

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 4<sup>TH</sup> DAY OF FEBRUARY 2022 / 15TH MAGHA, 1943

MAT.APEAL NO. 43 OF 2020

AGAINST THE JUDGMENT IN O.P.NO.1183/2017 OF

FAMILY COURT, NEDUMANGAD

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APPELLANT/S:

BEENA M.S., AGED 32 YEARS,  
D/O.M.G.SAMUEL, MURUPPEL HOUSE,  
VAYYATTUPUZHA, VAYYATTUPUZHA.P.O,  
PATHANAMTHITTA, PIN-689663.

BY ADVS.

JACOB P.ALEX

SRI.JOSEPH P.ALEX

SHRI.MANU SANKAR P.

RESPONDENT/S:

SHINO G.BABU, AGED 33 YEARS,  
S/O.C.G.BABU, CHARUVIL KETTIDATHIL HOUSE,  
KALANJOOR, KALANJOOR.P.O., PATHANAMTHITTA  
DISTRICT, PIN-689694,  
NOW RESIDING AT PMRA 122A, MADANKOVIL LANE,  
PARUTHIPARA, NALANCHIRA.P.O., PIN-695015,  
THIRUVANANTHAPURAM.

BY ADV SMT.MAJIDA.S

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON  
04.01.2022, ALONG WITH Mat.Appeal.No.72/2020, THE COURT ON  
04.02.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE  
&  
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS  
FRIDAY, THE 4<sup>TH</sup> DAY OF FEBRUARY 2022 / 15TH MAGHA, 1943  
MAT.APPEAL NO. 72 OF 2020  
AGAINST THE JUDGMENT IN O.P.No.1176/2017 OF  
FAMILY COURT, NEDUMANGAD

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APPELLANT/S:

SHINO.G.BABU, AGED 31 YEARS,  
S/O C.G.BABU, PERMANENTLY RESIDING AT CHARUVIL  
KETTIDATHIL HOUSE, KALANJOOR, KALANJOOR P.O.,  
PATHANAMTHITTA DISTRICT-689 694, PRESENTLY  
RESIDING AT PMRA 122A, MADANKOVIL LANE,  
PARUTHIPARA, NALANCHIRA P.O.,  
THIRUVANANTHAPURAM.

BY ADV MAJIDA.S

RESPONDENT/S:

BEENA.M.S., D/O.M.G SAMUEL,  
MURUPPEL HOUSE, VAYYATTUPUZHA,  
VAYYATTUPUZHA P.O.,  
PATHANAMTHITTA, PIN-689 663.

BY ADVS.

SRI.JACOB P.ALEX  
SRI.JOSEPH P.ALEX  
SHRI.MANU SANKAR P.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON  
04.01.2022, ALONG WITH Mat.Appeal No.43/2020, THE COURT ON  
04.02.2022 DELIVERED THE FOLLOWING:

'CR'

**A.MUHAMED MUSTAQUE & SOPHY THOMAS, JJ.**

**Mat.Appeal Nos.43 & 72 of 2020**

**Dated this the 4<sup>th</sup> day of February, 2022**

**JUDGMENT**

**A.Muhamed Mustaque, J.**

These appeals are between the same parties. Mat. Appeal No.43/2020 is filed by the wife challenging the decree of divorce granted in favour of the respondent-husband on the ground of cruelty. Mat.Appeal No.72/2020 was filed by the husband challenging the dismissal of his petition for permanent custody of the child born in the wedlock with the respondent-wife. The parties are hereinafter referred with reference to their marital status.

2. The parties are Christians. Their marriage was solemnized on 30.04.2015. The husband is an Engineer by profession and the wife is a Dentist holding post-graduate

degree. At the time of marriage, the wife was a post-graduate student in Kannur and the appellant was working as an Assistant Professor in an Engineering College in Parippally, Thiruvananthapuram. We, after hearing the counsel for the appellant and going through the pleadings and evidence threshold, are of the opinion that the parties never developed any emotional bond or intimacy. Perhaps, the reason that they were living at distant places at the time of marriage had hampered developing such bonding. The marital relationship is built over the period, based on harmonious combination of differences in taste, outlook, attitude etc. The initial phase of the marriage lays a strong foundation for the marriage. The understanding built during the initial phase would enable the parties to resolve the differences which they may encounter in the later stage of the marriage. In some jurisdictions, incompatibility is a recognized ground for divorce. If domestic harmony is not achieved during the initial phase of the marriage, it may lead to constant quarrels and bickering, spoiling the relationship. The

incompatibility essentially refers to both parties being unable to reconcile in their approach to the matrimonial life. We thought to refer to the above remarks in this case obviously for the reason that both parties could not yield to each other in building a relationship and the marriage failed at the threshold itself. The husband realising the insurmountable hurdle in moving forward, approached the court for divorce on the ground of cruelty. The ground of cruelty necessarily pinpoints the faults of the opposite party. Legal cruelty is different from actual cruelty. The popular meaning of cruelty cannot be ascribed to the statutory meaning of cruelty. While deciding this case, we have outlined at the outset the incompatibility of the parties for the reason that, if we omit to refer to the incompatibility, the judgment rendered would only prove innocence or fault of either of the parties. By incompatibility, we mean that both parties failed in building the relationship and one alone cannot be attributed with the imputation of fault.

3. The pleadings of the husband dominantly refers to the quarrelsome attitude of the wife. The husband would say even a small provocation would vitiate a conducive atmosphere at the matrimonial home. The husband states that his wife does not like his relationship with his mother and sister. The constant and recurring and quarrelsome attitude of the wife has been projected as the ground for divorce. The wife, on the other hand, denied any sort of misbehaviour from her side. However, she admitted that the husband failed to offer care and emotional support when it was required including the period of pregnancy. It is her case that the husband gave priority to his comfort and needs than the needs of the wife while she was pregnant and studying the MDS Course. The objection of the wife pointed to the fact that the parties never had any cordial relationship and failed to develop any emotional intimacy.

4. We are sure that the parties were leading an incompatible life from the initial phase of the marriage.

We are called upon to decide on cruelty as a ground for divorce. The Family Court referred to various incidents including email communications between the parties to hold that the wife committed matrimonial cruelty. We perused the evidence, email communications and oral evidence of the parties. We cannot completely blame the wife for the deteriorated relationship. All that would go to show that the parties never had a peaceful relationship. The email communications would show the emotional turbulence and stress experienced by the wife. Ext.A8 series perhaps would bring more reflection on the character of the wife. The wife obsessively charted her plans and course of action. She lists out the work and action of a day in writing. It seems that she was in the habit of cataloguing the schedules and routines in writing. The distraction or variation appears to have disturbed her thoughts. She meticulously minutiae her actions in advance. The husband produced a bunch of notes prepared by the wife as Ext.A8 series. We just refer here the note prepared on 17.9.2017:

<p><b>WORKS.</b></p> <p>1. <u>Nairthen kidoks</u> - At present:</p> <ul style="list-style-type: none"> <li>1. Crying bline.</li> <li>2. Preparing feed.</li> <li>3. feeding him - {every 2 hrs.} (1) 6am - Milk. (2) 8am - breakfast.</li> <li>4. 10 times in a day (3) 10:00am - kueuku. (4) 12:30 Noon. - Milk / potato / apple.</li> <li>5. Changing diapers. (5) 2:00 - Lunch - Rice + potato.</li> <li>6. Cleaning him up (6) 3:30 - Clellag. (7) 5:30 - kueuku.</li> <li>7. Cleaning up room (8) 7:30 / 8:00 - Milk / 10:00 - Milk.</li> <li>8. after pre. (9) 2:00 - Milk.</li> <li>9. after food. (10) 3:00am - Milk.</li> <li>10. Cleaning up room after feed.</li> <li>11. 2. cleaning his toys - after feed.</li> <li>12. attending to him - making him engaged / playing w/ him.</li> <li>13. putting him to sleep.</li> <li>14. keeping him safe from mosquitoes, ants, from falling down.</li> <li>15. washing his clothes after poo.</li> <li>16. washing his clothes: putting to dry, folding and keeping in.</li> </ul>	<p>17-09-2017 (8<sup>th</sup> mord)</p> <p><b>OTHER WORKS:</b></p> <p>1. Personal →</p> <ol style="list-style-type: none"> <li>1. Brushing</li> <li>2. Toilet.</li> <li>3. Bathing.</li> <li>4. food - prep, eating, cleaning, venets.</li> <li>5. prayer &amp; meditation.</li> <li>6. Socialising - kistrapp/calls. interact w/ people - top/engq.</li> <li>7. clothes - washing, drying, folding, ironing.</li> </ol> <p>2. other works. → 1. cooking</p> <ul style="list-style-type: none"> <li>1. Tea making - mom</li> <li>2. Hot water - mom prep</li> <li>3. Breakfast.</li> <li>4. Lunch.</li> <li>5. Dinner prep.</li> </ul> <p>- keeping kitchen slabs clean.</p> <p>- cleaning vessels.</p> <p>2. Cleaning.</p> <ol style="list-style-type: none"> <li>1. Sweeping rooms.</li> <li>2. Mopping rooms.</li> <li>3. Cleaning toilet.</li> </ol>
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<p>4. Outside cleaning</p> <ul style="list-style-type: none"> <li>front</li> <li>back</li> </ul> <p>5. Checking cobwebs.</p> <p>6. waste disposal</p> <ul style="list-style-type: none"> <li>- cleaning bins</li> <li>- mine, achr, nair, bedsheets, waste clothes used for mopping</li> <li>↔ w/ machine.</li> <li>put clothes, stuff-dotted.</li> <li>put out to dry.</li> <li>pick when dried/rain.</li> <li>Drying.</li> <li>Folding on kpg in place.</li> </ul> <p>3. Washing clothes.</p> <ul style="list-style-type: none"> <li>↔ mine, achr, nair, bedsheets, waste clothes used for mopping</li> <li>↔ w/ machine.</li> <li>put clothes, stuff-dotted.</li> <li>put out to dry.</li> <li>pick when dried/rain.</li> </ul> <p>4. Achr:</p> <p>1. Fooddr. Serving tea, breakfast, cleaning his vessels.</p> <p>Serving lunch, cleaning his vessel.</p> <p>Serving dinner, "</p> <p>2. prayer time - tog.</p> <p>3. VI need.</p>	<p>POA</p> <p>5-6 - prayer &amp; medtn.</p> <p>6-6.15 - Edg Nthm milk</p> <p>6.15-6.30 - putting clothes in machine</p> <ul style="list-style-type: none"> <li>- tea making tea.</li> </ul> <p>6.30 - 8.00 - cooking - breakfast, lunch.</p> <ul style="list-style-type: none"> <li>- put clothes to dry.</li> </ul> <p>8.00 - 8.30 - cleaning rooms.</p> <p>8.30 - 9.00 - serve brfst, hv,</p> <p>9.00 - 9.15 - put Nthm to sleep.</p> <p>9.15 - 10.00 - cleaning vessels.</p> <p>set up.</p> <p>10.00 - 11.00 - Give Nthm bline, Feed.</p> <p>11.00 - 12.00 - Relax/ play w/ Nthm.</p> <p>12.30 - 1.00 - feed N. Lunch ht up.</p> <p>1.00 - 5.00 - Bng w/ kid</p> <ul style="list-style-type: none"> <li>serve lunch - achr, clean vessels</li> <li>pick up dried clothes.</li> <li>Tea.</li> </ul> <p>5.00 - 6.00 - feed for Nthm, Cln up.</p> <p>6.00 - 8.00 - Invst time.</p> <p>8.00 - 9.00 - achr - prayer, phone calls?</p> <p>9.00 - 10.00 - dinner - Cln vessels</p> <p>10.00 - 10.30 - set things for next day.</p> <p>10.30 - 11.00 - a/c &amp; comt Nairthy.</p>
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5. The husband attributes this conduct as a behavioural disorder. The wife denies the same. We are not able to discern ourselves to classify this as behavioural disorder or not. There are various types of personality disorders. In the absence of any medical evidence before us, we may not be able to classify this behaviour as a personality disorder. But, we are sure unstable emotions and relationships existed between the parties as revealed from Exts.A2 to A4 e-mail chatting reports and Ext.A5 whatsapp message. If one of the spouses is unable to adjust to such behaviour, that party cannot be found fault with. The obsessive nature of the character possessed by the wife would have led to a deteriorating relationship between the parties from the initial phase of life itself. Chasing happiness based on schedules instead of living in the moment, appears to be the vowed daily life routine adopted by her. She was not realistic to the fact that the secret of marital harmony lies in accepting the life as it unfolds and not becoming

a stickler of the schedules or routines. Compulsive obsessiveness is also considered as a disorder. Though we are not sure about attributing the appellant as a person who suffers from such disorder, on going though the evidence, we are certain such attitude and behaviour was unbearable to the husband. If the conduct and character of one party causes misery and agony to the other spouse, the element of cruelty to the spouse would surface, justifying grant of divorce. If the parties cannot mend their ways, the law cannot remain oblivious to those who suffer in that relationship. In any matrimonial relationship, spouses may have a different outlook on the marriage based on faith, perceptions, outlook, attitudes, social ethos, etc. Fearing divorce is repugnant to his or her notion, one would refrain from the divorce based on mutual consent. The court cannot leave the life of a spouse to the mercy of the opposite spouse. Human problem requires resolution consistent with the notion of justice. The husband wants to get out of the misery and agony of the relationship; though, what was portrayed before the

court is the fault of the wife, the husband also failed in building the relationship. We made an attempt for conciliation. The said attempt failed. There is no scope for reviving the dead marriage. The Apex Court in **Naveen Kohli v. Neelu Kohli** [(2006) 4 SCC 558], opined that if the parties cannot live together on account of obvious differences, one of the parties is adamant and callous in attitude for having divorce on mutual consent, such attitude can be treated as the cause of mental cruelty to other spouses. The Apex Court in **Samar Ghosh v. Jaya Ghosh** [(2007) 4 SCC 511] also considered such act as cruelty in the following words:

*“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 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.”*

6. 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 break down to allow divorce is premised on the fact that the spouses can never remain together on account of their differences. If the court is able to form an opinion that due to incompatibility, the marriage failed and one of the spouses was withholding consent for mutual separation, the court can very well treat that conduct itself as cruelty. If one of the spouses is refusing to accord divorce on mutual consent after having convinced of the fact that the marriage failed, it is nothing but cruelty to spite the other

spouse. No one can force another to continue in a legal tie and relationship if the relationship deteriorated beyond repair. The portrayal of such conduct through manifest behaviour of the spouse in a manner understood by a prudent as 'cruelty' is the language of the lawyer for a cause before the court. This case is also not different. The behavioural disorder pointed out against the appellant in the petition for divorce was essentially reflection of incompatibility that existed between the parties. The husband wants to get out of the struggled relationship, on the projected cause of cruelty with reference to the incidents of misbehaviour. Incompatibility is a factor that can be reckoned while considering the ground for cruelty, if one of the spouses withholds the consent of mutual separation, though incompatibility is not recognised as ground for divorce.

7. The parties are young. They are living separately since 2017. We, in such circumstances, are of the view that for the reasons stated above, the order of

the Family Court granting divorce has to be sustained.

Mat.Appeal No.72/2020 is against the dismissal of the custody petition. Admittedly, the child is with the mother ever since his birth. The father also had not sought interim custody of child. The husband was not enthusiastic to obtain the custody of the child. The child is only five years old. The Family Court dismissed the claim for permanent custody taking note of the above facts. We find no reason to interfere with the above order. However, the said dismissal will not stand in the way of the husband moving the Family Court for any visitorial rights or contact rights with a fresh petition.

The Mat. Appeals are dismissed. No costs.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

Sd/-

**SOPHY THOMAS, JUDGE**

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