



2023/KER/71808

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 16TH DAY OF NOVEMBER 2023 / 25TH KARTHIKA, 1945

MAT.APPEAL NO. 197 OF 2023

AGAINST THE JUDGMENT DATED 31.1.2023 IN OP(HMA) 217/2018 ON THE
FILE OF FAMILY COURT, MAVELIKKARA

APPELLANT/RESPONDENT IN O.P.:

RAJKAMAL
AGED 41 YEARS
S/O PURUSHOTHAMAN, PIRAVASSERIL HOUSE, THEKKUMBHAGOM
KARA, KARIKKODE VILLAGE, THODUPUZHA TALUK, IDUKKI
DISTRICT, PIN - 685585

BY ADVS. JOSEPH GEORGE
P.A. REJIMON
SAJEEV JOHN T.
T.A. AKBAR

RESPONDENT/PETITIONER IN O.P.:

ANU G @ ANURAJ KAMAL
AGED 36 YEARS
D/O OMANA, BINUS BHAVANAM, KALLIMEL MURI, KALLIMEL P.O,
VETTIYAR VILLAGE, MAVELIKKARA TALUK, ALAPPUZHA
DISTRICT, PIN - 690509

BY ADVS. A. MOHAMMED SAVAD
T.R. VISHNU
R. SHABANA

THIS MATRIMONIAL APPEAL HAVING COME UP FOR FINAL HEARING ON
6.11.2023, ALONG WITH Mat.Appeal.198/2023, THE COURT ON 16/11/2023
DELIVERED THE FOLLOWING:



Mat.Appeal Nos.197 and 198 of 2023

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 16TH DAY OF NOVEMBER 2023/25TH KARTHIKA, 1945

MAT.APPEAL NO. 198 OF 2023

AGAINST THE JUDGMENT DATED 31.1.2023 IN OP(OTHERS) 163/2018

ON THE FILE OF FAMILY COURT, MAVELIKKARA

APPELLANTS/RESPONDENTS IN O.P.:

- 1 RAJKAMAL, AGED 41 YEARS
S/O PURUSHOTHAMAN, PIRAVASSERIL HOUSE,
THEKKUMBHAGOM KARA, KARIKKODE VILLAGE, THODUPUZHA
TALUK, IDUKKI DISTRICT, PIN - 685585
- 2 PURUSHOTHAMAN, AGED 85 YEARS
PIRAVASSERIL HOUSE, THEKKUMBHAGOM KARA, KARIKKODE
VILLAGE, THODUPUZHA TALUK, IDUKKI DISTRICT,
PIN - 685585
- 3 SANTHA, AGED 74 YEARS
W/O PURUSHOTHAMAN, PIRAVASSERIL HOUSE,
THEKKUMBHAGOM KARA, KARIKKODE VILLAGE, THODUPUZHA
TALUK, IDUKKI DISTRICT, PIN - 685585

BY ADVS. JOSEPH GEORGE

P.A. REJIMON

SAJEEV JOHN T.

T.A. AKBAR

RESPONDENT/PETITIONER IN O.P.:

ANU G. @ ANURAJ KAMAL

AGED 36 YEARS

D/O OMANA, BINUS BHAVANAM, KALLIMEL MURI, KALLIMEL

P.O., VETTIYAR VILLAGE, MAVELIKKARA TALUK,

ALAPPUZHA DISTRICT, PIN - 690509

BY ADVS. A. MOHAMMED SAVAD

T.R. VISHNU (K/1280/2020)

R. SHABANA (K/001058/2007)

THIS MATRIMONIAL APPEAL HAVING COME UP FOR FINAL HEARING ON
6.11.2023, ALONG WITH Mat.Appeal.197/2023, THE COURT ON
16.11.2023 DELIVERED THE FOLLOWING:



Mat.Appeal Nos.197 and 198 of 2023

AMIT RAWAL & C.S.SUDHA, JJ.

Mat.Appeal Nos.197 and 198 of 2023

Dated this the 16th day of November, 2023

J U D G M E N T

C.S.Sudha, J.

These appeals under Section 19(1) of the Family Courts Act, 1984, have been filed by the respondent/husband against the common order dated 31/01/2023 in O.P.(Others) No.163/2018 and O.P.(HMA) No.217/2018, on the file of the Family Court, Mavelikkara. The respondent herein/wife is the petitioner in the original proceedings. The parties and the documents in these appeals will be referred to as described in the original proceedings.

2. O.P.No.163/2018 was filed by the petitioner/wife alleging thus – the marriage of the petitioner and the respondent was solemnised on 07/11/2013 as per the rites and customs of the community to which they belong. The second and third respondents are the parents of the first respondent. After the marriage was fixed, the respondents demanded an amount of ₹2 lakhs as dowry. They also put forward a condition that taking into account the status of the respondents, the petitioner must have at least

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75 sovereigns of gold ornaments. As demanded by the respondents, on 01/11/2013 an amount of ₹2 lakhs was given to the second respondent who handed it over to the third respondent. The money was paid by the petitioner's father in the presence of the first respondent; Ramachandran, the uncle of the petitioner and one Sashidharan. The amount paid in cash was counted by the third respondent and brother of the first respondent and handed over to the first respondent. For the marriage, the petitioner was given 50 sovereigns gold ornaments by her parents. In addition to the same, on the date of the marriage, the first respondent was given a gold ring weighing one sovereign and a gold chain weighing three sovereigns. On the said date itself as directed by the first respondent, the third respondent/mother was given a gold bangle weighing one sovereign. After the marriage, the petitioner resided in the house of the respondent for three months. On the next day of the marriage, all the gold ornaments of the petitioner except a pair of anklets weighing 2½ sovereigns; a gold chain weighing three sovereigns; a bangle weighing one sovereign and a pair of earrings weighing one sovereign were taken by the first respondent and handed over to the second and third respondents for safekeeping.

2.1. While so, saying that the respondents have several financial liabilities, they wanted the gold ornaments to be pledged, to which the

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petitioner was not amenable. However, against her wishes, the gold ornaments were pledged by the respondents before the SBT, Thodupuzha. During the petitioner's stay in her matrimonial home, she was made to do all the household chores, even while she was pregnant. The first respondent also suspected her fidelity and used to keep asking her as to how many relationships she had before her marriage and whether she was still keeping in touch with those persons. As the petitioner had severe morning sickness and exhaustion, on 03/02/2014 she was taken to her parents' house. After that the first respondent had visited her only twice at her parental home. Even on the said two visits, the first respondent used to keep accusing her of illicit relations. On 19/08/2014, she gave birth to a male child. After the child was born, the first respondent came to visit her once in the hospital. He thereafter paid a visit to the petitioner's house. However, the first respondent never came for taking the petitioner and her child back to his home. Hence, after sixty (60) days of the delivery, the petitioner's parents took her to the respondents' house. The first respondent raised doubts about the paternity of the child. The physical and mental abuse and torture continued. On 29/11/2014, the petitioner was severely manhandled by the first respondent. On 30/11/2014, the first respondent took her and her child and left them at her parental home. Thereafter respondent never came or enquired about the

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petitioner or her child.

2.2. Pursuant to the same, the petitioner filed O.P.No.1259/2015 for return of her gold ornaments and the amount of ₹2,00,000/- given to the first respondent as dowry. She also filed M.C.No.184/2015 for getting maintenance. The matter was thereafter compromised by the first respondent agreeing that he would not return home at untimely hours; that he would not stay over in other peoples' residence and that he would return the 20 sovereigns of gold ornaments of the petitioner which he had pledged. In the light of the compromise, M.C.No.184/2015 was withdrawn and O.P.No.1259/2015 was decreed on 29/04/2017 as per the terms of the compromise. After that the petitioner and child were taken to the house of the first respondent. The first respondent very tactfully got the attachment obtained in I.A.No.2926/2015 raised. After achieving the same, the first respondent went back to his old self. He started harassing the petitioner physically and mentally ; refused to maintain the petitioner and her child and failed to comply with any of the terms of the compromise. On 06/01/2018, the first respondent left home by 6 p.m. He returned the next day by about 11 a.m. When the petitioner enquired about the reason, she was physically assaulted and her clothes and other belongings were thrown outside the house of the respondents. The first respondent sent out the

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petitioner and her son and locked the door of the house. The petitioner informed her parents. When her parents came and enquired about the matter, the first respondent said that they can take back the petitioner and her child to their home or if not the petitioner could commit suicide. Left with no choice, the petitioner and child were taken to her parents' home. Hence the petitioner claimed return of 47½ sovereigns of gold ornaments or its market value and also for return of the amount of ₹2,00,000/- with interest and cost from the defendants and their assets.

3. The first and the second respondents entered appearance and filed objection denying the allegations raised in the petition. The respondents never demanded any dowry or gold as alleged by the petitioner. The petitioner was never physically or mentally harassed. The respondents denied the case of the petitioner that she was given 50 sovereigns of gold ornaments at the time of the marriage and also denied giving of gold ornaments to the first and third respondents. However, they admitted that 20 sovereigns of gold ornaments of the petitioner were pledged by them, relating to which O.P.No.1259/2015 had been filed. The said case was thereafter settled as per a compromise on the basis of which a judgment and decree has also been passed. As per the terms of the decree, all the gold ornaments of the petitioner were returned to her. The petitioner has no cause



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of action to file the present petition and hence not entitled for the reliefs prayed for, contended the respondents.

4. O.P.No.217/2018 was filed seeking divorce on the ground of cruelty and desertion. In addition to the allegations contained in the aforesaid petition, the petitioner also contended that the respondent was in the habit of coming home at untimely hours and refusing to reveal the reason for the same. She was severely assaulted by the first respondent for enquiring the reason for the same. Hence on the ground of cruelty and desertion, divorce was sought.

5. The first respondent in O.P.No.163/2018 alone is the respondent in this case. He denied the allegations of cruelty and desertion.

6. On completion of pleadings, the parties went to trial. PW1 was examined and Exts.A1 to A3 were marked on the side of the petitioner. RW1 was examined and Ext.B1 was marked on the side of the respondents. By the impugned common order, both the petitions have been allowed. Aggrieved, the respondents have come up in appeal.

7. The only point that arises for consideration is whether there is any infirmity in the findings of the trial court calling for an interference by this Court.

8. Heard both sides.

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9. O.P.No.217/2018 - We have already referred to in detail the pleadings of either side. The respondents denied the allegation of the petitioner that he had physically or mentally harassed or ill-treated her. He had never doubted the paternity of the child. After the compromise in the earlier case, the entire gold ornaments had been given to the petitioner. According to the respondent, the attitude of petitioner changed after receiving back all her gold ornaments. It was on her demand, the petitioner and child had been taken to the house of her parents. Thereafter did not return back. The allegation that she was manhandled and sent out of the house, are all false and incorrect. The petitioner examined herself as PW1. She stood by her case of cruelty and desertion while she was cross examined. Nothing was brought on record to discredit her testimony. However the respondent/husband never entered the box to adduce evidence to substantiate his contentions. Therefore, there is no contra evidence to discredit or disprove the case of the petitioner regarding cruelty and desertion. Hence, we find no infirmity in the findings of the trial court and so confirm the decree of divorce granted in favour of the petitioner/wife.

10. Now we come to Mat.Appeal No.198/2023, which is from the order in O.P.No.163/2018. The petitioner seeks return of 47½ sovereigns of gold ornaments. According to the petitioner, without her consent, the

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respondents had pledged her gold ornaments in SBT, Thodupuzha. The respondents admit that 20 sovereigns of gold ornaments of the petitioner had been pledged by them. In order to establish their case that the gold ornaments had been pledged and thereafter as demanded by the petitioner, the same had been returned to the petitioner, RW1 was examined. As per the version of RW1, the first respondent had borrowed an amount of ₹2,60,000/- from him and while so had pledged the gold ornaments of the petitioner. On going through the testimony of RW1, we find it very difficult to believe the story. RW1 does not seem to have the necessary wherewithal to lend such an amount. He does not even know the weight or the details of the gold ornaments alleged to have been pledged by first respondent with him. Moreover, the petitioner has a specific case in the petition that the gold ornaments had been pledged by the respondents before SBT, Thodupuzha. This fact has not been denied by the respondents in their counter. There is no case of the respondents in the counter that the gold ornaments had been pledged with RW1. Therefore, the story of pledging the ornaments with RW1 and that on repayment of loan, the gold ornaments were released by the first respondent and returned to the petitioner, cannot be believed. No documents have been produced by the respondents to show that the ornaments that had pledged in the bank, had been returned to the petitioner.

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11. Admittedly, Ext.B1 is the compromise petition and the judgment and decree in O.P.No.1259/2015. As per the terms of the compromise *inter alia*, the first respondent is seen to have agreed to return the 20 sovereigns of gold ornaments which had been pledged when a loan of ₹2,60,000/- was availed by him. The compromise was entered into on 29/04/2017. As per the terms of the agreement, the first respondent had agreed to return the gold ornaments within three years from 29/04/2017. O.P.No.1259/2015 was decreed in terms of the compromise. In the appeal memorandum, the respondents have taken up a case that the petitioner could not have moved O.P.No.163/2018 for return of gold ornaments as it is hit by the principle of *res judicata* in the light of Ext.B1 judgment and decree. Such a contention is not seen taken up by the respondents before the family court. In the light of this argument raised by the respondents, we called for a copy of O.P.No.1259/2015 from the Family Court, Mavelikkara and perused the same. The allegations in the said petition are the same as raised in the present petition.

12. As per Ext.B1, the first respondent is seen to have agreed to return 20 sovereigns of gold ornaments within three years. The agreement was to return it within three years from 29/04/2017, i.e. by 29/04/2020. However, O.P.No.163/2018 is seen filed by the petitioner on 06/02/2018

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which is much before the period mentioned in Ext.B1 compromise agreement. Instead of filing an application for getting Ext.B1 decree executed, the petitioner is seen to have filed a fresh O.P., which is not permissible. There is already a compromise and a decree passed relating to the same subject matter. The petitioner has no case that Ext.B1 decree and judgment is liable to be set aside in the light of the proviso to Order XXIII CPC. Therefore, she could not have filed a fresh O.P. for return of gold ornaments. In such circumstances, the family court went wrong in decreeing O.P.No.163/2018 and hence an interference is called for. Moreover it is quite doubtful whether the petitioner had fifty (50) sovereigns of gold ornaments. PW1 when cross examined admitted that some of the gold ornaments worn by her on the marriage day as seen in Ext.A3 photo are not gold. PW1 also admitted that after Ext.B1 compromise, she told the first respondent that 20 sovereigns were not sufficient and demanded 47 sovereigns. In the petition she has a case that after the marriage was fixed, on 26/09/2023, the respondents came to her residence and demanded ₹2 lakhs as dowry and 75 sovereigns of gold ornaments. As demanded, the amount is alleged to have been paid on 01/11/2013. However, PW1 when cross-examined admitted that the respondents had not demanded gold or money; that there was no engagement; that the day her father went to the



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respondents' house, was taken as the engagement day and thereafter she saw the respondents on the date of the marriage. Therefore her case of demand for dowry and gold by the respondents is doubtful. For the aforesaid reasons, the petitioner is not entitled to a decree as prayed for. However, we make it clear that the petitioner is entitled to get the judgment and decree in Ext.B1 executed as per law.

In the result, Mat.Appeal No.197/2023 is dismissed and Mat.Appeal No.198/2023 is allowed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

**AMIT RAWAL
JUDGE**

Sd/-

**C.S.SUDHA
JUDGE**

ami/