



2024/KER/9360

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR.JUSTICE G. GIRISH

WEDNESDAY, THE 7TH DAY OF FEBRUARY 2024 / 18TH MAGHA, 1945

MAT.APPEAL NO.129 OF 2016

AGAINST THE JUDGMENT DATED 16.04.2011 IN OP NO.1198/2003 OF
FAMILY COURT,ERNAKULAM

APPELLANT/PETITIONER:

AVIJIN.K.DOMINIC, AGED 49 YEARS S/O.K.A DOMINIC,
RESIDING AT H.NO. 22/1548,KIZHAKKENCHERUVALLIL
HOUSE, PAMBAIMOOLA, EDAKOCHI 6

BY ADVS. SRI.JIMMY GEORGE SRI.M.R.SURESH

RESPONDENT/RESPONDENT:

BEENA, AGED 44 YEARS, D/O. P.V MATHAI, POONOLI
HOUSE, THOTTUVA, KOOVAPADI P.O, PERUMBAVOOR 683544

THIS MATRIMONIAL APPEAL HAVING COME UP FOR FINAL HEARING
ON 07.02.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



J U D G M E N T

G. Girish, J.

Unsuccessful of getting a decree of dissolution of his marriage with the respondent on the ground of cruelty and desertion, from the Family Court, Ernakulam, the appellant is here before this Court with this Mat.Appeal.

2. The marriage between the appellant and the respondent was on 17.04.1994, and they were blessed with a male child in that wedlock on 03.11.1997. The appellant would allege that within a short period after marriage, the respondent started to abuse and insult him without any reason, and insisted to abandon his parents and to shift residence to an independent house. The respondent, it is alleged, was not ready and willing to perform her marital obligations as a dutiful wife and created unhealthy scenes leading to the intervention of neighbours and friends. The other objectionable conduct attributed to the respondent are that she refused to prepare food, failed to do household activities and behaved in an indifferent manner to the parents of the appellant. The rude behaviour of the respondent in the above regard is said to have continued even after the appellant shifting residence to a rented house along with the respondent and son. The appellant is said to have reverted back to



his parental house since the respondent, allegedly, did not mend her ways even after the commencement of residence at an independent house. The appellant is said to have filed a complaint before the police against the above cruel behaviour of the respondent on 04.10.2002, the day when the respondent allegedly left the house along with her father and brother-in-laws. On the basis of a complaint preferred by the respondent alleging matrimonial cruelty, the Kasaba Police Station, Kochi registered Crime No.256 of 2002 against the appellant and his parents for the commission of offence under Section 498A and 323 I.P.C. The appellant would further allege that he has been taking care of his son since the respondent abandoned her duty in the above regard. On the basis of the above allegations, the appellant has approached the Family Court, Ernakulam with a petition filed under Section 10 and 18 of the Divorce Act, 1869, seeking dissolution of marriage on the ground of cruelty, desertion and non-fulfilment of marital obligations.

3. The respondent countered the petition alleging that she was being subjected to unbearable cruelty of physical and mental tortures at the instance of the appellant and his parents. She would contend that the appellant and his parents used to harass, insult and abuse her demanding more money as dowry. According to the respondent, the appellant was entrusted with an amount of about



Rs.4,00,000/- in addition to her gold ornaments. The respondent would allege that the appellant, an alcoholic, was having contact with persons of bad reputation and used to quarrel with neighbours without any reason. Another allegation levelled by the respondent against the appellant is that at the insistence of the appellant and his parents, she had to undergo abortion of her second pregnancy. According to the respondent, the quarrelsome nature of the appellant was the reason for frequent shifting of residences. She would contend that the appellant even used to create scenes at the houses of his brothers by verbally abusing them. On many occasions, the appellant is alleged to have subjected the respondent to severe physical torture after making her starve without any food and water. The respondent is said to have preferred complaint before the police, unable to bear the physical and mental tortures of the appellant and his parents. The appellant is said to have preferred complaint against the respondent as a counterblast to the above complaint preferred by the respondent. According to the respondent, the appellant has been preventing the respondent from meeting and interacting with her child. It is alleged that the appellant refused the access of the respondent to their child in spite of the intervention of mediators who requested the appellant to hand over the child to her. According to the respondent, she is not ready to give her assent



for severing the matrimonial tie since she believed that there shall not be any such separation of the bond which God had created.

4. Finding that the counselling sessions initiated at the instance of Family Counsellors did not render any positive results, the Family Court proceeded with the trial, in which the appellant and one witness were examined as PW1 and PW2, and seven documents marked as Exts.A1 to A7. On the part of the respondent, three witnesses were examined as RW2 to RW4 in addition to her testimony as RW1, and one document was marked as Ext.B1.

5. The Family Court, after evaluating the above evidence and hearing both sides, arrived at the finding that the appellant failed to prove that the respondent subjected him to cruelty, and accordingly dismissed the original petition.

6. In this appeal it is contended, inter alia, that the Family Court did not consider the fact that the matrimonial relationship between the appellant and the respondent was not cordial, that there was no chance for reunion between the parties who had been living separately since 02.10.2002, that the Family Court did not properly evaluate the nature and character of the respondent who is not even having love or affection to her child, that the Family Court did not consider the cases filed by the respondent against the



appellant for maintenance and return of property, that the Family Court did not consider the acquittal of the appellant in the case registered for the commission of offence under Section 498A I.P.C on the basis of the complaint of the respondent, and that the Family Court ought to have found that the false and unnecessary allegations levelled by the respondent against the appellant in her counter statement revealed the nature and cruel attitude of the respondent.

7. Though the respondent was duly served with notice of this appeal, she has not chosen to appear.

8. Heard the learned counsel for the appellant.

9. It has to be stated at the outset that, apart from general allegations of rude behaviour and refusal to maintain a cordial relationship with the appellant and his parents, there is absolutely no specific instances of cruelty attributed to the respondent in the petition filed before the Family Court for dissolution of marriage. True that the appellant had sworn before the Family Court that the respondent was of quarrelsome nature right from the early days of their marriage, and that she had behaved in such a manner disturbing the mental peace of the appellant. The appellant has also alleged that he had to shift his residence to rented houses since the respondent was not ready to adjust with the parents of the



appellant. However, the appellant could not bring on record any evidence other than his testimony to substantiate the above allegations levelled against the respondent. The witness who was examined as PW2 on the part of the appellant was the driver of a car in which the appellant is said to have travelled to the parental house of the respondent on 02.10.2003 for conciliatory talks. The evidence tendered by PW2 is to the effect that he had seen the respondent's father pushing out the appellant from his house and attempting to assault him with a brick. There is absolutely nothing in the testimony of PW2 about any cruel behaviour on the part of the respondent which made the life of the appellant miserable.

10. It is pertinent to note that the definite case of the appellant is that mediators including friends, relatives, neighbours and priests had intervened at his request to advise and compel the respondent to maintain a peaceful life with the appellant. Still, the appellant could not bring any such person before the Family Court for adducing oral evidence regarding their intervention in the matrimonial discord between the appellant and the respondent, which is said to have been created due to the cruel and rude behaviour of the respondent. On the other hand, the evidence adduced by the respondent, her father and her brother-in-laws as RW1 to RW4 would clearly reveal the matrimonial cruelty meted out



to the respondent, by the appellant, by way of severe physical and mental tortures inflicted upon her. Thus, the evidence adduced by the respondent in the above regard would disclose the fact that it was actually the appellant who had perpetrated cruelty upon the respondent making it impossible for her to remain in his company.

11. In matrimonial issues, conduct of such type which would endanger the life of the partner amounts to cruelty. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty may be physical or mental. Mental cruelty is the conduct of the spouse which causes mental suffering or fear in continuing the marital life with one's partner. Cruelty, however, has to be distinguished from ordinary wear and tear of family life. As far as the present case is concerned, the allegations levelled by the appellant, to a great extent, is about the incompatibility of the respondent to lead a cordial family life by taking care of the interests of the appellant and his parents. The above incompatibility attributed to a life partner cannot be classified as cruelty of such a grade which would warrant the dissolution of marital tie. The degree of tolerance will vary from one couple to another and the court will have to take into account the background, level of education and also the status of the parties in order to determine whether the cruelty alleged is sufficient to



justify dissolution of marriage at the instance of the party who is said to have suffered.

12. In **Samar Ghosh v. Jaya Ghosh [(2007) 4 SCC 511]**, the Apex Court held that no uniform standard can ever be laid down for guidance for ascertaining whether a particular conduct of a party to his spouse, would amount to cruelty. However, the Apex Court enumerated some instances of human behaviour, which may be relevant in dealing with the cases of mental cruelty, in paragraph No.81 of that judgment, which is extracted as follows;

"81. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.



(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.



(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) 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."

13. In **A.Jayachandra v. Aneel Kaur [AIR 2005 SC 534]**, the Apex Court held that mere annoyance or irritation may not constitute cruelty, rather it is a spontaneous change in human behaviour, which restricts the other side to live with the spouse under the fear of endangering life or bodily injuries. It was further observed thereunder that though the word 'cruelty' has not been defined strictly, it has to be gathered from the attending



circumstances of each case and that the allegations should be specific with regard to time, place and manner of committing such cruelty.

14. In **Gurbux Singh v. Harminder Kaur [AIR 2011 SC 114]**, the Apex Court held that the aggrieved party has to make a specific case that the conduct of which exception is taken, amounts to cruelty. It was further observed that a single act of violence, which is of grievous and inexcusable nature satisfies the test of cruelty, and that the marital life should be accessed as a whole, and few isolated instances over certain period, will not amount to cruelty.

15. In **Joydeep Majumdar v. Bharti Jaiswal Majumdar [(2021) 3 SCC 742]**, the Apex Court held in paragraph No.10 of that judgment, as follows;

"10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party. In Samar Ghosh v. Jaya Ghosh [(2007) 4 SCC 511], this Court gave illustrative cases where inference of



mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts."

16. In the case on hand, it is seen from the records that the respondent is said to be a person who had studied only till 10th standard. Going by the evidence tendered by RW1 to RW4, the respondent made all efforts to live along with the appellant for a period of about eight years from the date of her marriage with him. According to the respondent, she was taken to her parental home by her father and brother-in-laws after having been ruthlessly thrashed out by the appellant in the night of 01.10.2022. It is thereafter that the respondent is said to have lodged a complaint before the police alleging matrimonial cruelty on the part of the appellant. The evidence adduced by the respondent in the above regard does not suffer from any inconsistency or material defect which would render it unbelievable. That being so, the respondent cannot be found fault with for preferring complaint against the appellant for the alleged matrimonial cruelty meted out to her. It is true that the judgment of the Judicial First Class Magistrate Court-II, Kochi in C.C.No.1001 of 2003, which is marked as Ext.A6, would reveal that the appellant and his parents were acquitted of the charge under Section 498A I.P.C on 22.12.2007. However, a perusal of the said judgment would reveal that neither the respondent nor



her parents and other relatives were examined as witnesses in the said case. There is also no finding in Ext.A6 that a false and frivolous case has been foisted against the appellant. On the other hand, the Magistrate had to resort to acquittal of the respondent for the reason that the prosecution could not prove the case put forward by them. In this context, it is worth to note that the respondent has got a definite case that the summons issued to her in the said case was in the address of the appellant and that it was returned at the instance of the appellant to prevent her from appearing before the court and adducing evidence against him. It is her further case that she had preferred Criminal Revision Petition No.6533 of 2008 before this Court against the above verdict of acquittal of the learned Magistrate. Therefore, neither the institution of a criminal prosecution against the appellant for the commission of offence under Section 498A I.P.C., nor the acquittal of the appellant in the said case, as per Ext.A6 judgment, would help the appellant in establishing cruelty on the part of the respondent.

17. Another argument advanced by the learned counsel for the appellant is that the failure on the part of the respondent to take care of her child, who is presently being looked after by the appellant, would itself reveal the cruel nature of the respondent. It is not possible to accept the argument of the learned counsel for the



appellant in the above regard, since an unemployed and under-educated lady like the respondent in this case, cannot be expected to take the responsibility of maintaining and meeting the expenses of a child, in addition to her task of finding means to fetch a livelihood for herself. It is pertinent to note that even according to the appellant, the respondent had instituted proceedings seeking maintenance and monetary reliefs from him, stating the reason that she was not able to maintain herself. Taking into account of the above plight of the respondent, it is not possible to attribute cruelty upon her, for the reason that she did not take steps to obtain the custody of her child.

18. Here is a case where a husband has sought the dissolution of his marriage on the ground of cruelty, desertion and non-fulfilment of marital obligations of his wife, who in turn, had complained of unbearable matrimonial cruelty on the part of her husband, which had compelled her to part his companionship. As already stated above, the evidence adduced before the Family Court, by the respondent, about the cruelty attributed to the appellant, would outweigh and supersede the evidence of cruelty relied on by the appellant. No wife could be expected to tolerate the acts of cruelty of the nature borne out of the evidence adduced by the respondent in this case against the appellant, and sacrifice her



physical and mental health and personal safety for the sadistic pleasure of her life-partner. That being so, the appellant is disqualified and disentitled to have the relief of dissolution of his marriage with the respondent on the ground of cruelty and desertion. There is absolutely no illegality or factual error in the impugned judgment of the Family Court, Ernakulam. Accordingly, we find that the judgment under challenge in this appeal is not liable to be interfered with. Needless to say, that the appeal can only fail.

In the result, the appeal is hereby dismissed.

(sd/-)

ANIL K. NARENDRAN, JUDGE

(sd/-)

G. GIRISH, JUDGE

jsr/vgd