

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

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THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

THURSDAY, THE 11<sup>TH</sup> DAY OF JULY 2024 / 20TH ASHADHA, 1946

MAT.APPEAL NO. 1131 OF 2017

(AGAINST THE JUDGMENT DATED 11.10.2012 IN OP(DIV) NO.536 OF 2010

ON THE FILE OF THE HON'BLE FAMILY COURT, ALAPPUZHA)

APPELLANT/PETITIONER:

LITTY MARY JOHN,  
D/O. K.M. JOHN,  
KOCHUVEETIL BUNGLOW, KALLIMEL MURI,  
VETTIYAR VILLAGE, MAVELIKKARA TALUK,  
ALAPPUZHA DISTRICT.

BY ADVS.

A.PARVATHI MENON  
P.SANJAY(K/000381/1992)  
BIJU MEENATTOOR(K/620/1992)  
INDIRA.K.P. (K/000085/1984)  
PAUL VARGHESE (PALLATH) (K/000171/2017)  
P.A.MOHAMMED ASLAM(K/000843/2017)  
KIRAN NARAYANAN(K/000131/2018)  
RAHUL RAJ P. (K/547/2020)  
AMRUTHA M. NAIR(K/001096/2022)  
MUHAMMED BILAL.V.A(K/1033/2023)

RESPONDENT/RESPONDENT:

MANOJ.K.VARGHESE  
S/O. LATE P.K. VARGHESE,  
EDAYILEVEETIL PUTHEN VEEDU,  
KALLIMEL P.O, MAVELIKKARA TALUK,  
ALAPPUZHA DISTRICT-688001.

BY ADV

SRI.R.JAYAKRISHNAN (MUTHUKULAM)

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON  
11.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

JUDGMENT

Devan Ramachandran, J.

The concept of 'cruelty' has scarcely been defined with exactitude in any matrimonial or divorce statutes; and perhaps, it can never be.

2. As a normal standard, any violent or demoralizing act, constituting abuse, either physically or mentally, on either of the spouses in a matrimonial scenario, would generally be construed to be cruelty.

3. The U.N. Special Report of the year 1955 defines 'cruelty' as *“any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*

4. Lord Davey of the House of Lords, spoke thus for a Bench, with a narrow majority of five to four thus:

*“The general idea, which, I think underlies all those decisions, is that, while declining to lay down any hard and fast definition of legal*

*cruelty, the Courts acted on the principle of giving protection to the complaining spouse against the actual or apprehended violence, physical ill-treatment, or injury to health”.*

5. There are several elements that Courts will have to consider: danger to health, physical injury, threats, coercion, pressure and so forth.

6. Apodictically, cruelty encompasses a range of behaviour and actions that inflict physical or emotional harm, pain, or suffering on others. It can manifest in various forms, such as verbal abuse, physical violence, neglect, psychological manipulation, and systemic oppression. In relationships, cruelty may appear as controlling behaviors, intimidation, or relentless criticism that erode a person's dignity and freedom.

7. Ultimately, recognizing and addressing cruelty in its many forms is crucial for fostering a more empathetic and just society.

8. While defining "cruelty" with mere words is challenging, explanations and illustrations can help convey what it means to an individual.

9. The Oxford Dictionary defines “Cruelty” as *“the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness”.*

10. The Black's Law Dictionary [8th Edition, 2004] defines "mental cruelty" as "a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse".

11. A single, overarching definition of "cruelty" is impractical and ineffective, as it can manifest in various forms and shapes - it may be perceived differently in different situations. What constitutes cruelty often differs from person to person, situation to situation, as it is subjective and depends on the perception of the individual experiencing it.

12. The concept of cruelty indubitably is inherently subjective – it being inevitable – since what one person considers cruel, may not be perceived the same way by another. This subjectivity arises from individual differences in values, experiences, and sensitivity. For instance, an action that causes emotional distress to one person, might be perceived as trivial or inconsequential by someone else. These varying perceptions make it difficult to establish a universal definition of "cruelty", as it relies heavily on the individual's personal interpretation

and emotional response to the behaviour in question.

13. Though “Matrimonial cruelty” unfortunately has sometimes been perceived “part and parcel” of marriage, it has – more than often – evaded precise connotation. A spouse who has endured it for years – whether due to being silenced by the other spouse or their family, gaslighted, or unaware that it constitutes "cruelty" – may lack the courage to speak out about the horrific experiences she/he has faced within the four walls of their shared household. When they finally do muster the courage, the complaining spouse frequently finds themselves under intense scrutiny, facing questions about their background, the frequency of such incidents, and whether the other spouse is otherwise ideal in other aspects of the marriage and so on. This is applicable more pointedly in the case of a woman in a matrimonial relationship.

14. The afore exordium has been necessitated because, the amplitude and contours of the concept of cruelty has been impelled for forensic consideration of this Bench by the petitioner, who claims to have been a naive 17 year old girl – having eloped with a man whom she loved, in the year 2001. She says that she had acquaintance with the respondent – her subsequent husband – even when she was very young,

through contacts at Church and that they developed a close relationship with each other. She says that when her parents came to be aware of this, they shifted her to a “Boarding School” at Pathanapuram and thereafter to a “Catholic College” at Pathanamthitta, to pursue her Pre-Degree course; but that the respondent maintained the relationship, making her believe that he was madly in love with her.

15. The petitioner concedes that the respondent married another woman thereafter, but that he was still able to convince her, through his charm, that he did so under pressure from his parents; and further that, even when he was living with his wife, he only had the petitioner in his mind, especially at intimate times. She says that she unfortunately fell for these persuasions and eloped with the respondent on 10.09.2001, to live with him as husband and wife, knowing fully well that he was already married. She says that, throughout the time she lived with the respondent, he convinced her that he would divorce his wife, which he did in 2004; and that, thereafter, their marriage was solemnized on 17.01.2005 under the Special Marriage Act, leading to their child being born on 27.05.2007.

16. The petitioner says that she was subsequently persuaded by

the respondent to agree for a Church Marriage because, on account of the elopement and their subsequent life together, they were excommunicated from their respective communities; but that their relationship was never smooth-sailing, with him being under the influence of alcohol most of the time and exhibiting immoral tendencies with other women; leading to a culmination of all such on 08.05.2010, when she was brutally assaulted by him and locked up in a room, thus incapacitating her from calling for help. She says that even though she mentioned this to her mother on 09.05.2010 – when she met her at the Church – the latter did not take it seriously, presumably because she still did not accept her on account of her earlier actions; but that, on 10.05.2010, when she saw her father in front of the institution where she was working, she went back home with him, never to return.

17. The petitioner further says that there were initially disputes between the parties with respect to the custody of their child, leading to the filing of a petition before the competent Magistrate's Court; but that it was given up because, the respondent deserted both of them, to never keep contact thereafter.

18. Smt.Parvathy Menon – learned counsel for the petitioner,

took us extensively through the pleadings on record, as also the evidence, to impress upon us that, throughout the time when the petitioner was living with the respondent, she harboured morbid apprehensions and fear because he was exhibiting deviant tendencies on account of alcoholism and a roving eye. She explained that her client was very young at the time when she eloped with the respondent, without any experience in life and being lured by his sugarcoated words; thus continuing to endure the most difficult times, believing that there would be light at the end of the tunnel. She submitted that, it was in such manner that she gave birth to her child and agreed to marriage – both under the Special Marriage Act and in the customary manner – hoping that this would sway the respondent to a better life; but that, alas, it was not to be, which is exhibited by the events which occurred on 08.05.2010, when she was beaten up mercilessly, tortured, assaulted and locked up in a room, so as not to allow her voice to reach out in complaint.

19. Smt.Parvathy Menon vehemently argued that these undenied facts are sufficient to establish cruelty by any standard; but that the learned Family Court did not appreciate it in such perspective, but



appear to have been swayed by the factum of the respondent having made certain investments in money – which by no stretch of imagination can be construed to be sufficient for her client or her son; and hence that the impugned judgment is without forensic legs to stand on.

20. Smt.Parvathy Menon thereafter showed us that the learned Family Court has even justified the admitted actions of the respondent, in virtually stalking her client when she went for employment, saying that it was on account of ‘bondage of love’; and that her admission, that she went with her father on 10.05.2010, has been interpreted to be an act of desertion by her, rather than vice versa. She contended that the learned Family Court has severely deviated from the normally accepted parameters in such matters, in holding that the disputes between the parties are part of ‘*ordinary tear and wear of family life*’ (sic) ....‘*and that the spouses had no serious issues between them to live separately*’ (sic).

21. Smt.Parvathy Menon then predicated that the afore conclusions of the learned Family Court are so irrational, that they can never be sustained, particularly when a woman has been subjected to untold cruelty. She relied upon various judgments, including that of the

Hon'ble Supreme Court in ***A.Jayachandra v.Aneel Kaur*** [(2005) 2 SCC 22]; ***Dinesh Mandal v.Chaitali Majumdar*** [2023 0 Supreme (Pat) 944]; ***Roopa Soni v. Kamalnarayan Soni*** [AIR (2023) SC 4186]; and that of this Court in ***Ramanathan v. Raji*** [2023 KER 55801].

22. The endorsements on the files of this case establish that the summons to the respondent has been validly served. However, he is neither present in person today, nor represented through counsel; thus constraining us to dispose of this matter in his absence.

23. We have gone through the materials on record, as also the evidence – certified copies of which have been handed over across the Bar by Smt.Parvathy Menon; and have evaluated them, on the touchstone of the findings in the impugned judgment.

24. We began this judgment, inditing that the contours of the concepts of matrimonial cruelty have been urged for examination in this case because, what is projected by the petitioner is a decade of difficult matrimonial life; but without specific instances being enumerated, except the event on 08.05.2010. This is perhaps why the learned Family Court was induced to the impression that these are “*all part of the normal wear and tear of the family life*”(sic); and that the one incident on 08.05.2010

would not be sufficient to buttress an argument of cruelty, to lead to a decree of divorce.

25. However, we are certain that the afore perspective is not correct because, when a woman complains of being in a loveless relationship, with her husband leading a wayward life and acting under the influence of alcohol, it may not be possible for her to project each and every incident, as if they are carved in stone.

26. The pleadings on record limpidly disclose the deep misery that the appellant had to go through for years; and she, pertinently, accepts blame, admitting that she was very naive in the year 2010, as a 17-year-old girl, to have eloped with her prospective husband, knowing fully well that he was already married and with a child.

27. The appellant has explained that she was too young to fathom the consequences of her choices; and that she was enamoured by the words of the respondent, that he even fantasized about her when he was having intimate moments with his wife, thus being unable to live without her. She concedes that she made herself believe all such and took certain decisions, which she rued in the days thereafter.

28. Obviously, this is a case where a young girl with stars in her

eyes and hopes in her aspirations – though both unfounded, as the events later would establish – took the plunge of living with a married man, who had a child; but to never have a happy matrimonial life thereafter – whatever be the reason – being virtually “trapped in an unhappy marriage”. She transpires to have held the fond hope that things would get better, if he were to divorce his wife and marry her formally - her condition being exacerbated for the reason that she and her husband were both excommunicated from their respective communities, reduced thus to being without any succour from any other source, including her family, thus falling upon the respondent for all emotional, physical and other needs.

29. The afore scenario cannot perhaps be explained semantically, but can only be understood by someone who experiences it; particularly being forced to live in a loveless life, with despondency and hopelessness.

30. To make worse the scenario, the appellant says that the respondent was an alcoholic, with an eye for other women; and that her status as a woman itself was, therefore, under attack.

31. Before we move forward, it would be necessary for us to go

through the defence that has been built by the respondent, particularly in his counter pleadings and testimony.

32. Very pertinently, the respondent asserts that it was the appellant who deserted him on 10.05.2010; and he unequivocally concedes that there had been no relationship between them thereafter. He then insinuates that the appellant was wrong in having fallen in love with a married man and the father of a child; and that he was forced to marry her because she threatened to commit suicide, unless he deserted his wife and his family. He asserts that it is the appellant who had played “*fraud on him, to have his company*” (sic) and that it was he who was ill-treated by her, which he suffered.

33. The respondent then takes an extremely patriarchal position, saying that he “accepted the appellant” and tried to maintain her properly; and that he had not committed any act of cruelty, as alleged. He also imputes against the father of the appellant that, with an intent to “*destroy the marital life*” (sic), he took her away from him, which compelled him to file a joint petition for divorce. He concludes, saying that he is ready to resume conjugal relationships and to “*maintain the petitioner*” (sic).

34. We have carefully examined and evaluated the impugned judgment; and as rightly argued by Smt. Parvathy Menon, the learned Family Judge has found the incidents narrated by the appellant to be rather trivial and as part of the stress and strain of a normal marital life; and that that there are no severe issues between them, finding justification for this opinion by the factum of the respondent having made certain fiscal deposits in the name of the appellant and the child. The learned Court concludes that there is no “sort of cruelty set up before Ext.A1” (sic); and that the action of the appellant in having joined her father on 10.05.2010 and to have proceeded home with him, can only be construed to be an act of desertion *viz a viz*, the respondent.

35. As we have already said in the earlier paragraphs of this judgment, it is impossible to define the concept of “matrimonial cruelty” with mathematical precision or exactitude. “Cruelty”, most of the time, is a status of mind and depend upon the vicissitudes and permutations of the events – it being a personal issue, guided by the impressions in the mind of a person subjected to such. It would never be possible for any Court, or for that matter, any person, to decide that a particular action is “cruelty” or otherwise, in a given situation, as a general rule; and it

would depend upon the variables that are attracted, especially, the atmosphere; the manner of impact of the incident psychologically; the mental state of the person; the age and socio-economic status of the victim.

36. Over the years, numerous judicial pronouncements had tried to address the concept of "matrimonial cruelty". A quick walk through a few of the important precedential opinions would be very useful.

37. In ***Sirajmohmedkhan Janmohamadkhan v. Haizunnisa Yasinkhan and Anr.*** [1981 KHC 690], the Supreme Court held that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living.

38. In ***Rajani v. Subramonian*** [1989 KHC 57], a Division Bench of this Court observed that *“the concept of cruelty depends upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance, judged by standard of modern civilization in the background of the cultural heritage and traditions of our society”*.

39. It has been aptly held by the Supreme Court in ***Gananath Pattnaik v. State of Orissa*** [2002 KHC 302], that *“The concept of*

*cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs”.*

40. In **A. Jayachandra vs. Aneel Kaur** [2005 KHC 7], the Supreme Court held that “*Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to 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.*

*.... In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not 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.”*

41. The Supreme Court in **Shobha Rani v. Madhukar Reddi** [1988 KHC 254] in paragraphs 4 and 5, defined “cruelty” as “*a course*



*of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse”.*

42. It was then further observed in **Shobha Rani** (supra) that, “Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behavior, capacity or incapability to tolerate the conduct complained of. Such is the wonderful realm of cruelty”.

43. In **Samar Ghosh vs. Jaya Ghosh** [2007 (2) KHC 231], the Supreme Court poignantly opined that there cannot be any comprehensive definition of the concept of “mental cruelty”, within which all kinds of such cases can be covered and that no Court should

even attempt to offer it a comprehensive definition. The specific words of the Hon'ble Supreme Court is deserving of full reading for which it is extracted below:

*“73. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration”.*

44. Even though no standard guidelines can be hence enumerated, the Hon'ble Court, in **Samar Ghosh** (Supra), pointed out some instances which may amount to cruelty, which has been summarised as follows:

Severe mental pain and suffering that makes it impossible for the parties to live together; if the wronged party cannot reasonably be expected to tolerate the other party's conduct; Simple coldness or lack of affection is not enough, but extreme rudeness, neglect, or indifference can make married life intolerable; mental cruelty arises from prolonged anguish, disappointment, and frustration caused by the other spouse's behavior; ongoing abusive and humiliating treatment intended to make the spouse miserable qualifies as mental cruelty; continuous unjustifiable behavior affecting the physical and mental health of the other spouse is considered mental cruelty; Sustained neglect, indifference, or sadistic behavior causing mental harm or deriving pleasure from it can amount to mental cruelty; the conduct arising from but exceeding jealousy, selfishness, or possessiveness; mere emotional upset is not sufficient for divorce on mental cruelty grounds; ordinary irritations, quarrels, and daily wear and tear are not adequate grounds for mental cruelty; the entire married life should be considered; persistent ill-conduct over a lengthy period leading to an intolerable relationship may be mental cruelty; undergoing sterilization or abortion without the spouse's consent or knowledge may constitute mental cruelty; unilaterally refusing

intercourse for an extended period without valid reason can amount to mental cruelty; unilaterally deciding not to have children after marriage may be considered mental cruelty; and prolonged separation indicating the marriage is irreparable can be seen as mental cruelty, showing disregard for the emotional well-being of the parties.

45. No doubt, as our social conceptions advance, this list continues to evolve, expand and vary, from person to person. The victims, living under relentless pressure, must be given the necessary space to breathe, relieving them of the heavy weight they carry. It is also imperative that the diverse experiences and background of these individuals are factored into, while considering such matters.

46. Returning to the case at hand, it has luculently come out in evidence, without any contra - evidence being offered, that the petitioner was a mere 17 year old girl at the time when she eloped with the respondent in the year 2010; and that, even at that time, the latter was married with a child. He himself admits this; but says that he was “forced” to accept the petitioner because, she pressured him to elope with her and marry her, under the threat of suicide; and he even goes to the extent of saying that he was “trapped” by her, consequently being

forced to desert his family because of her insistence. The evidence of the respondent as RW1 is on the said lines; and he emphasizes more on his earlier marriage and his child from it, trying to project himself as a victim of circumstances, drawn into marital life with the appellant on her force and then imputing that it was he who was actually ill-treated. However, these assertions remain without any corroboration and there is not even a whisper in the pleadings, or in the evidence, that the respondent was ever ill-treated in any manner whatsoever; and this by itself, in our view, would be sufficient to expose his true face and to establish that he dealt with her in a manner that can well be seen to be cruel. There can hardly be any contest in this because, such unsubstantiated allegations surely challenges the self-respect and dignity of the appellant, a lady.

47. That apart, when the appellant specifies an incident on 08.05.2010, asserting that she was brutally attacked and locked up; and that, she then found solace by running away with her father on 10.05.2010, the contra evidence given by the respondent is a bare denial, but without any cogent explanation. In fact, as we have seen above, his case is that, it was the appellant who deserted him on 10.05.2010; and

that she did so without any reason, though he was a very caring and loving person. This assertion by the respondent certainly finds no support in any of the pleadings or evidence on record; and we, therefore, find no tenable reason for the appellant to be dis-believed, when she graphically explained the trauma she went through on 08.05.2010.

48. Of course, we are not saying that a singular incident could be justified for a Court to grant divorce; but this case presents a situation exacerbated over the years, with the wife feeling trapped in a loveless relationship, reduced to feelings of self-worthlessness and despondency, during the entire decade she lived with him. The position of an individual feeling so trapped and experiencing asphyxiation – not of breathing air, but of dignity and safety - is not one that can be easily described; and we cannot trivialize it in any manner whatsoever, especially when it is apodictically reflected from the evidence and pleadings, that the parties never lived together after the year 2010. A break of more than 14 years without the respondent making an attempt – with no such, having been brought before us - to seek the company of his wife; and then saying that he is willing to live with her and take “care” of her, can only be seen to be patriarchal in approach, which this Court

cannot countenance.

49. In the afore circumstances, we are certain that the appellant is entitled to succeed, since, she cannot be forced to remain in a marriage against her will and without her volition.

50. This appeal is, therefore, allowed and the judgment of the learned Family Court, Ernakulam, is set aside.

Axiomatically, O.P.(Div.)No.536/2010 will stand allowed; and the marriage between the parties is hereby declared to be dissolved, with effect from the date of this judgment.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

C.PRATHEEP KUMAR

JUDGE