

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 28TH DAY OF JUNE 2021 / 7TH ASHADHA, 1943

MAT.APPEAL NO. 594 OF 2018

AGAINST THE ORDER/JUDGMENT IN OPHMA 758/2014 OF FAMILY

COURT, MAVELIKKARA, ALAPPUZHA

APPELLANT/PETITIONER:

SABITHA UNNIKRISHNAN
AGED 33 YEARS
W/O.VINEET DAS, SABITHA, MANNARASALA P.O.,
HARIPAD, KARHTIKAPPALLY TALUK.

BY ADVS.
SRI.NAGARAJ NARAYANAN
SRI.BENOJ C AUGUSTIN
SRI.U.M.HASSAN
SRI.SAIJO HASSAN
SRI.VISHNU BHUVANENDRAN

RESPONDENT/RESPONDENT:

VINEET DAS
AGED 36 YEARS
S/O.LATE MOHANDAS, KRISHNA BHAVAN, NEAR CATHOLIC
CHURCH, CHENGANOOR, THIRUVALLA TALUK,
PATHANAMTHITTA-682191, PRESENT ADDRESS - VINEET
DAS, S/O.LATE MOHANDAS, CATERING AND SUPPLIES
COMPANY, LLC, P.O.BOX 311, POSTAL CODE-100, OMAN,
MUSCAT.

BY ADVS.
SRI.JACOB P.ALEX

Mat.Appeal No.594/2018

-:2:-

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

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
16.06.2021, THE COURT ON 28.06.2021 DELIVERED THE
FOLLOWING:

J U D G M E N T

Dated this the 28th day of June, 2021

Dr.Kauser Edappagath, J.

This matrimonial appeal filed by wife is directed against the judgment of the Family Court, Mavelikkara (for short, 'the court below') dismissing the original petition filed by her against her husband for divorce on the ground of cruelty and desertion.

2. The marriage between the appellant and the respondent was solemnized on 28/6/2009 as per the Hindu religious rites and ceremonies. In the wedlock, a child was born on 20/5/2011.

3. The appellant as well as the respondent were working at Sultanate of Oman at the time of marriage. After a few days of marriage, i.e, on 15/7/2009, the appellant and the respondent went back to Sultanate of Oman to resume their job. According to the appellant, while they were living together in Sultanate of Oman, the respondent made false allegations of unchastity against her and the said allegations were spread among his

relatives as well as the co-workers of her father. The appellant alleged that the respondent spread about the said false allegations of unchastity to his maternal uncle, Sri.Hari and his aunt, Smt.Usha Pillai, residing at U.S.A who in turn sent Ext. A2 email message to her alleging infidelity on her part. According to the appellant, the said false imputation of adulterous conduct made by the respondent lowered her reputation in the estimate of others including co-workers and, thus, she cannot be expected to live with the respondent. It is further alleged that while they were living together at Sultanate of Oman, the respondent used to pick up quarrels with her on the issue of unchastity and on 1/3/2012, he brutally assaulted her as well. It is also alleged that, from 1/3/2012 onwards, she has been living separately from the respondent who has deserted her with permanent intention to break the marital relationship between them. It was in these circumstances, the appellant preferred the Original Petition for dissolution of marriage on the ground of cruelty and desertion.

4. The respondent entered appearance in the court below and filed objection statement. He specifically denied the instance of cruelty allegedly exercised by him on the appellant and

pleaded in the original petition. The respondent also denied the allegation in the original petition that he has made false allegation of unchastity against the appellant. According to him, it was the appellant who often quarrelled with him and failed to discharge her marital obligation. It is also contended that the appellant has always been highly passionate for luxurious life and he was forced to succumb to her needs. Ext. A2 email was denied. He asserted that he is ready to reside with the appellant and discharge his marital obligations even now. The respondent sought for the dismissal of the petition.

5. The respondent has also filed a petition under the Guardian and Wards Act for the permanent custody of the child before the court below. Both original petitions were tried together by the court below. On the side of the appellant, PW1 and PW2 were examined and Exts. A1 to A3 were marked. On the side of the respondent, RW1 and RW2 were examined and Exts. B1 to B5 series were marked. After trial, the court below found that the appellant has failed to prove cruelty as well as desertion and accordingly the original petition was dismissed as per the impugned judgment. Challenging the said judgment, the

appellant preferred this appeal.

6. We have heard Sri.Nagaraj Narayanan, the learned counsel for the appellant and Sri.Jacob P.Alex, the learned counsel for the respondent.

7. The learned counsel for the appellant submitted that the appellant is not pressing the prayer for dissolution of marriage on the ground of desertion. Thus, what survives for consideration is only the ground of cruelty.

8. The learned counsel for the appellant assails the impugned judgment on the ground that the court below was unreasonable and unrealistic in the appreciation of oral as well as documentary evidence. The learned counsel submitted that the evidence on record, both oral and documentary, would clearly prove that the respondent has exercised cruelty, both physically and mentally, on the appellant. The learned counsel for the respondent on the contrary submitted that the evidence on record is insufficient to prove cruelty alleged so as to grant a decree for dissolution of marriage and, thus, the court below was absolutely justified in dismissing the original petition.

9. As stated already, at the time of marriage, both the

appellant and the respondent were employed at Sultanate of Oman. The father of the appellant was employed in the same company where the respondent was employed. After a few days of marriage, the appellant and the respondent went to Sultanate of Oman and they resided together. According to the appellant, during this period, matrimonial dispute developed between them which were further intensified by passage of time. It is specifically alleged by the appellant that, on 1/3/2012, there was an incident of physical assault and from the said date onwards they have been living separately. This is specifically disputed by the respondent. However, the respondent also admits that since 23/3/2014, they have been living separately.

10. Cruelty as a matrimonial offence is the conduct in relation to or in respect of matrimonial duties and obligations. It is settled that physical violence is not absolutely essential to constitute cruelty; a cruelty complained of may be mental or physical. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other and inference can be drawn from the attending facts and circumstances taken cumulatively. The Supreme Court in

Mat.Appeal No.594/2018

-:8:-

Dr.N.G.Dastane v. Mrs.S.Dastane (AIR 1995 SC 1534) has held that the standard of proof in matrimonial cases would be same as in civil cases, i.e., the Court has to decide the cases based on preponderance of probabilities. Therefore, the Court 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 complainant spouse because of the acts or omissions of the other.

11. The main allegation of mental cruelty on the part of the respondent canvassed by the appellant is the false allegation of unchastity made by him against her. It is settled that the unsubstantiated accusation and character assassination by one spouse against the other would constitute mental cruelty. The Supreme Court in **Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate** (AIR 2003 SC 2462) has held that unsubstantiated disgusting accusations made by one spouse against the other in the written statement constitutes mental cruelty for sustaining the claim for divorce. In **K. Srinivas Rao v. D. A. Deepa** (AIR 2013 SC 2176), it was held that making unfounded indecent defamatory allegations against the spouse or

his or her relatives in the pleadings amount to causing mental cruelty to the other spouse. Again, the Supreme Court in **Raj Talreja v. Kavita Talreja** (2017 KHC 6335) has held that the reckless, defamatory and false accusations made by the wife against her husband, his family members and colleagues would definitely have the effect of lowering his reputation in the eyes of his peers and, thus amounts to cruelty. In **Gangadharan v. T. T. Thankam** (AIR 1988 Kerala 244), this Court held that false, scandalous, malicious, baseless and unproved allegation made by one spouse, whether by letters or written statement or by any other mode, amounts to cruelty.

12. The appellant relies on her own evidence as PW1 and the oral testimony of her mother, who was examined as PW2 and Ext. A2, the copy of the email, to prove the case set up by her. The court below on appreciation of evidence found that the oral testimonies of PW1 and PW2 are not reliable and that Ext. A2 cannot be relied on without examining its author. It was further found that there is nothing on record to show that the imputations in Ext. A2 regarding the infidelity of the appellant was furnished by the respondent to his aunt, who sent Ext.A2 to

him. Relying on the entries in Ext. B4 passport of the respondent, it was found that the respondent was in India on 1/3/2012, the date of the alleged physical cruelty, and hence, the said incident also cannot be said to be proved.

13. The pleadings, oral evidence of PW1 and PW2 as well as the contents in Ext. A2 have to be appreciated and evaluated together to find out whether the case set up by the appellant that the respondent has made false accusation of unchastity against her is true or not. There is specific pleading in the petition that while the parties were living together at Sultanate of Oman, the respondent made false allegation of unchastity against the appellant, the allegation was also spread among the relatives of the respondent as well as among the co-workers of the father of the appellant and that the respondent spread about the alleged unchastity to his uncle and aunt residing at USA and on 4/3/2012, the respondent's aunt Smt.Usha Pillai sent an email message to the appellant alleging that she was caught hold of by police with a boy friend and both of them were taken to police station. The appellant asserted that there was no such incident as alleged in the email and there is absolutely no truth in the allegation of

unchastity levelled against her. The appellant also gave oral evidence in tune with the pleadings.

14. To corroborate her oral testimony, the appellant has produced the most crucial document Ext. A2, the copy of the email. The learned counsel for the respondent submitted that Ext. A2 could not have been even admitted in view of the provisions of Sections 65 and 65B of the Evidence Act. The learned counsel further submitted that Ext. A2 is only an unauthenticated copy and its author has not been examined and hence no reliance can be placed on the same. The counsel also submitted that even if it is admitted that Ext. A2 is an email message sent by Smt. Usha Pillai, the aunt of the respondent, then also, the respondent cannot be held liable for its contents inasmuch as nowhere is it stated in Ext. A2 that the information about the illicit affair of the appellant was furnished by the respondent. We are unable to agree with the learned counsel for the respondent.

15. The technicalities of the Evidence Act cannot be imported to a proceedings before the Family Court because Section 14 of the Family Courts Act authorizes a Family Court to receive as evidence any report, statement, document,

information or matter that may, in its opinion assist it to deal effectually with a dispute irrespective of whether it is relevant or admissible under the Indian Evidence Act, 1972. It is discernible from Section 14 that the technicalities of Indian Evidence Act regarding the admissibility or relevancy of evidence are not strictly applicable to the proceedings under the Family Court and in the matrimonial dispute before the Family Court, a discretion has been given to the court to rely on the documents produced if the court is satisfied that it is required to assist the court to effectively deal with the dispute.

16. Now, we will come to the contents of Ext. A2. Ext. A2 mail was sent by the aunt of the respondent Smt. Usha Pillai to the appellant on 04/03/2012. In fact, it was in response to a mail sent by the appellant to her on 29/01/2012. The said mail also forms part of Ext. A2. A reading of the mail dated 29/01/2012 would show that the appellant informed about her strained relationship with the respondent to Smt.Usha Pillai and sought her version in the matter. A reading of the mail dated 04/03/2012 which runs into two pages would show that Smt.Usha Pillai and her husband Sri.Hari knew about the marital problems between

the appellant and the respondent and they had intervened in it. It is specifically stated in the mail that Smt.Usha Pillai had spoken to the respondent about the marital problems between him and the appellant and she heard what the respondent has to say in the matter. It is also further stated in the said mail that the respondent had knowledge about the boy friend of the appellant even before the marriage. There is a specific aspersion in Ext. A2 that the appellant was caught hold of by police along with a boy friend and both of them were taken to police station. It is further stated in Ext. A2 that the respondent had told Smt. Usha Pillai and her husband that the appellant was trying to get the baby's surgery done without his consent. Smt. Usha Pillai has even doubted the paternity of the child. The respondent was cross-examined in length as to the contents of Ext. A2. He deposed that he came to know of Ext. A2 and its contents including the allegation regarding unchastity when he received the notice in the original petition. Still, he did not ask about it to Smt.Usha Pillai. At the same time, he stated that he enquired about Ext. A2 with his uncle, the husband of Smt. Usha Pillai, who admitted that Smt. Usha Pillai had sent Ext. A2 to the appellant. He also stated

that he picked up quarrel with his uncle on that count. That apart, in the original petition for custody filed by the respondent before the court below, he has stated that the appellant had an affair with another person. All these circumstances indicate that it was the respondent who told Smt. Usha Pillai that the appellant was caught hold of by the police along with a boy friend and both of them were taken to the police station. For all these reasons, we are of the view that the contents in Ext. A2 can safely be relied upon.

17. PW2, the mother of PW1, has also given evidence that the respondent used to pick up quarrel with the appellant alleging that she was having extra-marital relationship with another person. She deposed that the respondent has spread the said allegation among his relatives. Even though PW2 has been cross-examined in length, nothing tangible has been brought out to discredit her testimony. We also find no reason to disbelieve the evidence tendered by PW1 that the allegation of unchastity was spread by the respondent among the co-workers of her father. Admittedly, father of the appellant and the respondent were working in the same company in the Sultanate of Oman. The

respondent has miserably failed to substantiate the imputation made by him that the appellant has relationship with another person and she is an unchaste woman. Levelling disgusting accusation of unchastity and attributing aspersions of perfidiousness to the wife would undoubtedly amount to worst form of mental cruelty. No wife can tolerate such accusation. On going through the relevant portions of imputations in Ext. A2, we find that they are of such quality, magnitude and consequence as to cause reasonable apprehension in the mind of the appellant that it is not safe for her to continue the marital tie. Inasmuch as the mental cruelty on this ground has been established, it is immaterial whether the allegation of physical assault on 1/3/2012 has been substantiated or not in order to grant a decree for dissolution of marriage on the ground of cruelty.

18. On an overall appreciation of the pleadings and evidence, we find that the appellant has made out a case for granting a decree for dissolution of marriage on the ground of cruelty u/s 13(1)(ib) of the Hindu Marriage Act, 1955. The court below went wrong in dismissing the original petition for dissolution of marriage. The impugned judgment, thus, rejecting

Mat.Appeal No.594/2018

-:16:-

the prayer for dissolution of marriage on the ground of cruelty is liable to be set aside. We do so.

In the result, the appeal is allowed. The impugned judgment is set aside. OP No.758/2014 on the file of Family Court, Mavelikkara is allowed. The marriage between the appellant and the respondent solemnized on 28/6/2009 stands dissolved. No order as to costs.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

Mat.Appeal No.594/2018

-:17:-

APPENDIX

APPELLANTS' EXHIBITS:

ANNEXURE 1 TRUE COPY OF THE DEATH CERTIFICATE
DATED 18.6.2019 OF THE APPELLANT'S
FATHER

ANNEXURE 2 TRUE COPY OF THE COMPLAINT SUBMITTED BY
THE RESPONDENT BEFORE THE DY.SP
KAYAMKULAM.

ANNEXURE 3 COMPLAINT DATED 15.5.2019 GIVEN BY THE
RESPONDENT TO THE DYSP, KAYAMKULAM
OBTAINED BY THE PETITIONER UNDER RTI ON
13.8.2020.

ANNEXURE 4 TRUE COPY OF THE ORIGINAL PETITION
FILED BY THE RESPONDENT AS O.P(G&W)
NO.1147/2014.

True Copy

PS to Judge

Rp