

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

TUESDAY, THE 18TH DAY OF FEBRUARY 2020 / 29TH MAGHA, 1941

Mat.Appeal.No.547 OF 2013

AGAINST THE JUDGMENT DATED 21-06-2013 IN OP NO.84/2013 OF FAMILY
COURT, PALAKKAD

APPELLANT/PETITIONER:

SANTHOSH KUMAR.S.,
AGED 30 YEARS,
S/O.RAJU, MANGALATH HOUSE, MAZHUVANNOOR SOUTH P.O.,
ERNAKULAM DISTRICT.

BY ADVS.SRI.ALEXANDER JOSEPH
SRI.P.M.SANEER

RESPONDENT/RESPONDENT:

JAYASREE DAMODARAN, AGED 25 YEARS,
D/O.LATE DAMODARAN, ATTAPALLAM HOUSE, PAMPAM PALLAM
P.O., KANJIKODE, PALAKKAD.

BY ADVS. SRI.T.C.GOVINDA SWAMY
SMT.KALA T.GOPI
SMT.T.N.SREEKALA
SRI.K.B.SOUNDER RAJAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
29-01-2020, THE COURT ON 18-02-2020 DELIVERED THE FOLLOWING:

Dated this the 18th day of February, 2020

J U D G M E N T

T.V.ANILKUMAR J.

The husband, who filed O.P. No.84/2013 before the Family Court, Palakkad, for dissolution of marriage on the grounds of desertion and cruelty, is in appeal.

2. The original petition was earlier filed in the Family Court, Ernakulam and numbered as O.P. No.143/2009 before it was transferred to the Family Court, Palakkad. The court below dismissed the original petition holding that appellant/husband failed to prove the grounds of dissolution taken under sections 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 (*for short 'the HM Act'*).

3. The respondent/wife is the own cousin of appellant and their marriage was solemnized on 22.08.2004. Appellant married her while she was studying for B.Sc. Botany in Chittur Government Arts and Science College, Palakkad. After the marriage, a male child by name 'Kannan' was born to the spouses.

4. The allegation of the appellant against the respondent is that, after 1½ months since the date

of their marriage, his life with her became intolerable and miserable. It is alleged that she is of such a peculiar type of woman that she used to pick up quarrels with him and other inmates of the matrimonial house for no good reasons and further she is so short tempered that she used to break plates, glasses and household utensils by throwing them away during quarrels. It was usual for her to leave for her parental home in Palakkad after picking up quarrel and many a time appellant was persuaded to follow her to such a long place from Ernakulam, even at odd night hours. Once she broke her thali chain and threw it at his face. She often challenged appellant to divorce him and claimed that she would well be taken care of by her relatives in Palakkad and Coimbatore. She refused to get up in usual hours of morning nor was she prepared to make tea or food for him. She led an easy going life, without showing any loyalty and love for appellant and failed to discharge her matrimonial duties. She manhandled appellant more than once and even threatened to kill him. After the spouses shifted to a flat in another part of Ernakulam Town also, her

character did not improve and his life with her became all the more intolerable. She developed unholy relationship with one 'vadivelu', a close relative of her, when she used to be in Coimbatore without appellant's consent. Ultimately in the month of December, 2008, she deserted him and left for Palakkad taking away the child and all her belongings. On these allegations, appellant sought dissolution of marriage.

5. The respondent denied allegations of cruelty and desertion and claimed that appellant was taking advantage of his own wrong. According to her, he is a drunkard, who came home with a group of friends in drunken state and harassed her both physically and mentally demanding to raise more gold and cash from her mother. He was interested only in her assets and did not love nor maintain her and child. In fact, she had been tolerating his cruel acts all the years since their marriage.

6. The court below examined appellant as PW1 and three independent witnesses as PWS 2 to 4 on his side and admitted Exts.A1 and A2 in evidence. Respondent was examined as RW.1 and on her side, no

documents were admitted in evidence.

7. After hearing both sides, the court below was not pleased to order dissolution of marriage, since according to it, the allegations of cruelty as well as desertion could not be established by appellant. It was said that evidence of PW1 was interested and was not corroborated by direct eye witnesses to alleged cruelties. It was observed that allegations of cruelty were vague and general and did not contain any material particulars. Testimonies of Pws 2 to 4 were rejected holding that their knowledge of cruelty was only from hearsay sources. It was commented that appellant chose to seek dissolution of marriage taking advantage of his own wrong.

8. We heard the learned counsel for the appellant and the respondent.

9. It was contended on behalf of the appellant that the court below failed to appreciate evidence adduced by the appellant in its correct perspective and to note that there was enough and satisfactory evidence to prove that respondent treated appellant with mental and physical cruelty. It was further

contended that the purpose for which Pws 2 to 4 were cited, was not correctly understood by the court below and there was absolutely no reason for disbelieving the independent witnesses. It was also contended that the allegations of cruelty were clear, transparent and very specific and in fact, allegations of respondent were unspecific and very vague.

10. On the other hand, the learned counsel for the respondent sought to sustain the impugned order of dismissal and contended that the conduct of the appellant amounted to condoning the alleged acts of cruelties, especially when the spouses lived together for sometime after the institution of the original petition at the direction of the Legal Service Authorities.

11. So far as the dissolution of marriage on the ground of desertion is concerned, in our view, the court below rightly dismissed the original petition holding that the ground is not legally sustainable on the facts of the case. O.P.No.143 of 2009 was filed in the Family Court, Ernakulam in the month of January, 2009, before it was transferred and

re-numbered as O.P.No.84 of 2013 in the Family Court, Palakkad. The alleged desertion was in the month of December, 2008. Section 13(1)(i-b) of the HM Act does not permit a spouse to sue for divorce on the ground of desertion before the continuous period of desertion completes two years. Therefore, the order refusing dissolution of marriage claimed on the ground of desertion is absolutely correct and liable to be confirmed.

12. What hereafter survives is the sole question as to whether the appellant has succeeded in proving that he was treated by the respondent with mental and physical cruelty and is entitled to an order of dissolution on that ground.

13. The view taken by the court below that appellant is very vague and unspecific in his pleadings relating to cruelties does not appear to be factually correct. In both of his pleadings and testimony, he has narrated specific situations and incidents wherein he sustained physical and mental cruelties at the hands of the respondent. The major reason for the court below to disbelieve PW1's testimony was that it was quite interested and

Lacked corroboration from independent sources.

14. In proof of matrimonial cruelties both mental and physical, it is quite insensible and impractical for courts to insist on adduction of independent oral evidence, since in most of the matrimonial cases, such cruelties usually take place only within the four walls of one's own house. This gives no opportunity to outsiders of the house to witness the alleged acts of cruelties. The Family courts, therefore will have to proceed with inquiry into the truth of the allegations, confined to the sole testimonies of the spouses before them, rather than rejecting them as being interested. It is unfair for courts in such cases, to insist for corroborative evidence from independent witnesses instead of endeavouring to appreciate the testimonies of the spouses on their own merit and intrinsic worth.

15. There is no eye witness in this case to the alleged acts of cruelty since Pws.2 to 4 cited on the side of the appellant have only hearsay information about the allegations of cruelty. They were cited only to prove that despite having

undertaken repeated rounds of conciliations in order to bring the parties together, their attempts only failed and further the matrimonial relationship between the spouses was irretrievably broken down. PW2, the Secretary of NSS Karayogam, in which the appellant is the Member, initiated reconciliatory efforts based on Ext.A1 request dated 18.12.2008 submitted by the appellant before him. PW3 is a close neighbour of the respondent. PW4 is the brother-in-law of the appellant. All these three witnesses said in their uniform voice that the spouses reached such an estranged state of mind that they could never be made to live together and lead a normal matrimonial life.

16. The appellant testified a few incidents in which he sustained acts of physical cruelty besides mental cruelty. He said that in the month of July,2005, he was manhandled with a knife and was threatened with death also. This was repeated on subsequent occasions also at the matrimonial house. Another allegation is that respondent maintained unholy relationship with a close relative of her by name Vadivelu when she used to stay in Coimbatore

without the consent of the appellant. On going through these allegations, we are not inclined to accept them as proved. If there was physical assault, there could have been some medical or similar evidence. The allegation of unholy relationship was also not proved. Further these allegations were denied by the respondent in her pleading as well as testimony.

17. But with respect to the allegations of mental cruelty, we are inclined to disagree with the view taken by the court below and come to a different conclusion. The appellant said that after a few weeks of marriage and on 02.12.2004, respondent picked up quarrel with him without any tangible reason and broke a few household utensils by throwing them away. She is quarrelsome by nature and short tempered also. Similar incidents of breaking away of household utensils were stated to have occurred in the month of February, 2005 and on subsequent occasions also. He said that picking up of quarrels without any rhyme or reason and breaking of household utensils were quite usual and he had no other go than to tolerate her conduct all through

out. He further said that it was her habit to leave for her parental home in Palakkad immediately after creating such scenes and without his consent. He said that on many occasions, he had to follow her from Ernakulam to Palakkad even at odd night hours. On one occasion, at midnight, after picking up quarrel she left for Palakkad in a taxi without permitting him to travel with her and therefore, he had to follow her in a motor bike. Another instance of mental cruelty which appellant alleges is that she deliberately chose to rise only late in the morning and refused to cook and make food for him in time. She used to humiliate him in the presence of strangers and guests in the house.

18. The question that now arises is whether uncorroborated testimony of appellant vis-a-vis RW1, respondent is convincing and inspires truth. We find that the respondent denied all the allegations of physical and mental cruelties in her deposition and sought to rebut them by contending that she was in fact, the victim of cruelties at the hand of appellant. She alleged appellant to be a drunkard, who used to beat her demanding dowry. He was always

in the midst of his friends, who also came in drunken state to the house and thus failed to discharge the matrimonial duties of her husband.

19. We have meticulously gone through the rival versions testified by the spouses and find that appellant's version of cruelty is trustworthy and convincing. If the respondent was ill-treated with demands for dowry as claimed by her, one would only expect her to have complained to the authorities against such domestic violences. No evidence of such a complaint was ever adduced or proved. On the other hand, her stand is that she is prepared to live with him. This readiness can only be a pretension and this itself improbably her allegation as to domestic violence on her. In the counter statement to the original petition for divorce, she did not at all indicate any specific dates or the amount of gold and cash allegedly demanded by the appellant. So also, the names of the friends, who allegedly used to join appellant's company for sharing liquor in the house were also not disclosed in her pleadings. These material facts were introduced for the first time only when she testified in court.

This belated disclosure has materially affected the reliability of her allegation that appellant was taking advantage of his own wrong, after suppressing his alleged acts of cruelty.

20. It was pointed out on behalf of the appellant that none of the allegations of mental cruelty narrated in Paragraph No.17 of this judgment as well as pleadings in the original petition was specifically denied by the respondent in her counter statement and therefore, they must be deemed to be admissions in proof of allegations of cruelty by virtue of the principle as to evasive denial incorporated in Order VIII Rule 5 of the Code of Civil Procedure, 1908 (*for short, 'the C.P.C.'*).

21. The rules of pleading incorporated in the C.P.C. equally apply to the proceedings before the family Courts also by virtue of Section 10 of the Family Courts Act, 1984. The general principle flowing from Order VIII Rules 3 and 5 of the C.P.C. that a defendant who proposes to deny the truth of an allegation against him/her ought to do it either specifically or necessary implication in lieu of mere general or evasive denial, applies to the

family courts also. Evasive denial in the pleadings of a defendant is treated by law to be an admission of the truth of allegations made against him, unless the court in its discretion is of the opinion that the undenied fact must, nonetheless, be proved otherwise than by such deemed admission. In other words, the courts have necessary discretion to take exception to such admissions and to look for independent evidence instead of fully relying on them. The exceptional cases for such exercise of discretion ordinarily relate to decisions involving issues as to status, relationship of parties and also matters of which court cannot possibly draw inference as to the truth having regard to their evidentiality. In this context, section 23(1) of the HM Act in its application to matrimonial courts dealing with cases arising under the said Act is also very relevant. The aforesaid section mandates that in the proceedings under the Act whether **defended or not**, the courts are to arrive at just decisions based only on total satisfaction drawn from the entirety of materials on record apart from the deemed admission flowing from the evasive denial

referable to Order VIII Rule 5 of the C.P.C. by following the guidelines mentioned in Section 23(1). This Section does not permit passing of a decree for divorce on the ground of cruelty when the wronged spouse is proved to have condoned the cruelty of the offending spouse. So also, when the spouse sues for dissolution of marriage after taking advantage of his or her own wrong or disability also, the said provision empowers the court to refuse the relief sought notwithstanding that the truth of the allegation was not denied specifically or by necessary implication.

22. Even if the conduct of the respondent is not specifically denying the allegation of cruelty in her counter statement is brushed aside also, on an overall consideration of evidence, it could be seen that there is enough material from the testimony of PW1 and circumstances of the case to prove that respondent treated him with cruelty. The proved conduct of the respondent shows that the acts complained of against her are not mere trivial and negligible irritations or quarrels arising out of the normal wear and tear of a matrimonial life which

happens in all families of the society. On the other hand, they are acts and conduct which obviously have affected the peace and security of the family life of the appellant creating apprehension in his mind that it would be harmful or injurious for him to live or lead a normal and decent life with the respondent. The decisions of the Hon'ble Supreme Court reported in *Samar Ghosh v. Jaya Ghosh*[(2007)4 SCC 511], *Vishwanath Agrawal v. Sarla Vishwanath Agrawal* [(2012) 7 SCC 288], *Savitri Pandey v. Prem Chandra Pandey* [2002 KHC 265(SC)] and *Gurbux Singh v. Harminder Kaur* [2010 KHC 4767(SC)] are relevant in this context. The court below failed to appreciate the facts, evidence and law in proper perspective and came to the wrong conclusion.

23. It was argued by the learned counsel for the respondent that during the pendency of the proceeding before the Family Court, the spouses lived together for a few months after settling the matrimonial issues at the intervention of the Lok Adalath and therefore in view of reunion, the appellant was disentitled to pursue his case any further since his conduct amounted to condoning the

alleged cruelties. Either party does not deny that they lived together at the matrimonial house for a short period at the intervention of Lok Adalath. The evidence given by the spouses shows that the spousal relationship could not continue for long and they again separated leaving the pending proceedings before the Family Court, to take its logical conclusion.

24. The reunion of spouses for a temporary period during the pendency of the proceeding for divorce pursuant to settlement of matrimonial issues will not defeat the claim for dissolution of marriage on the ground of alleged condonation of cruelty nor will it bar continuance of the proceeding when their relationship is again estranged. The alleged condonation can put an end to the proceeding only when the complaining spouse has led a normal and intimate life uninfluenced by the conduct of the offending spouse, in such a manner that the wronged spouse has pardoned and restored the offending spouse to the original status. Nothing of that sort happened in this case. The reunion lasted only for a temporary period and the

spouses failed to carry on a normal and harmonious life. Therefore, the plea raised by the learned counsel for the respondent for dismissal of the original petition on the ground of alleged condonation of cruelty is liable only to be refused.

25. Condonation of cruelty is a benevolent and generous act of an offended spouse forgiving the misdeeds of the offending spouse and restoring the latter to the original company. In every condonation there is an implied condition that the excused spouse will not repeat or commit matrimonial wrongs in future. No wrong is permanently wiped out by condonation; but is only hibernated. An act of cruelty once condoned could certainly revive and give rise to a cause of action for dissolution of marriage, when the offending spouse exploits and takes unfair advantage of the generosity or the benevolence shown by the wronged spouse and takes to matrimonial misdeeds over again. This principle of law could be gathered from the decision of the Hon'ble Apex Court in *Dr. N.G. Dastane v. Mrs. S. Dasane* [AIR 1975 SC 1534] wherein Their Lordships in paragraph No.57 of the decision held that '*but*

condonation of a matrimonial offence is not to be likened to a full Presidential pardon under Art.72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival.'

26. In the light of re-appreciation of evidence and discussion of law made by us, we are fully satisfied that the respondent treated appellant with such cruelty that he was disabled from leading a normal and decent matrimonial life. There is nothing to prove that the acts of cruelty were ever condoned by the appellant. The court below came to a wrong conclusion that appellant's version of cruelty was untrustworthy and his attempt was to take advantage of his own wrong.

27. We are also satisfied that all efforts taken by the Family Court to reunite the parties by settling the issues between them have failed and their relationship has become emotionally dead. In fact, the evidence given by PWS 2 to 4 the mediators, who intervened in the matter is so convincing that the spousal relationship has been broken down for ever. For all these matters together, we are of the opinion that the court below

was not justified in having refused appellant's demand for dissolution of marriage. Therefore, we find him to be entitled to a decree for dissolution of marriage on the ground of mental cruelty and the impugned judgment is liable to be reversed.

In the result, appeal succeeds and in reversal of the judgment and decree of the court below, we grant the appellant a decree for dissolution of marriage on the ground of cruelty. Parties will suffer their respective costs.

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ALL ABOUT LAW

A.M. SHAFFIQUE, JUDGE

sd/-

T.V. ANILKUMAR, JUDGE

DST/ami

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P.A.To Judge