearing for the appellant and Sri.Arun Thomas, the learned counsel appearing for the respondent.

8. It is contended by the learned counsel appearing for the appellant that the Family Court failed to appreciate the evidence available on record as well



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as the law on the point in its correct perspective. It is urged that the Family Court committed a grave error in disbelieving the oral evidence tendered by PW1 and PW2 for their failure to provide specific instances. It is also contended that the Family Court erred in disbelieving the version of the appellant with respect to the misappropriation of gold for the mere reason that the appellant did not file any petition to recover the gold ornaments or its value. According to the learned counsel, the evidence tendered by the appellant and her daughter together with the photographs would convincingly show that the appellant had adorned 30 sovereigns at the time of marriage.

9. On the other hand, the learned counsel appearing for the respondent contended that there was no serious dispute between the appellant and the respondent. It is only because of her superiority complex being a government employee and the respondent being a low-paid employee, that she intends to evade him.

10. We have perused the records of the trial court. The appellant gave



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evidence before the Family Court, asserting that the spouses had lived together only for a few months and that she was subjected to persistent mental and physical harassment by her husband. She also stated that she was forced to engage in unnatural sexual acts by her husband, which she found objectionable. When she refused to include his name in the deed, she was threatened with injuries. Additionally, she testified that the husband used to abuse the children, causing them serious hardship. Her daughter entered the box and gave evidence as PW2, and she corroborated these facts. However, their evidence was rejected on the ground that they had not given specific dates and details. In a matrimonial relationship, it is often difficult for spouses to keep track of every single incident that occurs, especially when they are overwhelmed by persistent abuse and harassment. The constant strain can blur the specifics of each incident, making it challenging to recall exact dates and details. This should not undermine the credibility of their experiences or the severity of their claims. Furthermore, the appellant is 54 years old, and the respondent is 62 years old, as per the records. Marriage should be a stable relationship where a man and



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woman are socially permitted to live together for their well-being. Given the age and ongoing conflict, it is clear that continuing this marriage will not serve the intended purpose of a supportive and harmonious union.

11. Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments, the Apex Court has reiterated the meaning and outlined the scope of the term "cruelty". Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.

12. In **Samar Ghosh v. Jaya Ghosh**¹, the Apex Court has laid down illustrative cases where inference of "mental cruelty" can be drawn. It was held

¹ [(2007) 4 SCC 511



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that the list is not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. It would be apposite to refer to the relevant paragraph.

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of ‘mental cruelty’. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that the situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) xxxxx xxxxx

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.



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(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) xxxxxx xxxxxx

(ix) xxxxxx xxxxxx

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) xxxxxx xxxxxx

(xiii) xxxxx xxxxxx

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a



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legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

13. In **K. Srinivas Rao v. D.A Deepa**², the Apex Court took note of the unbridgeable distance between spouses and the consequent irretrievable breakdown of marriage to order separation. It was held as under:

"30. It is also to be noted that the appellant husband and the respondent wife are staying apart from 27-4-1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh [2007 (4) SCC 511], if we refuse to sever the tie, it may lead to mental cruelty

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage that

²[2013 (5) SCC 226]



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is dead for all purposes cannot be revived by this Court, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

14. In **Jordan Diengdeh v. S.S. Chopra**³, a case involving the provisions of the Divorce Act, 1869, the Apex Court had called for the intervention of the legislature to provide a way for couples to end their tie on the ground of irretrievable breakdown of marriage. It was held as under paragraph 7 of the judgment.

7. It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste. It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. The case before us is an illustration of a case where the parties are bound together by a marital tie which is better untied. There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken down. We suggest that the time has

³ (1985) 3 SCC 62



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come for the intervention of the legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have found themselves in. We direct that a copy of this order may be forwarded to the Ministry of Law and Justice for such action as they may deem fit to take. In the meanwhile, let notice go to the respondents.

15. Much later, a Division Bench of this Court in **Beena M.S v. Shino G. Babu**⁴ had observed as under in paragraph No. 6 of the judgment.

"The law on divorce recognises both fault and consent as a cause for separation. When both the parties are unable to lead a meaningful matrimonial life due to inherent differences of opinion and one party is willing for separation and the other party is withholding consent for mutual separation, that itself would cause mental agony and cruelty to the spouse who demands separation. The purpose of marriage is to hold matrimonial ties lifelong, respecting mutual obligations and rights. The companionship of spouses creates oneness of the mind to walk together. It is through mutual respect and Courtship, the companionship is built and fortified. The modern jurisprudence of irretrievable breakdown to allow divorce is premised on the fact that the spouses can never remain together on account of their differences."

⁴ [2022 (2) KHC 11]



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16. In the case at hand, both parties are unable to lead a meaningful matrimonial life due to inherent differences of opinion. One party is seeking separation, while the other is not ready for it. This situation creates mental agony and cruelty for the spouse who is denied separation. Forcing the continuation of the marriage under such circumstances undermines the purpose of marriage, which is to uphold matrimonial ties lifelong, respecting the mutual obligation of rights. Marriage should be a union based on mutual respect, love, and understanding. When one spouse seeks freedom from a relationship that has become a source of distress, denying this request only perpetuates suffering and contradicts the very essence of a marital bond. The refusal to acknowledge the irretrievable breakdown of the marriage does more harm than good, inflicting emotional pain and preventing both parties from moving forward with their lives.

17. In view of the discussion above, we are of the considered opinion that the appellant has made out a case for interference. This appeal will stand allowed. The judgment dated 14.7.2023 passed by the Family Court is set aside. The marriage between the appellant and the respondent solemnized on



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29/01/1997 will stand dissolved with effect from today.

The parties shall suffer their respective costs.

Sd/-

**RAJA VIJAYARAGHAVAN V.
JUDGE**

Sd/-

**P.M.MANOJ
JUDGE**

ncd