



2023/KER/59072

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 4TH DAY OF OCTOBER 2023 / 12TH ASWINA, 1945
MAT.APPEAL NO. 1 OF 2014
AGAINST THE ORDER/JUDGMENT IN OP 272/2011 OF FAMILY COURT,
MALAPPURAM

APPELLANT/1ST PETITIONER:

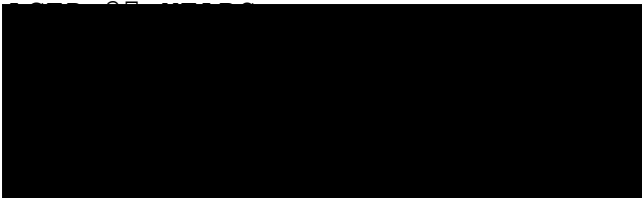
FOUSIYA



BY ADVS.
SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN

RESPONDENT/RESPONDENT:

SHAMSUDHEEN POKKADAN



BY ADV SMT.DEEPA NARAYANAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
18.09.2023, THE COURT ON 04.10.2023 DELIVERED THE FOLLOWING:



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JUDGMENT

Sophy Thomas, J.

The 1st petitioner in OP No.272 of 2011 on the file of Family Court, Malappuram filed this appeal against the judgment and decree dated 05.04.2013, by which her claim for patrimony was rejected and past maintenance was awarded at a lower rate.

2. The appellant is the wife and respondent is the husband. Their marriage was solemnised on 28.08.2006, and a girl child was born in their lawful wedlock. Her case is that, at the time of marriage, 50 sovereigns of gold ornaments and Rs.1,50,000/- in cash were given to her from her family as her patrimony. Her entire gold ornaments and cash were misappropriated by the respondent for modification of his business in Karnataka. Her matrimonial life was miserable and he even deserted the appellant and her child. So, the appellant along with her minor child filed the OP for getting back the patrimony, and past maintenance @ Rs.5,000/- for the appellant and Rs.2,000/- for the child.

3. The respondent/husband opposed that petition and according to him, no gold ornaments and money were entrusted with him by the appellant or her family members, and so, he is not liable to honour her claim.



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4. After formulating necessary issues by the Family Court, the parties went on trial. PWs 1 to 3 were examined and Exts.A1 to A3 were marked from the side of the appellant/wife, and RW1 was examined from the side of the respondent/husband.

5. After analysing the facts and evidence, the Family Court rejected her claim for patrimony and allowed past maintenance @ Rs.3,000/- to the appellant and @ Rs.2,000/- to her minor child. Aggrieved by the rejection of her prayer for patrimony, and inadequacy of the maintenance amount awarded, she filed the above appeal.

6. Now we are called upon to answer whether there is any illegality, irregularity or impropriety in the impugned judgment and decree, warranting interference by this Court.

7. Heard learned counsel for the appellant and learned counsel for the respondent.

8. The definite case of the appellant is that, she was given 50 sovereigns of gold ornaments and Rs.1,50,000/- in cash as her patrimony, in connection with her marriage. Her entire gold ornaments and the cash entrusted were misappropriated by the respondent/husband for modifying his business in Karnataka. PW1-the appellant produced Ext.A3 photographs to show that she



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was wearing 50 sovereigns of gold ornaments at the time of marriage. But, she herself admitted that she was wearing imitation ornaments also at the time of marriage. The respondent/husband contended that, the father of the appellant was an auto driver, and he had no financial capacity to give 50 sovereigns of gold ornaments to his daughter. PW2-the father of the appellant would say that, earlier he was working abroad, and so, he was capable to give 50 sovereigns of gold to his daughter. The respondent contended that no documents whatsoever has been produced by PW2 to show that, he was having sufficient money with him or to prove purchase of 50 sovereigns of gold ornaments for his daughter.

9. PW1 produced Ext.A2 bill issued by PW3-a local goldsmith which will show that, two gold biscuits weighing 35 sovereigns were entrusted with him by PW2 for making ornaments. In addition to that, 15 sovereigns of gold were also used by him, to make ornaments weighing 50 sovereigns in total. PW2 did not adduce any evidence to show, from where he brought two gold biscuits weighing 35 sovereigns. If he had brought it from abroad, definitely entries might have been there in his passport. He failed to produce his passport to show that, he had brought gold biscuits



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weighing 35 sovereigns from abroad.

10. Ext.A3 photographs will show a waistlet worn by the appellant which is said to be weighing 8 sovereigns as per Ext.A2 bill. There is no probability for giving a waist chain weighing 8 sovereigns by an autorickshaw driver to his daughter. As per Ext.A2, the gold ornaments were handed over to the appellant on 20.08.2006. But, according to PW1, she received the ornaments from the goldsmith only on 28.08.2006 along with Ext.A2 bill. Her marriage was on 28.08.2006. Normally, ornaments might have been arranged well before the marriage and not on the date of marriage. PW2-her father would say that, the ornaments along with Ext.A2 bill were received from PW3 on 28.07.2006 i.e one month prior to the marriage. But, in Ext.A2 bill, it is stated that, the ornaments were given on 20.08.2006 i.e. eight days prior to the marriage. At the same time, PW2-the father of the appellant deposed that, the gold ornaments were purchased from a jewellery which will cut at the root of their case. Moreover, the testimony of PWs 1 to 3 regarding Ext.A2 bill and the date of handing over of the ornaments by the goldsmith are contradicting each other. Though the appellant filed OP No.272 of 2011 on 10.03.2011, Ext.A2 bill was produced before court only on



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08.02.2012 that too, after the respondent filed his written statement. PW1, during her cross examination, deposed that Ext.A2 bill was made in the year 2010, for the purpose of this case. The Family Court rightly rejected that document, as the testimony of PW3 and Ext.A2 bill were not inspiring confidence of that Court.

11. According to the respondent, the appellant was having about 15 sovereigns of gold ornaments, and she was keeping the same, and she took those ornaments along with her, when she returned to her paternal house. PW1 admitted that, she was taken back to her paternal house on 01.03.2009 by her own father. If she was having any gold ornaments, in all probability, she might have taken the same along with her, especially when she returned to her paternal house along with her father due to ill-treatment from her matrimonial house. In the O.P, she has not made any claim for return of the gold ornaments in specie, but claimed only its value. If her case that the respondent misused or misappropriated her 50 sovereigns of gold ornaments was true, definitely, she could have asked for return of that much of gold, and only as an alternate relief she could have claimed its market value. No schedule of gold ornaments also was attached to the OP showing the description of ornaments she was given from her



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family. Absence of such details in the OP, also speaks against her claim. So, the Family Court rightly found that the respondent was not liable to answer her claim for 50 sovereigns of gold ornaments, and we find no reason to interfere with that finding.

12. Regarding patrimony amount of Rs.1,50,000/-, PW1-the appellant deposed before court that, her father had given her Rs.1,50,000/- and it was entrusted with the respondent. The respondent/husband is admitting that, their marriage was an arranged one. It is a matter of common knowledge that, in an arranged Muslim marriage, there was every probability for handing over patrimony amount to the husband or his family members from the house of the bride. PW2-the father of the appellant also deposed that, cash worth Rs.1,50,000/- was handed over to the respondent as patrimony of his daughter. According to PW2, though he was an auto driver during the period of marriage of his daughter, earlier he was working abroad. Moreover, his son also was working abroad and he also contributed amounts for giving patrimony to his sister. The respondent would say that, he had given mahar of five sovereigns of gold to the appellant at the time of marriage. Usually, the quantity of mahar will be proportionate to the patrimony received from the bride's family. So, the



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admission of the respondent that he had given mahar of five sovereigns of gold, indicates that he had received patrimony from the family of his wife. It is true that, no documents are there to prove that PW2 was having Rs.1,50,000/- with him, or to show that his son had contributed some amount for giving patrimony to the appellant.

13. In **Bexy Michael v. A.J. Michael [2010 (4) KHC 376]**, a Division Bench of this Court held that, it would be unreasonable for a court to insist for documentary evidence regarding ornaments and money that had changed hands at the time of marriage. In most of the cases, such a claim has to be decided on the basis of oral evidence and such a claim cannot be dismissed merely because no documentary evidence was produced. Absolute certainty is not the requirement under Section 3 of the Evidence Act. In a civil case, rival contentions and rival evidence will have to be considered, assessed, evaluated and weighed to come to a conclusion whether the burden on the petitioner has been discharged or not.

14. It is true that no documentary evidence is there to prove the source of money or to prove the handing over of money at the time of marriage. But the oral testimony of PWs 1 and 2 is clear



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and cogent enough to come to a conclusion that Rs.1,50,000/- was handed over to the respondent at the time of marriage as patrimony of the appellant.

15. In **Jubairiya M.K. v. Abusalih and another [2013 (2) KHC 304]**, this Court reiterated that, even in the absence of documentary evidence to prove payment of money and gold, oral evidence of the parties if found believable, can be relied upon by the court for granting relief, as we know, in matrimonial cases, it may be difficult to get documentary evidence for each and every transactions. So, the Judges are bound to see the ground realities of the human conduct in their day-to-day life.

16. Though PWs 1 and 2 categorically stated that, Rs.1,50,000/- was handed over to the respondent as patrimony to the appellant, except the flat denial made by the respondent, no effective cross examination was there, on that aspect from the part of the respondent. So, we find no reason to discard the evidence of PWs 1 and 2, as to the entrustment of Rs.1,50,000/- towards the patrimony of the appellant. So, we are inclined to set aside the finding of the Family Court with respect to the patrimony amount of Rs.1,50,000/-, whereby the respondent can be directed to return Rs.1,50,000/- to the appellant with 6% interest per annum



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from the date of petition till the date of realisation.

17. Against the claim of past maintenance @ Rs.5,000/- per month, the Family Court awarded Rs.3,000/- to the appellant. Though the appellant contended that the respondent was doing vegetable business in Karnataka, she could not prove his business or income. According to the respondent, he was only a driver in Karnataka, getting monthly income of Rs.4,000/- for which also, he did not produce any documents. Even then, considering the fact that the respondent was an able bodied person, the Family Court found him liable to maintain his wife, who was unable to maintain herself. The Family Court fixed her past maintenance @ Rs.3,000/- per month, for a period of 24 months amounting to Rs.72,000/- in total.

18. Considering the available facts and materials, we find no reason to interfere with the quantum of maintenance awarded by the Family Court.

19. In the result, the appeal is liable to be allowed in part, setting aside the finding of the Family Court with respect to the patrimony amount of Rs.1,50,000/-, and upholding the judgment and decree in all other respects.



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Accordingly, the appeal is allowed in part as follows:

(1) The appellant is entitled to recover Rs.1,50,000/- from the respondent and his assets with 6% interest per annum from the date of petition till realisation.

(2) No order as to costs.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

SOPHY THOMAS, JUDGE

smp