

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 20TH DAY OF MAY 2020 / 30TH VAISAKHA, 1942

Mat.Appeal.No.137 OF 2014

AGAINST THE JUDGMENT IN OP 805/2011 DATED 21-01-2014 OF FAMILY
COURT, THALASSERY

APPELLANT/PETITIONER:

RANJITH.P.C.
S/O.LATE P.KUNHANANDAN NAIR,AGED 41 YEARS, 'ANAND',
CHETTAMKUNNU P.O., THALASSERY, KANNUR DISTRICT.

BY ADVS.
SRI.P.N.SUKUMARAN
SRI.K.A.ANAS

RESPONDENT/RESPONDENT:

ASHA NAIR.P,
AGED 37 YEARS
D/O.LATE GOVINDAN NAIR, ABILASH, PALAYAD P.O.,
THALASSERY TALUK, KANNUR DISTRICT, PIN: 670 661.

BY ADV. SRI.M.SASINDRAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 04-02-
2020, THE COURT ON 20-05-2020 DELIVERED THE FOLLOWING:

"C.R"

A.M. SHAFFIQUE & MARY JOSEPH, JJ.

Mat Appl. No. 137 of 2014

Dated this the 20th day of May, 2020

JUDGMENT

MARY JOSEPH, J:

Judgment dated 21.01.2014 of Family Court, Thalassery in O.P. No.805 of 2011 is assailed in this appeal. The appellant is the petitioner in the Original Petition. Decree for dissolution of marriage sought for by him was declined by the Family Court and the Original Petition was dismissed for his failure to establish the ground cruelty alleged as basis. The respondent is the respondent before the Family Court, who is none other than the wife of the appellant.

2. Before advertng to the legality, propriety and correctness of the judgment under challenge, an understanding of the facts led to the filing of the Original Petition seeking the decree being relevant, a summary description is made hereunder. For a smooth understanding of the matter, the parties to the appeal are referred to hereinafter as the petitioner and the respondent.

3. The petitioner and respondent got married on 17.04.2003 and a female child was born in the wedlock. The marital relationship did not last long in the way it commenced due to the quarrelsome nature of the respondent who finds pleasure in quarrelling with the petitioner and his mother. She started declaring that she would commit suicide after creating cogent materials to trap himself and his mother. She used to call the petitioner 'dog' and 'shameless creature'. She used to undermine his person stating that he is not a fit person to be her husband and insult him by beating him in front of his relatives. She also denied the petitioner sex. She refused to live at the matrimonial home. Several attempts to commit suicide had been made by her which takes in an incident of rushing towards the railway line passing near the petitioner's house. She left the matrimonial home on 10.02.2011 and ever since then she was there and therefore, the expectation of the petitioner to maintain a smooth marital life was lost. When the hope for reunion was lost, the petitioner caused to issue a lawyer notice to the respondent on 30.06.2011 demanding dissolution of marriage. The respondent received the same and issued a reply to it on 08.07.2011. The Original Petition was filed thereafter seeking for a decree for dissolution of marriage.

4. The respondent entered appearance and a counter statement was filed admitting the marriage and birth of a girl child in the marriage. The allegations of cruelty are denied. It is urged that due to the under influence of the mother of the petitioner and her ill advise, the petitioner started to ill treat her. The petitioner was a drunkard, who is in the habit of coming home late in the house in intoxicated state, he used to assault her and the child and also destroyed the tea-poy. The respondent had nursed petitioner's mother well for no returns from her. She is ready to join the petitioner provided, he stops consumption of alcohol and changes his attitude towards her. She left the matrimonial home not voluntarily but was constrained to leave due to threat of petitioner's mother. The petitioner had sent her and child to the parental home and did not contact her and maintain them. 10 sovereigns of gold was in the custody of the petitioner and those were misused by him. Circumstances did not exist warranting dissolution of marriage and there is no basis for the petitioner to contend that reunion is impracticable due to irrecoverable break down of marriage. The Original Petition is liable to be dismissed with costs.

5. During trial, the petitioner had let in oral evidence as PW1 and marked Exts.A1 to A4. The evidence of respondent is confined to her own testimony. The Family Court's appreciation of the aforesaid evidence culminated in dismissal of the Original Petition and that paved the way for preferring this appeal. Dissolution of marriage was sought on the ground of cruelty. Several allegations have been taken in the Original Petition to impress the court that the respondent has behaved cruelly to the petitioner. The allegations include threats extended by the respondent to him that she would commit suicide, after leaving evidence of torture against himself and his mother to drive her to do so. Attempt of the respondent to commit suicide in the railway track, insulting the petitioner, abusing him and assaulting him in front of his relatives and pressurising the petitioner to avoid his mother. Apart from the above, it was also contended that the marital tie has become irretrievably broken and reunion is impracticable.

6. Petitioner as PW1, has testified in tune with his pleadings, but during cross examination he denied the attempt of the respondent to commit suicide. PW1 has deposed categorically about the frequent declarations made by the petitioner that she would commit suicide after leaving evidence against the petitioner and his mother that they would be responsible for her act. PW1

has also deposed to convince the court that the respondent has insulted, abused and scolded him and his mother. The respondent while being examined as RW1 had denied the contentions of the petitioner as above. Despite the denial of RW1, the petitioner failed to discharge the burden to establish the contentions raised against the respondent by adducing independent evidence. The interested testimony of the petitioner alone is available and in the absence of any independent supportive evidence to establish the attempt of the respondent to commit suicide, he cannot be taken to have proved the same. For lack of independent evidence, the contention of the petitioner that the respondent frequents to threaten him that she would commit suicide and make them responsible for that by creating materials against them has also remained unestablished. The Family Court has also found those as not proved and we cannot find fault in that.

7. What remains then is whether contention taken by the learned counsel for the petitioner that the respondent has dislike about his mother staying with them and her persuasion on the petitioner to stay away from his mother was a reason for causing mental agony in him and that amounts to mental cruelty. According to the learned counsel, the dislike of the respondent towards his mother often results in quarrels, which impacted loss

of peace and tranquility in their life. According to him, the respondent's in-cordial attitude to his mother is revealed from her version during cross examination as RW1 and the Family Court went wrong in appreciating those as something short of mental cruelty. The learned counsel has also invited attention of us to the ratio in **Narendra v. K. Meena** [2016 (5) KHC 180] to rest his contention that the effort of wife to constrain husband to be separated from the family would be tortuous for the husband and it continues as an act of 'cruelty'.

8. Sri.Sasindran, the learned counsel on behalf of the respondent has urged that without specific pleadings being raised in the original petition on cruel treatment of the spouse, 'cruelty' as a ground cannot be taken to have established to grant a decree for dissolution of marriage. The learned counsel has also relied on ratio of the Division Bench of this Court in **Beena S.S. v. Sundaresan and others** [2016 (1) KHC 355 (DB)] and **Rajkumar T. v. Moljimol K.S.** [2017 (2) KHC 226(DB)] to fortify his argument.

9. There cannot be any dispute on the aspect that evidence to be relevant must have basis in the pleadings raised by the parties to the litigation.

10. The Division Bench of this Court in cases cited supra have found in accordance with the dictum in **Beena S.S.** Supra is extracted hereunder for convenient reference :

“Bond created by a marriage cannot be dissolved by relying on flimsy, shallow and baseless allegations. In order to establish the ground of mental cruelty, there should be sufficient pleading and evidence which is substantial and material in nature to the extent of creating a permanent mental distress and everlasting disturbance to the mind of the person alleging cruelty. Such an injury also should bear a deep rooted feeling and impression in the mind of the recipient of the injury that the wedlock will not be able to be carried on any further smoothly and successfully. That apart, stray and inconsequential allegations made, even if proved, will not by itself contribute to the factum of cruelty.”

The dictum laid down in **Rajkumar T** supra, by one among us (myself) is also extracted hereunder for reference :

“When cruelty is alleged as a ground for divorce, the petitioner must have specific pleadings with reference to the instances of cruelty meted out by the respondent and those have to be established by cogent and reliable evidence.”

It is the basic principle that the evidence adduced by a party to a litigation to establish his case must have basis in pleadings raised by him in the petition seeking the relief.

11. Sri.Sasindran was constrained to cite the above decisions in the wake of the argument of Sri.P.N. Sukumaran to consider the effort of the respondent in the case on hand to constrain the petitioner to be separated from his mother as cruelty and to grand

a decree for dissolution of marriage based on that ground after reversing the judgment appealed against.

12. Sri.P.N. Sukumaran has invited our attention to the version of RW1 while tendering evidence and that is extracted hereunder :

“ഹർജിക്കാരന്റെ അമ്മയുള്ള വീട്ടിൽ എനിക്ക് ജീവിക്കുവാൻ കഴിയുകയില്ല. ഹർജിക്കാരന്റെ അമ്മയോടൊപ്പം ജീവിക്കുന്ന വീട്ടിൽ ഇനി പോയി ജീവിക്കുവാൻ ഞാൻ സന്നദ്ധയല്ല..... ഹർജിക്കാരന്റെ വീട്ടിൽ നിന്നും അമ്മ മാറിയാൽ മാത്രമേ ഞാൻ ഹർജിക്കാരന്റെ വീട്ടിൽ പോവുകയുള്ളൂ..... എന്റെ വീട്ടിൽ എനിക്ക് അമ്മയുണ്ട്. എന്റെ അമ്മയെ എന്റെ വീട്ടിൽ നിന്നും ഒഴിവാക്കണമെന്നു ഹർജിക്കാരൻ പറഞ്ഞാൽ ഞാൻ അംഗീകരിക്കുകയില്ല.” **She has stated further that:** "അമ്മയാണ് എന്റെ ജീവിതത്തിലെ വില്ലത്തി..... ഹർജിക്കാരന്റെ അമ്മയോടൊപ്പം ഞാൻ ആ വീട്ടിൽ താമസിക്കുവാൻ തയ്യാറല്ല..... ആരെയും അസൂയപ്പെടുത്തുന്ന ബന്ധം ആണ് അമ്മയും മകനും തമ്മിൽ. ”

13. On the basis of the evidence as above, it is urged by the learned counsel that the respondent virtually wanted to abandon his mother. According to him, on the strength of the dictum of the Apex Court in **Narendra** supra the Family Court ought to have found in the case on hand that the respondent has made necessary efforts to separate the petitioner from his mother and those tantamount to torturing the husband. According to him, the attempts in that regard is nothing short of cruelty and the Family Court is highly unjustified and erred in viewing the version of the respondent extracted above as a comment of a wife out of absence

of maturity or comment of a fickle minded woman.

14. In the backdrop of the argument advanced as above, it is relevant to have a look at the Original Petition to see whether it incorporates pleadings forming basis for the testimony of RW1 extracted supra. It is alleged by the petitioner in the Original Petition that the respondent used to insult him continuously in the presence of his friends and relatives. The respondent would declare that she would commit suicide by writing a letter that the husband and his mother are responsible for her death. The respondent also abused the petitioner and his mother. The pleadings of the petitioner to the above effect unveils the fact that the respondent was in-cordial to the petitioner's mother.

15. In the counter statement filed, the respondent though denied the above pleadings of the petitioner, has contended that during the earlier period, her life with the petitioner was happy. According to her, her husband was very smooth and lovable and due to the undue influence of his mother and ill advise, the character of her husband changed and he started to ill treat her. He started to consume alcohol and coming home late. He also started to abuse her and scold herself and the child.

16. The respondent has also contended that she was lovable and affectionate to petitioner's mother, without any return from

her. Admittedly, she left the matrimonial home on 10.02.2011 involuntarily, out of constraints of abuse and threat extended by her mother in law that she shall not continue to live there even for a single day. According to her, the petitioner took herself and the child to the parental home on that day and did not visit them further. According to her, she never desired for a separate life or a dissolution of marriage. According to her, petitioner's mother was so cruel to her and she made her to do all domestic works even during the convalescent period after a surgical operation. She was abused and ill-treated physically and mentally by the mother in law. Still she would like to have a joint happy life with her husband/petitioner and the child.

17. The above contentions raised by the respondent in her counter statement more particularly disclose her dislike to the mother in law and her desire to maintain a family life to her exclusion. It is also discernible from her contentions that initially the petitioner was very loving and life with him was comfortable and the mother in law caused changes in his attitude towards herself and the child.

18. The factum that the respondent was desirous of getting rid of the mother in law from their family life is more evident from her testimony during cross examination which is extracted

hereunder :

“ഹർജിക്കാരന്റെ അമ്മയുള്ള വീട്ടിൽ എനിക്ക് ജീവിക്കുവാൻ കഴിയുകയില്ല. ഹർജിക്കാരന്റെ അമ്മയോടൊപ്പം ജീവിക്കുന്ന വീട്ടിൽ ഇനി പോയി ജീവിക്കുവാൻ ഞാൻ സന്നദ്ധയല്ല..... ഹർജിക്കാരന്റെ വീട്ടിൽ നിന്നും അമ്മ മാറിയാൽ മാത്രമേ ഞാൻ ഹർജിക്കാരന്റെ വീട്ടിൽ പോവുകയുള്ളൂ..... എന്റെ വീട്ടിൽ എനിക്ക് അമ്മയുണ്ട്. എന്റെ അമ്മയെ എന്റെ വീട്ടിൽ നിന്നും ഒഴിവാക്കണമെന്നു ഹർജിക്കാരൻ പറഞ്ഞാൽ ഞാൻ അംഗീകരിക്കുകയില്ല.” **Her further statement is that** 'അമ്മയാണ് എന്റെ ജീവിതത്തിലെ വില്ലത്തി..... ഹർജിക്കാരന്റെ അമ്മയോടൊപ്പം ഞാൻ ആ വീട്ടിൽ താമസിക്കുവാൻ തയ്യാറല്ല..... ആരെയും അസൂയപ്പെടുത്തുന്ന ബന്ധം ആണ് അമ്മയും മകനും തമ്മിൽ.

”

Therefore, the respondent was very particular to have a more comfortable and happy life to the exclusion of petitioner's mother who according to her, was the root cause for problems to originate in her matrimonial life.

19. From the above discussion of the pleadings and evidence, it cannot be said that the oral evidence tendered is totally devoid of support of necessary pleadings. Moreover, the respondent has no case that the petitioner was a drunkard at the time when he married her. On the contrary her specific case was that he was lovable and affectionate and their life was smooth, happy and comfortable. Evidence indicates that the respondent and the

petitioner's mother were not cordial and clashes were frequent. Therefore, it is natural for the petitioner to be a scapegoat of the in-differences. It is also natural for a wife in that scenario to make persistent effort to constrain her husband to be separated from the family life and that would undoubtedly be tortuous for him. In the case on hand the petitioner's turning to be a drunkard can only be taken as the natural outcome of the pressure exerted on him by the respondent to have a separate residence to the exclusion of petitioner's mother. The persistence of the respondent was unbearable for the petitioner, could be seen from his conduct of avoidance of the company of the respondent after leaving her at the parental home on 10.02.2011.

20. Petitioner has pleaded specifically about the displeasure of the respondent towards his mother. He has deposed in tune with that when examined as PW1. In the counter statement the respondent has also raised pleading to endorse the same. During cross examination the respondent has openly stated that she doesn't want to continue a family life in the company of petitioner's mother. Respondent as RW1 has stated that the petitioner after dropping her at the parental home has not turned up to take her back. From the above conduct of the petitioner admitted by the respondent, it is evidenced that the torture

suffered by him amidst the respondent and his mother was of much gravity and something unbearable for him.

21. The dictum of the Apex Court in **Vijayakumar Ramachandra Bhate v. Neela Vijayakumar Bhate** [2003 (6) SCC 334] being apposite in the context is extracted hereunder :

“That such allegations made in the written statement or suggested in the course of examination and by way of cross examination satisfy the requirement of law has also come to be firmly laid down by this Court.”

22. No family is totally devoid of clashes among members constituting it. It is common for elders to scold and sometimes abuse youngsters. Making a daughter in law to do the house hold/domestic work is also not something unusual. From the evidence tendered by the respondent, it is all the more clear that the aforestated factors formed the basis for her ill-will to petitioner's mother.

23. We do not find any other justifiable reason for her to get the petitioner's mother excluded from the family or to be desirous of having a separate residence to the exclusion of her.

In the above context that the Apex Court held in **Narendra** supra :

“As stated hereinabove, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in

this case, we do not find any justifiable reason, except monetary consideration of the respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the respondent wife to constrain the appellant to be separated from the family would be torturous for the husband and in our opinion, the trial court was right when it came to be conclusion that this constitutes an act of 'cruelty'."

The dictum aforesaid is squarely applicable in the case on hand. But, the Family Court has observed in the context that :

"The wife is ready to come with him to live a happy life as she is even desiring to rectify his husband. That is the only desire of a poor woman. On the other hand, it is also pertinent to note that no woman who loves her husband and prefer to have a family life with husband will create any difficulties by injuring the sentimental feelings of her husband towards his beloved mother. Here is a case in which the petitioner has strong sentiments to his beloved mother. Though the mother may not be one acceptable to the wife or though the mother may not be fully right in her capacity as the mother in law, I feel that those matters are secondary instances rather than dealing the mother in law or considering her as a villain as deposed by RW1. I feel that when RW1 preferring for a marital life and resisting the divorce certainly and naturally she shall prefer the company of the respondent in his matrimonial home. No attempt to abandon the mother in law can be permitted. It is fair and necessary to harmonize them through the process of love, affection and mutual respect. If the wife is not ready for that naturally she will not be permitted to resist the case of divorce of the husband. However, I feel that situations are such that the respondent/wife can accompany the husband in his matrimonial home and to build up a good happy life. Naturally if the respondent is not responding to that suggestion petitioner can choose one of the method of

restitution of conjugal rights. With these observations, I am inclined to hold that there are no sufficient circumstances herein to dissolve the marriage between the petitioner and respondent.”

24. We have no hesitation to hold that the Family Court was highly unjustified in making the above observations. The Family Court has taken the role of a councilor rather than an adjudicator while doing so. It is after much efforts and counseling that a case comes up before the court for adjudication. Then the role of the court is to adjudicate the issue involved in the case based on the evidence after duly appreciating it. The Family Court is not supposed to advice the remedies to the parties and issuing directions. We are not satisfied with the way in which the Family Court had dealt with the case on hand.

25. Evidence as discussed above is satisfactory for us to take a view that the respondent has treated the petitioner with cruelty sufficient enough to grant a decree for dissolution of marriage in his favour. The Family Court undoubtedly has gone wrong in declining the relief to the petitioner. The judgment of the Family Court under challenge deserves to be reversed.

26. Apart from all the above, the parties by their conduct after their separated life have proved themselves to be unfit for resuming the matrimonial relationship. Not even a single attempt

was made from the side of the respondent to join the petitioner to continue the marital life. Therefore, the case on hand is also one, wherein the marital relationship among the parties have become irretrievably broken. Pursuit of any nature will not help resumption of matrimonial life. The cruelty having been established and the parties by their life have made it clear that joining in matrimonial relationship is something impracticable, the grant of a decree for dissolution of marriage is appropriate in the case.

In the result, the appeal stands allowed. The judgment under challenge is reversed. A decree for dissolution of marriage on the ground of cruelty is passed in favour of the petitioner. No order as to costs.

Sd/-
A.M. SHAFFIQUE
JUDGE

sd/-
MARY JOSEPH
JUDGE