

Rani Malayan vs Shibu Thomas

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Court : Kerala

Decided On : Jun-20-2024

Judge : Honourable Mr. Justice Raja Vijayaraghavan V, Honourable Mr. Justice P.M.Manoj

Appeal No. : Mat.Appeal/499/2021

Appellant : Rani Malayan

Respondent : Shibu Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V & THE HONOURABLE MR. JUSTICE P.M.MANOJ THURSDAY, THE 20TH DAY OF JUNE 2024/30TH JYAISHTA,1946 MAT.APPEAL NO. 499 OF 2021 AGAINST THE JUDGMENT DATED 30/07/2021 IN OP NO.831 OF 2017 OF FAMILY COURT, KOTTAYAM AT ETTUMANOOR APPELLANT/PETITIONER: RANI MALAYAN, AGED 39 YEARS, D/O. RAJAN ISSAC, MALAYAN HOUSE, MUTHOLY P.O, PULIYANNOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT - 686633. BY ADVS. Julian Xavier.J Joseph FIROZ K.ROBIN(F-15) ROY JOSEPH(K/55/2006) ANIES

MATHEW(K/952/2007) NIRMAL KURIEN EAPEN(K/000151/2022)
RESPONDENT/RESPONDENT: SHIBU THOMAS, AGED 45 YEARS,
S/O. K.J. THOMAS, KADIYAMKUTTIYIL HOUSE, VADAVATHOOR P.O,
KOTTAYAM TALUK, KOTTAYAM DISTRICT - 686010 THIS
MATRIMONIAL APPEAL HAVING COME UP FOR FINAL HEARING ON
20.06.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

P.M. Manoj, J.

The appellant is the wife of the respondent. She has preferred the above Mat. Appeal being aggrieved by the

judgment dated 30.07.2021 in O.P. No.831/2017 of the Family

Court, Kottayam at Ettumanur by which her prayer for dissolution of marriage on the ground of cruelty was rejected by the Family Court.

2. The short facts of the case are as follows: The Original Petition was filed under Section 10(1)(x) of

the Divorce Act, 1869 (for brevity Act 4 of 1969) seeking dissolution of marriage. In the petition, it was contended that the marriage between the appellant and respondent was solemnized on 17.04.2006. It was specifically averred in the petition that the respondent neglected, ill-treated, and inflicted

both mental and physical torture during the time they were together. He was suspicious of her chastity and accused her of having immoral relationships. He checked her e-mail account and did not permit her to use the phone or go shopping. The respondent never took any interest in getting her an ID card and did not allow her to go for any job. During her pregnancy, the respondent compelled her to have sex against her consent. Even the day before delivery, she was forced to engage in physical relations. She delivered three children via cesarean

sections, and during her bed rest, the respondent forcefully had sex with her, resulting in health issues. When she showed reluctance to have sex after the cesareans, he slapped her, squeezed her neck, and scratched her face, causing bleeding injuries. While breastfeeding, he grabbed her arm and twisted it forcefully, resulting in injury. On another occasion, he grabbed her by the throat tightly, causing her to urinate on the floor and suffer injuries. She was hospitalized and underwent urgent surgery. On 27-05-2013, the respondent told her that he had no

faith in her. Once, he pushed her and their children into a car and left them in the courtyard of her house, effectively deserting them. On 14-08-2013, the respondent trespassed into her house and tried to attack her. Due to the interference of neighbors, she was saved. A police complaint was filed regarding this incident, which is pending as C.C.No.576/2014 before the Judicial Magistrate of First Class, Kottayam. She stated that due to these circumstances, she was compelled to leave the company of the respondent. She stated that left with no alternative, she filed a petition seeking divorce, return of

money and maintenance as O.P. No.216/2014. She also filed O.P. (G&W) seeking custody of children and M.C.No. 95/2013 seeking maintenance. During the pendency of the petition, the parties decided to enter into a compromise agreement. It was specifically mentioned in the compromise agreement that if the parties are unable to live together, they would be at liberty to file a fresh petition on the same cause of action. As the appellant found that there was no scope for a reunion, O.P.

No.831/2017 was filed by the appellant seeking dissolution of marriage.

3. The respondent appeared and resisted the

averments in the petition. He denied that he had subjected his wife to cruelty as alleged in the petition. He denied that he had ill-treated his wife. He never doubted the chastity of his wife nor raised any allegations of immoral behavior. It is stated that the sexual relations between the spouses were always with the consent of the other. He denied that he subjected his wife to any physical abuse. It is stated that

ever since the appellant lost her job at Bangalore, she has left the company of the respondent and has deserted him. It is stated that on 7.06.2013, the appellant and her parents took away the clothes of the appellant and the children and left the matrimonial home. He stated that he still wishes for a reunion between the spouses.

4. Before the Family Court, the appellant and her father mounted the witness box and tendered evidence as PW1 and 2. Exts.A1 to A5 were marked on their side. On the side of the respondent, he got himself examined as RW1. No documentary evidence was let in on his side.

5. The Family Court framed the necessary issues for

consideration. After a detailed evaluation of the evidence, the Family Court concluded that the appellant failed to prove that the respondent treated her with cruelty. Though the court noted that the parties had been living separately for more than six years, the prayer for dissolution of the marriage was rejected on the ground that she had failed to prove her case.

6. We have heard Sri. Julian Xavier, the learned counsel appearing for the appellant. Notice was issued to the

respondent and the same was served. The matter was also posted for mediation but for the failure of the respondent to appear, it had failed to achieve the objective.

7. The Original Petition was filed under Section 10 (1)(x) of the Divorce Act. We find that there were earlier litigations

between the parties as O.P. No 216/2014 for recovery of amounts, O.P. (G&W) No. 66/2014 for custody of children, and M.C.No. 95/2013 for maintenance. All these matters were settled and a compromise was entered into. As per clause 3 of the compromise agreement, the parties had agreed to wait for a period of one year to explore the possibility of a reunion. The parties had agreed that if they failed to get together inspite of making a conscious attempt, the aggrieved party would be entitled to file a fresh petition on the very same cause of action. The records

clearly reveal that the parties were not able to settle their disputes and reunite. They do not have even an iota of affection towards each other.

8. In the case on hand, the parties are Christians and

the petition seeking dissolution of marriage is filed under Section 10 of the Divorce Act, 1869. Section 10(1)(x) of the Divorce Act, 1869 provides that dissolution of marriage can be granted if the spouse treated the appellant with such cruelty as to cause a reasonable apprehension in the mind of the appellant that it would be harmful or injurious for the appellant to live with the respondent.

9. We have already narrated the allegations leveled by

the wife against the husband. We find that the Family Court has examined the evidence let in by the wife and her father and has found certain inconsistencies in her evidence. After having done that, the Family Court proceeded to hold that the allegations of mental as well as physical cruelty alleged by the appellant against the respondent have not been satisfactorily proven. By giving vague reasons, the Family Court has rejected the evidence tendered by the appellant to the effect that her freedom has been seriously curtailed by her husband. Despite the letting of overwhelming evidence that serious discord had erupted between the parties from 2008, the Family Court has proceeded to trivialize the same. As far as forcing the appellant for sexual pleasure during her pregnancy and against her will is concerned, the Family Court has proceeded to disbelieve her by holding that such a version of the wife can be accepted only

with a pinch of salt. Matters which occur in the privacy of the bedroom of the spouses can be spoken only by the aggrieved spouse and no one else. The acts of physical cruelty alleged by the wife and substantiated by medical records were also rejected by the Family Court by holding that the same is improbable. The fact that the police had charged the respondent for the offence under Section 498A of the IPC was not given due weightage by the Family Court. The evidence tendered by the father of the appellant was ignored by the Family Court by holding that it is mere hearsay.

10. From the materials before this Court and the

previous agreement entered into between the parties and also the subsequent filing of the petition seeking divorce, it is beyond cavil that the marital tie between the parties has broken down irretrievably.

11. In *Jordan Diengdeh v. S.S. Chopra*¹, a case involving the provisions of the Divorce Act, 1869, the Apex 1 (1985) 3 SCC 62

Court had called for the intervention of the legislature to provide a way for couples to end their tie on the ground of irretrievable breakdown of marriage. It was held as under paragraph 7 of the

judgment.

7. It is thus seen that the law relating to judicial

separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste. It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. The case before us is an illustration of a case where the parties are bound together by a marital tie which is better untied. There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken down. We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have

found themselves in. We direct that a copy of this order

may be forwarded to the Ministry of Law and Justice for such action as they may deem fit to take. In the meanwhile, let notice go to the respondents.

12. Much later, a Division Bench of this Court in *Beena M.S v. Shino G. Babu* 2 had observed as under in paragraph 2 [2022 (2) KHC 11] No. 6 of the judgment.

"The law on divorce recognises both fault and consent as a cause for separation. 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 the other party is withholding consent for mutual separation, that itself would cause mental agony and cruelty to the spouse who demands separation. The purpose of marriage is to hold matrimonial ties lifelong, respecting mutual obligations and rights. The companionship of spouses creates oneness of the mind to walk together. It is through mutual respect and Courtship, the companionship is built and fortified. The modern jurisprudence of irretrievable breakdown to allow divorce is premised on the fact that the spouses can never remain together on account of their differences."

13. Now the question is whether the respondent has

treated the appellant with such cruelty as to cause a reasonable apprehension in the mind of the appellant that it would be harmful or injurious for the appellant to live with the respondent.

14. The Apex Court had occasion to examine in detail the definition of mental cruelty in *N.G. Dastane (Dr.) v. S. Dastane*³ and it was observed as under: 3 [(1975) 2 SCC 326]

The inquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.

15. Later, in *Sirajmohmedkhan Janmohamadkhan v.*

*Hafizunnisa Yasinkhan*⁴, the Apex Court held that the concept of legal cruelty changes according to the changes and advancement of social concepts and standards of living. With the advancement of our social conceptions, this feature

has obtained legislative recognition that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors that lead to mental or legal cruelty.

4 [(1981) 4 SCC 250

16. In *Shobha Rani v. Madhukar Reddi*⁵, the Apex

Court while examining the concept of cruelty under the Hindu Marriage Act held that the word cruelty has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se

5 [(1988) 1 SCC 105

unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case if, by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

17. In *Rajani v. Subramonian*⁶, this Court observed

that the concept of cruelty depends upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance, judged by the standard of modern civilization in the background of the cultural heritage and traditions of our society. 6 [AIR 1990 Ker 1]

18. In *Samar Ghosh v. Jaya Ghosh*⁷, the Apex Court after analyzing the law laid down in previous precedents has encapsulated the principles in paragraph Nos. 98 to 102 of the

judgment as under:

98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite

conclusion that there cannot be any comprehensive definition

of the concept of mental cruelty within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human

behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour 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.

7 (2007) 4 SCC 511

100. 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 straitjacket 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.

101. No uniform standard can ever be laid down for

guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of mental cruelty. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the

parties, acute mental pain, agony and suffering as would not make it possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party.

(iii) Mere coldness or lack of affection cannot amount to

cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other

spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of others for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one

spouse actually affecting the physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial, and weighty.

(vii) Sustained reprehensible conduct, studied neglect,

indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty. (viii) The conduct must be much more than jealousy, selfishness, and possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, and normal wear and tear of married life which happens in day-to-day life would not be adequate for a grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few

isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of

sterilization without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for a

considerable period without there being any physical incapacity or valid reason may amount to mental cruelty. (xiii) The Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous

separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

102. When we take into consideration the aforementioned factors along with an important circumstance that the parties

are admittedly living separately for more than sixteen-and-a-half years (since 27-8-1990) the irresistible conclusion would be that the matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent.

19. After appreciating the facts of the instant case in the

light of the principles above, we are of the view that the Family Court had failed to appreciate the evidence let in by the appellant in its proper perspective. The severity of cruelty cannot be determined solely by rigid evidentiary rules. In such cases, the court may also consider the preponderance of probabilities. When cruelty is of such a nature, it can create a reasonable apprehension in the

spouse's mind that living with the partner would be harmful or injurious, as stipulated under Section 10(1)

(x) of the Divorce Act, 1869.

20. In light of the available evidence, we have no doubt in

our minds that the Family Court erred in its assessment of cruelty said to have been inflicted by the respondent upon the appellant. The court was bound to meticulously analyze the conduct of the respondent in the light of the law laid down by the Apex Court as well as this Court. Though the respondent insists that the parties would be able to reconcile their differences, his failure to appear before this Court or to take part in the mediation efforts clearly brings out the hollowness in his actions and words. In view of the discussion above, the appellant is entitled to succeed. This appeal will stand allowed. The marriage between the parties solemnized on 17.04.2006 will stand dissolved. The parties shall bear their respective costs. Sd/- RAJA VIJAYARAGHAVAN V JUDGE Sd/- P.M.MANOJ JUDGE ncd

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