



2023/KER/62848

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

MAT.APPEAL NO. 948 OF 2016

AGAINST THE ORDER DATED 08.03.2016 IN OP 659/2013 OF FAMILY
COURT, THRISSUR

APPELLANT/RESPONDENT:

BY ADVS.
SRI.SANTHOSH P.PODUVAL
SMT.R.RAJITHA
SMT.VINAYA V.NAIR

RESPONDENT/PETITIONER:

BY ADV SRI.V.M.KRISHNAKUMAR

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
03.10.2023, ALONG WITH MAT. APPEAL NO.949 OF 2016, THE COURT
ON 17.10.2023 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

MAT.APPEAL NO. 949 OF 2016

AGAINST THE ORDER DATED 08.03.2016 IN OP 444/2014 OF FAMILY
COURT, THRISSUR

APPELLANT/PETITIONER:

BY ADVS.
SRI.SANTHOSH P.PODUVAL
SMT.R.RAJITHA
SMT.VINAYA V.NAIR

RESPONDENT/RESPONDENT:

BY ADV SRI.V.M.KRISHNAKUMAR

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
03.10.2023, ALONG WITH MAT.APPEAL NO.948 OF 2016, THE COURT
ON 17.10.2023 DELIVERED THE FOLLOWING:



JUDGMENT

Sophy Thomas, J.

Husband is the appellant in both these appeals. He filed Mat.Appeal No.948 of 2016 against the decree for restitution of conjugal rights obtained by his wife in OP No.659 of 2013, and Mat.Appeal No.949 of 2016, against the decree in OP No.444 of 2014, rejecting his prayer for divorce. The wife is the respondent.

2. The facts in brief are as follows:

The marriage between the appellant and respondent was solemnised on 07.05.2012. Thereafter they were living together as husband and wife at the house of the appellant, and thereafter in Abu Dhabi. The respondent/wife insulted and ill-treated the appellant in the presence of his relatives. She never respected him and was keeping distance from him. She even spit on his body though apologised later. She sent a complaint to the Managing Supervisor of the Company where he was working, making defamatory statements against him, with a view to terminate his employment. She was not ready to cook food for him. When she was living with his mother at her matrimonial home, she did not attend his mother and even quarreled with her for silly reasons. On 15.01.2013, she left her matrimonial home, taking her



belongings, and thereafter filed complaints before the Vanitha Cell as well as before the Chief Judicial Magistrate Court, Thrissur. After harassing him by filing false criminal cases, she filed OP No.659 of 2013, for restitution of conjugal rights, without any bonafides. He was apprehending that, he may lose his job, if he was continuing with her. So, he filed OP No.444 of 2014 for dissolving his marriage with the respondent.

3. The respondent/wife filed counter denying the allegations levelled against her. She contended that, the appellant was having some sexual perversions. But, he found fault with her shaming her body size, as well as her complexion. He compelled her to consume medicines for improving her breast size, and he used to compare her with other ladies. To her understanding, the appellant was having some mental problem and so, he was taken to Doctors at Abu Dhabi and also at his native. Though the Doctors prescribed medicines, he discontinued the same and returned to Gulf countries. While she was staying at her matrimonial home, her mother-in-law dropped her in a bus stand, saying that, she wanted to go to her brother's house. Thereafter, the appellant never permitted her to live in her matrimonial home, and from 15.01.2013 onwards, she is living separate from the appellant. He



was not enquiring about her or providing maintenance to her. So, she filed OP No.659 of 2013 for a decree for restitution of conjugal rights. After about one year of filing that OP, the husband preferred OP No.444 of 2014, for dissolving their marriage.

4. Both the OPs were tried together by the Family Court. After formulating necessary issues, the parties went on trial. PWs 1 to 3 were examined and Exts.A1 to A16 were marked from the side of the appellant. RW1 was examined and Exts.B1 to B17 were marked from the side of the respondent.

5. On analysing the facts and evidence, the Family Court found that the husband was not eligible to get a decree of divorce, whereas the wife was entitled to get a decree for restitution of conjugal rights, against which the husband has preferred these appeals.

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

7. The appellant/husband filed OP No.444 of 2014 for dissolving his marriage with the respondent, which was solemnised on 07.05.2012, on the ground of matrimonial cruelties. About one year prior to that OP, the wife had filed OP No.659 of 2013, for



restitution of conjugal rights. According to the appellant, the wife was so cruel to him, and she filed complaints against him before his employer, Vanitha Cell as well as before the Chief Judicial Magistrate Court. So, there was no bonafides from her part in filing an OP for restitution of conjugal rights.

8. Now let us see whether the appellant could succeed in proving the allegations of cruelty levelled against the respondent.

9. The main ground of cruelty is that, she sent Ext.B12 complaint to his employer with a view to terminate his job. The respondent/wife would say that, she was intending to continue her matrimonial life with the appellant and only to see that whether the employer of the appellant could help her in patching up their strained relationship, she sent an e-mail to him, only as a request for intervention. On going through Ext.B12 e-mail, it could be seen that, she was lamenting about the nature of the appellant, as he left her in Kerala and returned to UAE. She was expressing her anxiety about the behavioural changes seen in the appellant. She was seeking the assistance of his employer, to find out what was wrong with him, and to bring him back to normal life. The last paragraph of that e-mail reads thus:



“As I want things to be patched up instead of widening the breach between us, I really need your help to know what's wrong with him. Try to consider me as your own sister and it's a request from me. His nature towards me made others feel that he is mentally sick, which pains me. Keeping separated would give him a temporary relief, but he will have to repent in future which adds to his mental illness. So I want to bring him back to his normal life, being with him in all ups and downs. If you consider my feelings as genuine please help me in this regard or else if you think this as a personal affair not to indulge leave it”.

10. From these lines, we could read the mind of a desperate wife, who was deserted by her husband. Moreover, she was suspecting some behavioural disorders from the part of the appellant. PW1-the appellant, when examined before court, admitted that in UAE as well as in Kerala, he had consulted Psychiatrist and he was prescribed with medicines also. But, according to him, the Doctor told him that, taking of medicines was only optional. So, there is clear admission from the part of the appellant himself that, there was consultation with the Psychiatrists, which supports the case of the respondent. The respondent wanted to patch up the relationship, and bring him back to normal life, and she was ready to be with him in his ups and downs. So, Ext.B12 e-mail cannot be taken as a cruel act from the part of the respondent, so as to dissolve their marriage.



11. Learned counsel for the appellant relied on the decision **Raj Talreja v. Kavita Talreja [(2017)14 SCC 194]** to say that, wife making reckless defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers, amounts to cruelty from the part of the wife, entitling the husband to get a decree of divorce.

12. The appellant relied on another decision of this Court **Beena M.S v. Shino G. Babu [2022 (2) KHC 11]** to say that, when attitude and behaviour of one spouse becomes unbearable to the other causing much misery and agony to the relationship, the court cannot leave the life of a spouse to the mercy of the opposite spouse. If conduct and character of one party causes misery and agony to other spouse, element of cruelty to spouse would surface, justifying grant of divorce. Moreover, when both the parties are unable to lead a meaningful matrimonial life due to inherent differences of opinion and one party is willing for separation and other party is withholding consent for mutual separation, that itself would cause mental agony and cruelty to the spouse who demands separation. When there is incompatibility, withholding consent for mutual separation itself would amount to



cruelty.

13. In the case on hand, we have seen that the respondent/wife sent Ext.B12 e-mail to the employer of the husband seeking his help to patch up their relationship, expressing her intention to be with her husband in all his ups and downs. Learned counsel for the appellant was contending that, the respondent even alleged behavioural disorders/mental illness against the appellant, which also amounts to cruelty. But, there is clear admission from the part of the appellant himself that, in UAE as well as in Kerala, he was taken to a Psychiatrist for consultation and though medicines were prescribed, according to him, it was only optional. So, we cannot say that, the respondent/wife made reckless, defamatory or false accusations against her husband with a view to terminate his job. On going through Ext.B12, we could see that, it was the outcry of a desperate wife, to live with her husband, after bringing him back to normalcy, and she was seeking assistance of his employer for that purpose.

14. The appellant contended that, the respondent filed complaints before the Vanitha Cell as well as the Chief Judicial Magistrate Court against him, and that also amounts to cruelty. If the husband deserted the wife without providing her shelter and



maintenance, it is her legal right to proceed against her husband, and filing of complaints to get what was legally due to her from her husband, will not amount to cruelty. The appellant submitted that he was acquitted by the criminal court. The final outcome of a case depends upon so many factors and the acquittal of the appellant or his relatives in a complaint filed by the wife cannot be taken as a ground to find that, the complaint itself was false or vexatious. The respondent/wife admitted that, she had filed a complaint before the Passport authority also, as she wanted the presence of her husband in the native, to get their problems resolved.

15. The other ground of cruelty alleged by the appellant is that, she spit on his body in the presence of his relatives. But, none of the relatives who witnessed that incident was examined by the appellant to prove such an incident. He himself admitted that, after that incident, the respondent apologised, and even thereafter they lived together as husband and wife. So, first of all, there is no evidence to prove such an incident, and if at all there was such an incident, it was condoned by the appellant. So, that cannot be taken as a ground by the appellant to seek dissolution of marriage.

16. Another ground of cruelty urged by the appellant is that, the respondent did not know cooking and so, she did not prepare



food for him. That also cannot be termed as cruelty sufficient enough to dissolve a legal marriage. The respondent would contend that, the appellant was having some sexual perversions and he was having some behavioural problems also. He was shaming her body size and complexion. But, even then, she wanted to continue her matrimonial life with him and so, she approached the Family Court with a prayer for restitution of conjugal rights. One year thereafter, the appellant preferred the OP for divorce against her. Even now, the respondent says that, she is ready to continue her matrimonial life with the appellant.

17. According to the appellant, their marriage is dead practically and emotionally, and they are living separate for the last ten years. So there is no scope for any re-union.

18. In **Uthara v. Sivapriyan [2022 (2) KLT 175]**, a Division Bench of this Court held that, the period of non-co-habitation however long it may be, if it was due to deliberate avoidance or due to pendency of cases filed by one party, the other party cannot be found fault with, when the other party is still ready to continue his/her matrimonial life, and no grounds recognized by law are established against the other party to break their nuptial tie. So legally, one party cannot unilaterally



decide to walk out of a marriage, when sufficient grounds are not there justifying a divorce, under the law which governs them, saying that due to non-co-habitation for a considerable long period, their marriage is dead practically and emotionally. No one can be permitted to take an incentive out of his own faulty actions or inactions.

Taking into account the totality of the circumstances, we find no reason to interfere with the impugned judgments, dismissing the OP for divorce, and decreeing the OP for restitution of conjugal rights.

In the result, the appeals fail, and hence dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

SOPHY THOMAS, JUDGE

smp