



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

SATURDAY, THE 7TH DAY OF DECEMBER 2024 / 16TH AGRAHAYANA, 1946

MAT.APPEAL NO. 554 OF 2022

AGAINST THE JUDGMENT IN OP NO.1574 OF 2014 OF FAMILY
COURT, THIRUVANANTHAPURAM

APPELLANTS/COUNTER PETITIONER NOS.1 AND 2:

1 xxxxxxx

2 Xxxxxxx

BY ADV S.MOHAMMED AL RAFI

RESPONDENTS/PETITIONER & COUNTER PETITIONER NOS.3 TO 5

1 XXXXXXX

2 XXXXXXX

3 XXXXXXX

4 XXXXXXX

BY ADVS.

L.MOHANAN

LIGEY ANTONY

SRI L MOHANAN

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
21.10.2024, THE COURT ON 7.12.2024 DELIVERED THE FOLLOWING:

**CR****DEVAN RAMACHANDRAN & M.B.SNEHALATHA, JJ**

Mat.A.No.554 of 2022

Dated this the 7th day of December, 2024**JUDGMENT****M.B.Snehalatha, J**

Can an allegation of 'adultery' or even when so established, porpoise a claim for compensation is what is projected for our consideration in this appeal.

2. Appellants are respondent Nos.1 and 2 in O.P. No.1574/2014 on the file of the Family Court, Thiruvananthapuram. The said O.P was filed by the husband of the 1st appellant seeking compensation, return of gold ornaments and money from respondents 1 to 5 in the O.P. By the impugned judgment and decree, the learned Family Court decreed the Original Petition in part against respondent Nos.1 and 2 in the Original Petition/appellants herein, directing them to pay compensation of ₹4 Lakhs to the respondents. His claim for return of gold and cash was disallowed. Aggrieved by that part of decree, granting



compensation, respondents 1 & 2 in the O.P have come in appeal.

3. For the sake of convenience, the parties shall be referred to by their rank in the original petition.

4. The marriage of the petitioner and the 1st respondent was solemnized on 19.11.2006. During the subsistence of marriage, 1st respondent developed an illicit relationship with the 2nd respondent and on 31.7.2012 she eloped with him taking all the gold ornaments and valuable records. A complaint was lodged before the Kovalam Police Station, which was registered as Crime No.644/2012 under 57 of KP Act. Subsequently, when she was produced before the Court she stated before the Court that she went with R2 Praveen and they were staying together in a lodge. After production before the Court, she went with R2 and they are residing as husband and wife. The illicit affair of R1 during the subsistence of her marriage with the petitioner and her elopement with R2 caused mental pain and agony to the petitioner and he suffered humiliation. Respondents are liable to pay ₹20 lakhs as compensation for the mental agony, pain and humiliation suffered by him.

5. The 1st respondent in the OP filed counter contending



that the petition was filed as a counterblast to O.P.No.1831/2012 filed by her seeking return of her 35 sovereigns of gold ornaments which was misappropriated by the petitioner and his parents. It was further contended that she was forced to leave the matrimonial home due to the ill-treatment meted out from the petitioner and his mother. On 30.7.2012 and 31.07.2012, the petitioner and his mother brutally manhandled her demanding dowry and due to the said harassment, she had to leave the matrimonial home and thereafter she was residing with her parents. While so, she had gone with the 2nd respondent who is a relative of her. Presently, R1 and R2 are residing together. Petitioner is not entitled to get any amount as compensation.

6. Respondent Nos.2 to 5 filed counter denying the allegations made in the petition.

7. The evidence consists of the oral testimonies of PWs 1 to 5, RWs1 and 2 and the documents marked as Exts.A1 to A12 series.

8. By the impugned judgment and decree, the Family Court allowed the Original Petition in part directing respondents 1 and 2 to pay compensation of ₹4 Lakhs for causing mental pain,



agony and humiliation to the petitioner. His claim for return of gold and cash from the respondents was disallowed by the Family Court and the said finding has become final.

9. The point for consideration in this appeal filed by R1 and R2 in the O.P is whether the impugned judgment and decree directing them to pay compensation of ₹4 lakhs with interest to the petitioner warrants any interference by this Court.

10. Admittedly, petitioner and 1st respondent were husband and wife and their marriage was solemnized on 19.11.2006. It is also an undisputed fact that during the pendency of O.P. No.1574/2014, their marriage was dissolved as per the decree of divorce granted in O.P.No.1336/2012 of Family Court, Thiruvananthapuram.

11. The case of the petitioner/husband is that during the subsistence of his marriage with the 1st respondent, she developed extramarital relationship with the 2nd respondent and on 31.07.2012, she eloped with the 2nd respondent. His further case is that when R1 was produced before the Court, she admitted her relationship with R2 and her desire to live with R2 and thus she went with R5, who is the mother of R2 and thereafter she is



residing with R2. According to the petitioner, the said conduct of his wife caused mental pain and agony to him and he was humiliated and therefore he is entitled to get compensation.

12. First respondent, who was the wife of the petitioner has a different story altogether. Her case is that petitioner and his mother used to ill-treat her demanding dowry and brutally manhandled her and therefore she was forced to leave the matrimonial home; that thereafter she was residing at her parental home and she initiated action against the petitioner seeking divorce and return of her gold ornaments. According to her, the petitioner filed the above O.P. as a counterblast to O.P.No.1336/2012 filed by her for divorce and O.P.No.1831/2012 filed by her seeking return of gold ornaments and cash.

13. The evidence on record would show that there was marital discord between the petitioner and the 1st respondent. It has also come out in evidence that the 1st respondent filed O.P.No.1336/2012 seeking divorce and their marriage was dissolved. It has also come out in evidence that in O.P.No.1831/2012 filed by the wife, the husband was directed to return an amount of ₹1,50,000/- to the wife. It was subsequent to



the filing of the above two O.Ps, the petitioner/husband filed O.P.No.1574/2014 seeking compensation for the mental agony and pain allegedly suffered by him.

14. Even if the wife left the matrimonial home and thereafter took a decision to live with the 2nd respondent, that by itself is not a sufficient ground to claim compensation by the husband from the wife. Adultery is a valid ground for seeking divorce. But the contention put forward by the husband that since his wife had an extramarital affair with the 2nd respondent and she expressed her desire to live with the 2nd respondent, he suffered mental agony, pain and humiliation and therefore he is entitled to get compensation is untenable.

15. Adultery is often considered as a breach of marital trust, it has historically carried significant legal and moral weight in many societies. However, with evolving societal norms and legal principles, adultery is no longer recognized as a basis for claiming damages in many jurisdictions including India.

16. In the year 2018, in *Joseph Shine v. Union of India* (2019) 3 SCC 39) the Hon'be Supreme Court struck down and decriminalised Section 497 Indian Penal Code as being violative of



Articles 14, 15 & 21 of the Constitution of India and declared it as unconstitutional as it robbed a woman of her sexual autonomy, dignity and privacy. It was held that Section 497 IPC violates a woman's basic right to privacy under Article 21 of the Constitution; that it treated the women as a chattel or property of their husband, which violated the autonomy and sense of dignity and it maintained patriarchal tradition. Section 497 IPC was based on the stereotype that a man has control over his wife's sexuality and she is his property. It perpetuates the notion that women are passive and incapable of exercising their sexual freedom.

17. Adultery is not an offence under Bharatiya Nyaya Sanhita, 2023 also.

18. While adultery may be considered immoral, it is not a matter of criminal law. But it is a ground for divorce under the Hindu Marriage Act, 1955, the Indian Divorce Act, 1869, Special Marriage Act, 1954 and other personal laws. Indian Law does not permit a spouse to sue the adulterous partner or the third party for damages. This is because the marriage is considered as a personal relationship and a dispute arising within it which are typically resolved through family law mechanisms rather than tort law. Prior



to the Divorce (Amendment) Act, 2001, (Act 51/2001) Section 34 of the Indian Divorce Act, 1869 allowed the husband to claim damages from the adulterer. The damages were meant as compensation for the harm caused to the husband's marital relationship. By the amendment in 2001, Section 34 of the Divorce Act was omitted and the said provision was removed from the statute with effect from 3.10.2001. Section 34 of the Divorce Act, 1869 was deleted with an aim to treat marriage and personal relationship as private matters rather than grounds for public or legal retribution. Thus, Indian Law no longer permits claims for damages from an adulterer.

19. Most modern legal systems have moved away from allowing damages, claims for adultery recognising privacy of relationship. Adultery is viewed as a private matter between spouses. Modern laws reject the notion of one spouse owning the others' loyalty which was often the basis for damages claims.

20. Indian Law treats marriage as a sacred bond or a civil contract depending on the personal laws applicable. However, it does not recognise marriage as a relationship that creates enforceable propriety rights over spouse's behaviour. The law



provides remedy such as divorce or judicial separation for a spouse aggrieved by adultery. These remedies aim to restore personal dignity and autonomy without imposing financial liability on the adulterous spouse or third parties.

21. If the court allows the claim for damages, it would be reinforcing the updated notional gender roles in marriage such as the idea of one spouse owning the other's fidelity.

22. Adultery is not an actionable claim for damages in India. By treating adultery as a ground for divorce rather than a tortious or criminal act, the law respects individual autonomy while providing appropriate remedies for marital disputes.

23. In the case at hand, there is no evidence to show that due to the act and conduct of respondents 1 & 2, petitioner suffered any mental pain, agony or humiliation, as alleged. Ext.A12 series documents do not in any way help the petitioner in substantiating his claim for compensation. It is to be borne in mind that the divorce between the petitioner and the 1st respondent was not on the ground of adultery. Admittedly, the divorce petition was filed by the 1st respondent/wife in the year 2012 and it was two years thereafter petitioner filed the O.P seeking



compensation/damages from the respondents on the ground of adultery. There is no basis for the claim for compensation sought against respondents 1 & 2. Hence we find that, that part of the impugned judgment and decree of the Family Court, Thiruvananthapuram directing respondents 1 & 2 to pay compensation of ₹4 lakhs is liable to be set aside and we do so.

24. Accordingly, this appeal stands allowed and that part of the judgment and decree in O.P.No.1574/2014 on the file of the Family Court, Thiruvananthapuram to the extent to which it direct R1 and R2 to pay compensation to the petitioner stands set aside.

Parties shall suffer their respective costs.

Sd/-
DEVAN RAMACHANDRAN
JUDGE

Sd/-
M.B.SNEHALATHA
JUDGE

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