

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

TUESDAY, THE 21ST DAY OF MAY 2019 / 31ST VAISAKHA, 1941

Mat.Appeal.No. 51 of 2012

AGAINST THE JUDGMENT IN OP 882/2009 of FAMILY COURT,KOTTAYAM AT
ETTUMANOOR DATED 10-11-2011

APPELLANT/RESPONDENT:

ANISH JACOB
AGED 40 YEARS, S/O.P.J.PUNNEN, PULIKOTTIL HOUSE,
HOUSE NO.2, LANDS DOWN PARK, PULAYANARKOTTA P.O.,
THIRUVANANTHAPURAM TALUK, PIN 695031

BY ADVS.
DR.SEBASTIAN CHAMPAPPILLY
SMT.ANNIE GEORGE
SRI.KURIAN ANTONY EDASSERY

RESPONDENT/PETITIONER:

RINKU JACOB,
AGED 34, D/O.DR.GEORGE JOHN, KALLUPALAM HOUSE, BAKER
HILLS, KOTTAYAM VILLAGE, KOTTAYAM TALUK, PIN 686001

BY ADV. SRI.R.REJI

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 21.05.2019,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

SHAFFIQUE, J

This appeal is filed by the respondent in Div.O.P.No.882/2009 on the files of the Family Court, Kottayam at Ettumanoor. The original petition was filed by the respondent herein, wife of the appellant seeking divorce alleging cruelty and desertion.

2. The parties got married on 1.5.1999 and a male child was born in the wedlock on 06.12.2001. They started living separately since 30.12.2005. The contention urged by the petitioner/wife was that all along her husband was demanding her to bring patrimony. She had to suffer cruelty at the hands of the husband on account of such demands. Finally, during 2005, she was severely manhandled and she had to leave the matrimonial home. The respondent approached her again and demanded her parents to sell the property which was allotted to her share in the will executed by her parents. Since the same was not complied with, she was meted out with cruelty and she started to live separately. Further she was asked to perform perverted sex against her liking. She also had a case that after 30.12.2005, no attempt had been made by her husband to take her back to the matrimonial home and he had not taken care of her or child's interest in any manner which would amount to desertion for more than 2 years.

3. The appellant in his objections denied the allegations.

According to him he had not demanded for patrimony nor had asked to sell the property allotted to her. The wife had left the matrimonial home without any valid cause and therefore the petition is liable to be dismissed.

4. Before the Family Court, the petitioner/wife was examined as PW1 and her mother was examined as PW2. The petitioner had relied upon Exts.A1 to A3 documents. The respondent was examined as RW1 and he placed reliance upon Exts.B1 to B5 documents. The Family Court after evaluating the evidence found that the wife was successful in proving cruelty and therefore she was entitled for divorce. It was also found that the husband had deserted the wife and the child for more than two years and therefore the wife was entitled for divorce on the ground of desertion as well.

5. The learned counsel for the appellant argued that there is absolutely no material whatsoever to prove any form of cruelty being meted out against her. That apart, it is in evidence that the Will under which the wife got the property was executed only on 19.4.2006, after the date of their separation. Therefore the whole basis on which the case stands does not exist and for that reason itself, the petition ought to have been dismissed. Further it is contended that it is without the knowledge and approval of the appellant that the wife had left the matrimonial home. She had not stated any specific reason for remaining away from the matrimonial home and therefore the

allegation of desertion itself is not proved. That apart, it is contended that the appellant had specifically requested the court to record his evidence in English language as he was not fully conversant in Malayalam. But the court below had refused the said request and therefore he submits that proper opportunity had not been given to him to adduce evidence.

6. On the other hand, the learned counsel appearing for the respondent/wife submits that the court below had relied upon sufficient material to arrive at the finding that the wife had been subjected to severe cruelty and when sufficient evidence is available, the Family Court was justified in granting divorce. That apart, it is in evidence that it was the husband who had neglected the wife and minor child without any specific reason which would amount to desertion.

7. Having heard the learned counsel on either side and having perused the records, what we find is that PW1, the petitioner/wife had given evidence before court regarding the alleged cruelty. She deposed that on 8.12.2005 and 18.12.2005 she was manhandled by the respondent demanding her parental share in cash. She further deposed that both of them had gone to the parents of the petitioner on 27.12.2005. They resided there till 30.12.2005. The respondent asked the father of the petitioner to give the share amount. Her father told him that if he was intending to purchase any property or building he

could make arrangements for giving some amount as parental share or else the property may be purchased in the joint names of the petitioner, respondent and their child. She further deposed that the respondent was not amenable to the above suggestion. This fact is disputed by the respondent while being examined as RW1. However he admits the fact that the parties are living separately since 30.12.2005.

8. PW2 is the mother of the petitioner. She in her evidence had supported the version of PW1 and had narrated the manner in which the demand for patrimony had been made by the respondent.

9. On the other hand, the respondent alone had been examined before court. He denied the aforesaid facts and placed reliance upon certain photographs to prove that the couple had been leading a happy married life. As far as the petitioner/wife is concerned, her main complaint was that he was demanding the patrimony all along. That apart, according to her she was subjected to perverted sexual activities by her husband. Though the photographs may reflect that the couple were in a happy mood, that does not reflect as to how they were living together. At the time of taking the photographs, they seems to be in a happy mood. But that by itself does not mean that the couple was leading a happy married life, and there was no demand for patrimony.

Having regard to the aforesaid factual situation, when the Family

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Court had placed reliance upon sufficient material to arrive at a finding that the husband had ill-treated his wife, which amounts to mental and physical cruelty, we do not find any reason to interfere with the said finding of fact. There is no perversity or illegality in the said finding warranting any interference. Taking into consideration the aforesaid facts and the fact that the matrimonial tie had been irretrievably broken and there is no chance for a re-union, we don't think it necessary to interfere with the judgment of the Family Court.

The Mat.Appeal is dismissed. No costs.

Sd/-

A.M. SHAFFIQUE

JUDGE

Sd/-

N.ANIL KUMAR

JUDGE

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True copy

P.A. To Judge.