



2024/KER/18675

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 11TH DAY OF MARCH 2024 / 21ST PHALGUNA, 1945

MAT.APPEAL NO. 798 OF 2020

AGAINST THE ORDER/JUDGMENT DATED IN OP NO.2160 OF 2017 OF FAMILY
COURT, THRISSUR

APPELLANT:

HARIDAS
AGED 59 YEARS
S/O THOTTUPURATH KESAVAN, ANJOOR VILLAGE AND DESOM,
THALAPPILLY TALUK, KUNNAMKULAM P.O.
THRISSUR DISTRICT-680 503.
BY ADV P.RAMACHANDRAN

RESPONDENT:

SMITHA HARIDAS
AGED ABOUT 45 YEARS
KOORKKAPARAMBIL SAHADEVAN, GURUVAYOOR,
AMSOM, DESOM, GURUVAYOOR P.O., CHAVAKKAD TALUK,
THRISSUR DISTRICT-680 101

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
29.02.2024, THE COURT ON 11.03.2024 DELIVERED THE FOLLOWING:



ANU SIVARAMAN & C. PRATHEEP KUMAR, JJ.

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Mat.Appl. No.798 of 2020

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Dated this the 11th day of March, 2024

JUDGMENT

Anu Sivaraman J.

This appeal is preferred by the petitioner/husband against the judgment of the Family Court, Thrissur, dismissing the O.P. filed for divorce on the ground of cruelty and desertion. Though notice was duly served on the respondent/wife in 2021, there is no appearance for the respondent before this Court.

2. The petitioner's case in the O.P. was that the parties were married on 07.05.2001 and a child was born on 17.02.2002. Due to serious difference of opinion, they were staying apart from 2002 onwards. O.P. No.304/2008 for divorce, O.P. No.494/2007 for return of money and gold ornaments and M.C. No.47/2003 for maintenance were filed before the Family Court. All the cases were settled before the Lok Adalath. The petitioner agreed to pay Rs.1,75,000/- to the respondent and on payment of the money, parties agreed to file a petition for



divorce by mutual consent. The criminal cases were agreed to be withdrawn.

3. However, the agreed amount could not be paid immediately by the petitioner due to financial constraints. The amount was deposited before the Court, with interest, as provided in the agreement in 2017 and duly intimated to the respondent. But she refused to file the petition under Section 13B and to withdraw the criminal cases. It is stated that the marriage has broken down irretrievably, the respondent had subjected the petitioner to cruelty during the subsistence of the marriage and that the marriage is liable to be dissolved.

4. The respondent filed objection raising allegation of matrimonial cruelty against her and alleged that the petitioner stood convicted under Section 498 A of the Indian Penal Code and that a revision petition is pending before this Court. It was further alleged that the earlier litigations between the parties were settled and it was because the appellant did not abide by the terms of the settlement that the application for divorce by mutual consent was not filed.

5. The Family Court considered the contentions and held that the



fact that the parties are living separately alone would not be sufficient to grant a decree of divorce. Ext.P1 judgment of the Sessions Court confirming the conviction of the appellant under Section 498 A of the Indian Penal Code was accepted as sufficient reason for the wife living separately. It was further held that the allegations of cruelty and desertion could not be proved by the petitioner and the O.P. was dismissed.

6. The learned counsel for the appellant contends that the conviction was subsequently set aside by this Court by order dated 01.10.2020 in Criminal Revision Petition No.2308/2007. The settlement of all the cases in the Lok Adalath and the report in Court made by the appellant were taken note of by this Court in the Crl.R.P. The evidence was independently considered and this Court concluded that the prosecution had not succeeded in proving the offence under Section 498(A) of the Indian Penal Code beyond doubt. The conviction was therefore set aside.

7. The learned counsel for the appellant relied on the decision of this Court in **Sreedharan v. Ahsa** [2023 (5) KLT 559] where this Court



held that withholding of consent to dissolve a failed marriage is nothing but cruelty and contended that the parties had lived together only for a very short period and have been living apart for more than 20 years now. It is submitted that the marriage is liable to be dissolved.

8. Having considered the contentions advanced on either side, we notice that the main reason for the Family Court not to accept the contentions of the petitioner with regard to desertion was that the wife was staying apart due to reasons which were justifiable. The justification for the reasons were found in the conviction returned by the JFCM Court as affirmed by the Sessions Court. Now that this Court has set aside the said conviction in the Criminal Revision, we are of the opinion that the question of desertion requires a fresh consideration. We notice that the wife had admittedly been staying apart from the year 2002 onwards and there has been no cohabitation between the parties for the past more than 20 years. If the reason stated for leaving the company of the husband that there was matrimonial cruelty is not available anymore, we are of the opinion that the ground of desertion, which is one of the grounds on which the O.P. was filed would stand



proved. In view of the fact that the amount which was agreed between the parties had been deposited before the court, we are of the opinion that the appellant herein is entitled to a decree of dissolution of marriage on the ground of desertion since it is nobody's case that there has been any cohabitation between the parties from 2002 onwards. If the matrimonial cruelty is not established, then there is absolutely no reason for the wife to have been living apart from the husband from the year 2002 onwards.

In the above factual situation and in view of the fact that there is no defence raised by the respondent-wife in spite of due service of notice, we are of the opinion that the appeal is liable to succeed. The judgment of the Family Court is therefore set aside. The marriage between the parties is dissolved by a decree of divorce on the ground of desertion.

Sd/-

ANU SIVARAMAN, JUDGE

Sd/-

C. PRATHEEP KUMAR, JUDGE



2024/KER/18675

MAT.APPEAL NO. 798 OF 2020

7

APPENDIX OF MAT.APPEAL 798/2020

PETITIONER'S ANNEXURES

**Annexure A1 CERTIFIED ONLINE COPY OF THE ORDER DATED
01.10.2020 IN CRL.R.P. 2308/2007 ON THE FILE
OF THIS HONOURABLE COURT**

RESPONDENT'S ANNEXURES: NIL