



2025:KER:8852

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 3RD DAY OF FEBRUARY 2025 / 14TH MAGHA, 1946

MAT.APPEAL NO. 626 OF 2022

AGAINST THE JUDGMENT IN OP NO.1524 OF 2018 OF FAMILY
COURT, KOTTAYAM AT ETTUMANOOR

APPELLANT/PETITIONER:

ANILKUMAR V.K., AGED 55 YEARS
S/O. LATE G KRISHNA MENON, VRINDAVAN HOUSE,
POONJAR P.O., PERUNILAM KARA,
POONJAR VILLAGE, MEENACHIL TALUK 686 581,
KOTTAYAM DISTRICT.

BY ADVS.
CAROLIN SINDHU VAZ
C.SIVADAS
AKHIL SASIDHARAN

RESPONDENT/RESPONDENT:

SUNILA P., AGED 49 YEARS
D/O.K.S. PRABHAKARAN NAIR, VYSAKH HOUSE,
MOTHER TERESA ROAD, ATHIRAMPUZHA P.O.,
ATHIRAMPUZHA VILLAGE, KOTTAYAM TALUK 686 562.

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
17.1.2025, THE COURT ON 03.02.2025 DELIVERED THE FOLLOWING:

C.R

DEVAN RAMACHANDRAN & M.B.SNEHALATHA, JJ.

Mat.Appeal No. 626 of 2022

Dated, this the 3rd February, 2025

JUDGMENT

M.B.Snehalatha, J.

In this appeal, the appellant/husband calls in question the judgment and decree of the Family Court, Ettumanoor which dismissed his petition seeking divorce filed on the ground of cruelty and desertion.

2. The parties shall be referred to as petitioner and respondent as referred to in the Original Petition.

3. The averments in the petition in brief are as under.

The marriage of the petitioner with the respondent was solemnised on 4.2.2005 as per the Hindu religious rites and ceremonies. During the period of marriage, the petitioner was employed at Qatar. As it was not possible for him to get a family VISA, he was not in a position to take the respondent also to Qatar. But the respondent/wife was unhappy about petitioner's

inability to take her to Qatar and used to quarrel with the petitioner on that ground by alleging that she was misguided by the petitioner and his family to believe that she would be taken to his workplace in Qatar on family VISA. After the marriage, the respondent was not ready to stay at the house of the petitioner along with his parents. Whenever she visited the matrimonial home, she used to pick up quarrels with the relatives of the petitioner. When the petitioner came on leave, he used to stay with the respondent at her house, but she used to neglect him and used to pick up quarrels with him. She even refused to have sexual relationship with him. For the past five years, the respondent is residing separately and in spite of repeated requests, she has not cared to come and reside with the petitioner and thus there is physical and mental cruelty and therefore, petitioner seeks divorce on the ground of desertion and cruelty.

4. The respondent filed objection refuting the allegations made in the petition. After the marriage, the respondent was residing in the Taravad house of the petitioner along with his parents and she was taking care of his parents. Petitioner was not prepared to take the respondent to his

workplace even on a visiting VISA. In the wedlock, no children were born to them, and the petitioner was not even willing to consult a doctor. The respondent was always willing to have cohabitation with the petitioner and to continue the marital life. According to the respondent, the allegations regarding cruelty and desertion are baseless and without bonafides and hence she sought for dismissal of the original petition.

5. The evidence consists of the oral testimonies of PW1 and RW1 and documents marked as Ext.A1, A2 and Exts.B1 to B6 series.

6. After trial, the learned Family Court dismissed the petition with a finding that the petitioner failed to establish the grounds of cruelty and desertion as alleged by him.

7. The point for consideration in this appeal is whether the impugned judgment and decree, dismissing the petition for divorce needs any interference by this Court.

8. At first, let us see whether the petitioner has made out a case of desertion so as to grant divorce on that ground.

9. According to the petitioner, his wife has deserted

him and is residing separately at her parental house avoiding his company.

10. Admittedly the marriage of the parties was solemnised on 04.02.2005. The version of the petitioner/husband, who was examined as PW1 is that after the marriage, the respondent/wife used to make quarrel with him by ridiculing him, by saying that he had studied only up to 10th standard and also picked up quarrels with him for not taking her to Qatar, where he was employed. His further version is that, the respondent was not ready to look after his aged parents and she was not willing to stay with them. He has also stated in his evidence that the respondent refused to have sex with him. His further version is that the respondent is residing with her parents and thus deserted him for the past more than five years without any valid reasons and in spite of his repeated requests, she is not willing to come and reside with him.

11. Per contra, the respondent who was examined as RW1 has testified that it was the petitioner, who avoided her and in spite of the advice of the doctor to reside together, he was not prepared to do so. According to her, there was no desertion or

any acts of cruelty on her part and she was and is desirous to continue the marital life with the petitioner.

12. Though the petitioner would contend that the respondent/wife has deserted him and she has been residing separately for the past five years, during the cross-examination he has stated that till the time of filing the Original Petition, they were residing together. His version is quoted below:

“Respondent-ഉം ആയി ഞാൻ ഒന്നിച്ചാണ് ഈ കേസ് കൊടുക്കുന്നതിന്റെ മുൻപ് വരെ താമസിച്ചു വന്നത്.”

13. The Original Petition was filed in the year 2016. During cross-examination, petitioner stated that during the period from 2005 to 2015, whenever he comes on leave from abroad, they used to stay together and they used to spent half of the leave period at his house and the other half at the house of the respondent. So, his case that the respondent/wife deserted him stands belied by his own version that they were residing together till the filing of the Original Petition. Thus, the petitioner has not made out the ground of desertion as rightly held by the learned Family Court and we find no reasons at all to interfere with the said finding.

14. The next aspect for consideration is whether the

petitioner has made out the ground of cruelty as alleged by him. In the petition, he has alleged that the respondent used to behave in a cruel manner. Cruelty as a ground for divorce varies in interpretation based on the facts and circumstances of each case. Cruelty can be either physical, emotional, psychological or verbal. Different people may experience and pursue cruelty in different ways based on their personality and emotional resilience. Marital expectations and norms differ across communities, religions and socio-economic classes.

15. A behaviour that may be seen as trivial in one marriage might be deeply hurtful in another. Therefore, cruelty is to be assessed on a case-by-case basis. What constitutes cruelty in a matrimonial relationship depends on the unique circumstances, behaviour and experience of the parties involved. Courts do not rely on a rigid definition of cruelty but has to evaluate each case based on its facts. Courts have to analyse whether the conduct makes out unreasonable for the one spouse to live with the other.

16. In *Samar Ghosh vs. Jaya Ghosh* (MANU/SC/1386/2007) the Hon'ble Supreme Court in para 73

observed as follows:

"73. Human mind is extremely complex and human behavior is equally complicated. Similarly, human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. 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. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration."

17. In *Suman Singh v. Sanjay Singh* ((MANU/SC/0251/2017) the Hon'ble Apex Court held that general allegations with no details pleaded such as when such incident occurred (year, month, date etc.) what was its background, who witnessed, what the respondent actually said etc. is hardly sufficient for the petitioner to seek a decree for dissolution of marriage on the ground of cruelty.

18. The party seeking divorce must establish valid legal grounds as recognised under the law, so as to grant divorce. Those grounds typically need to be supported by evidence and if

the party fails to establish the grounds, the divorce has to be disallowed. This ensures that divorce proceedings are fair and not based on arbitrary or frivolous claims. But in the case on hand apart from the sweeping and general statement made by the petitioner that the respondent/wife behaved in a cruel manner and she used to pick up quarrels with him and his relatives, petitioner/husband could not establish any acts of cruelty on the part of the respondent as rightly found by the learned Family Court. Hence, divorce sought on the ground of cruelty cannot be granted.

The appeal is devoid of any merit and it is accordingly dismissed. No cost.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE

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