



Mat.Appeal No.200 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

WEDNESDAY, THE 15TH DAY OF JULY 2026 / 24TH ASHADHA, 1948

MAT.APPEAL NO. 200 OF 2025

AGAINST THE JUDGMENT DATED 05.10.2024 IN OP NO.518 OF
2023 OF FAMILY COURT, KANNUR

APPELLANT/PETITIONER:

BY ADVS. SRI.BASIL CHANDY VAVACHAN
SRI.GEORGIE SIMON
SMT.CHARUTHA BHAIJU
SMT.CHANDHANA BHAIJU
SHRI.BASIL SAJAN
SMT.FATHIM NAVAS
SMT.KAVYA RANI JAYAPRAKASH
SMT.LEKSHMI PRIYA V.
SMT.ANJANA V.
SHRI.AKSHAY SHIBU
SHRI.BASIL SCARIA

CNR : KLHC010185692025



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RESPONDENT/RESPONDENT:

BY ADVS. SMT.K.N.RAJANI
SMT.T.U.ANUKRISHNA

THIS MATRIMONIAL APPEAL HAVING COME UP FOR FINAL HEARING ON
15.07.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

PREETA A.K., J.

This Matrimonial Appeal is filed by the appellant/husband who was the petitioner in O.P.No.518 of 2023, impugning the judgment dated 05.10.2024 of the Family Court, Kannur, dismissing his petition for divorce on the ground of cruelty.

2. The appellant and the respondent herein are husband and wife. Their marriage was solemnized on 15.01.2017 in accordance with Hindu religious rites. After the marriage, the parties lived together in the matrimonial home. According to the appellant, there was marital discord even from the initial stages of marital life as the respondent refused to interact and mingle with the family and friends of the appellant and refused to accompany him to any function. Another allegation of cruelty is that the respondent is in the habit of telling lies and on one occasion had lied to him that she got an employment through Public Service Commission, which was later revealed to be untrue. The appellant has also pleaded that even though the respondent claims to be a Civil Diploma Holder, she has not shown the certificates to prove the claim which according to him, is an act of cruelty. The appellant also has a case that the respondent had made corrections in her horoscope



and when he enquired of the same, she did not comment on the same. The appellant also contends that she never used to attend the phone calls made by the appellant from abroad and that within a week of her marriage, she had taken all her gold ornaments to her parents' house without the knowledge and consent of the appellant. The appellant contends that even after the birth of a child on 18.04.2018, there was no change in the attitude of the respondent. She had preferred a false complaint against the appellant before the police and the Police on finding that the allegations were false, advised the parties to undergo counselling. Foisting a false complaint is pointed out as an instance of cruelty. Ultimately on 27.08.2022, the respondent left the house of the appellant without informing the appellant and his parents, and despite repeated efforts to bring her back, she did not return to the matrimonial home. She had also changed the school of the child to a place near her house and tried to separate the child from the appellant, which according to him is an act of cruelty. The appellant also contends that he had to approach the Family Court to ensure his visitation rights over the child.

3. In response, the respondent filed a written statement, denying all the allegations raised by the appellant. According to her, she is desirous of returning to the life of the appellant. The respondent



contends that the allegation that there was marital discord right from the initial days of marriage, is untrue. It is her version that the appellant had no siblings and ever since her marriage, she was living with the ailing father-in-law and mother-in-law, who was suffering from mental illness and continued there even while the appellant was working abroad. She had gone to her parents' house for delivery and after 6 months following child birth, she had returned to the matrimonial home. According to her, she was having a cordial relationship with all the family members and there was no occasion for her to state any lies to anybody. She has asserted that she had disclosed to the appellant even prior to their marriage that she is an ITI Diploma holder and she could not seek employment as the parents of the appellant were ill and she had a small child to look after. The respondent also contends that after the engagement, the horoscope was in the custody of the appellant and therefore, she was not aware of the corrections made in the horoscope. The respondent states that she had owned 10 sovereigns of gold at the time of marriage and the same was appropriated by her husband to settle a loan account. However, as she is desirous of being in the company of her husband, she has not raised any claim for the said gold ornaments. According to the respondent, the appellant had asked her to get the passports ready and accordingly she had arranged for the



passports of herself and her child, but the appellant had not taken them thereafter. Thereafter, the appellant stopped contacting the respondent and while he was abroad, he used to talk only to his parents and the child. Ultimately on 27.08.2022, she was sent back to her parental home and thereafter cohabitation never resumed. Aggrieved thereby, she had raised a complaint before the police in the faint hope that she would be taken back by the husband. After hearing both parties, the police had suggested a family counselling, but the appellant has not agreed to the same. As the respondent had shifted to her parental home along with the child, she got the child transferred to a school near to her parental home. According to the respondent, the appellant had deserted the respondent and the child, and seeks for dismissal of the petition seeking divorce.

4. Both sides let in evidence before the Family Court. The appellant had examined himself as PW1 and Exts.A1 to A5 were marked through him. Respondent was examined as RW1.

5. The Family Court framed an issue as to whether the appellant was entitled to get a decree for divorce and considered the evidence on record.

6. Before the Family Court, the appellant had tendered evidence



in tune with the Original Petition. In cross-examination, he had admitted that the marriage between the appellant and respondent was an arranged one. Even though the appellant had a case that the respondent had made corrections in the horoscope, the Family Court held that the said allegation was not proved. The Family Court took note of the fact that there is neither any pleading nor any evidence to show what was the the original entry and what was the corrected version so as to impact the life of the parties. In cross-examination, the appellant had also admitted that he does not know who had corrected the horoscope. Therefore, the said allegation was not proved. The same cannot be treated as a cruelty by the respondent on the appellant. Another allegation raised by the appellant was that the respondent was indifferent to him and his family members right from the inception of the marriage. It is to be seen that the marriage was on 15.01.2017 and the appellant had returned to Gulf for employment in January 2018. Meanwhile, the respondent became pregnant and she was taken to her residence for delivery and after 6 months since child birth, she had returned to her matrimonial home. The appellant had admitted that the customary function following the birth of the child, was conducted in his house and he had come down to participate in the functions. The Family Court, therefore disbelieved the version of the appellant that there was



marital discord ever since their marriage.

6.1. In cross-examination, it has also come out that after the appellant left to Gulf, his father passed away and his mother was under treatment for mental illness. Thus there was no occasion for the respondent to pick up quarrels with the family members at her matrimonial home. The appellant had raised an allegation that the respondent was in the habit of lying, which according to him are acts of grave cruelty. Appellant pointed out that the respondent had lied to him stating that she secured employment through PSC and it was later proved that it was false. Except for the statement of the appellant, there is no evidence to prove the allegation. According to the respondent, she had clearly stated to the appellant regarding her qualification as ITI Diploma holder and the same has been agreed by the respondent. The Family Court weighed the version of both sides on this aspect and observed that the allegation is not probable in the normal course of human conduct. The Family Court also dispelled the contention that the failure of the respondent to produce the educational qualification, amounted to cruelty. According to the Family Court, the relationship between the parties is of matrimony and not a case of employment as wife. The allegation that the respondent had subjected the appellant to cruelty by shifting the child from the school near to the



residence of the appellant to that of the respondent, was also held as not proved. It has come out in evidence that the appellant and respondent were living separately since August 2022 and there is a distance of about 70 kilometres between the residence of the appellant and the respondent. In such circumstances, putting a small child in a school and making her to travel about 70 kilometres, is highly detrimental to the welfare of the child. Hence, the respondent cannot be found fault with for shifting the school to a place near to her house. This cannot be taken as an instance to prove cruelty. It is also the case of the appellant that the respondent was suffering from various illnesses and he had taken her to various hospitals and has given her treatment. The Family Court considered the evidence which was laid before it and came to the conclusion that, if the allegation raised was true, the appellant could only be seen as concerned about the health of his wife. The Family Court, thus came to the conclusion that the instances pointed out by the appellant are not so grave to be treated as a case of cruelty but only a case of normal wear and tear in a matrimonial life and on such explanation, the Family Court has declined to grant relief in the petition for divorce. The Family Court thus found that the appellant failed to prove ground of cruelty for dissolution of marriage between himself and the respondent and dismissed the petition.



7. We have gone through the pleadings and the evidence on record. It is seen that the appellant had filed a proof affidavit in tune with the allegations in the Original Petition.

8. It is now well settled that there cannot be any comprehensive definition of the concept of “mental cruelty” within which all kinds of cases of mental cruelty can be covered. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. 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. 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.”* *“.... Cruelty must involve serious and weighty matters, which, reasonably considered, may cause physical or mental suffering. It must furthermore be of such a nature and kind as to render such conduct*

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intolerable to a reasonable person.” (See **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**). It is to be noted that this is a case where divorce has been sought for on the basis of fault of the respondent-wife. Under the fault theory, the guilt has to be proved applying the probability test. Herein though allegations have been levelled against the spouse, there is no material on record to hold that the allegations are proved. The allegations even if proved, are not worthy of being categorised as one of “cruelty”. We find that the Family Court has appreciated the evidence in its correct perspective and find no reason to interfere with the judgment of the Family Court.

In the result, the Mat. Appeal fails and is dismissed. No costs.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

PREETA A.K.
JUDGE

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