

M. Jayasree vs Indrapalan

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Court : Kerala

Decided On : Oct-03-2023

Judge : Honourable Mr. Justice Amit Rawal, Honourable Mrs. Justice C.S. Sudha

Appeal No. : Mat.Appeal/263/2023

Appellant : M. Jayasree

Respondent : Indrapalan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MRS. JUSTICE C.S. SUDHA TUESDAY, THE 3RD DAY OF OCTOBER 2023 / 11TH ASWINA, 1945 MAT.APPEAL NO. 263 OF 2023 AGAINST THE JUDGMENT AND DECREE DATED 31/12/2022 IN OP 70/2017 OF FAMILY COURT, PALAKKAD APPELLANT/RESPONDENT: M. JAYASREE AGED 44 YEARS W/O INDRAPALAN AND D/O LATE R.M. MANI, DOOR NO. 42, E.B COLONY, IDIGARAI, COIMBATORE, PIN - 641022 BY ADVS. RAJESH SIVARAMANKUTTY VIJINA K. ARUL MURALIDHARAN RESPONDENT/PETITIONER: INDRAPALAN AGED 56 YEARS S/O LATE A.C. VASUDEVAN, DOOR NO. 49/319, INDRAPRASAD,

MOOTHANTHARA, PALAKKAD, PIN - 678012 BY ADV VARGHESE
C.KURIAKOSE

THIS MATRIMONIAL APPEAL HAVING COME UP FOR FINAL
HEARING ON AMIT RAWAL & C.S.SUDHA, JJ.

----- Dated this the 3rd day of
October, 2023

JUDGMENT

C.S.Sudha, J.

This appeal under Section 19(1) of the Family Courts Act, 1984 has been filed by the respondent/wife in OP.No.70/2017 on the file of the Family Court, Palakkad challenging the judgment and decree dated 31/12/2022 granting dissolution of marriage. The respondent herein, is the petitioner/husband in the proceedings before the family court, at whose instance the decree has been granted. The parties will be referred to as described in the proceedings before the family court.

2. The case of the petitioner/husband in O.P.No.70/2017 is - The

marriage of the petitioner and respondent was solemnized on 27/08/2009 under the Hindu Marriage Act, 1955. The respondent believed that the petitioner was in some relationship before his marriage and hence the reason why he married late. Right from the initial days of marriage, the respondent started to quarrel with the mother and sisters of the petitioner. She wanted to take control of the entire family affairs including the business being run by the father of the petitioner. The respondent used to keep picking quarrels on trivial issues with the petitioner and his parents. In the meanwhile, the respondent conceived. She was totally unhappy as she was unable to gain control of the household. Hence, she used to keep threatening the petitioner that she would commit suicide and thus put the entire family of the petitioner behind bars. On 03/06/2010, the respondent left for her parents home. A girl child was born on 20/01/2011. The petitioner was prevented from seeing his newborn child by the respondent and her family. The respondent

harassed the petitioner, his parents and other family members by preferring complaints one after the other in various police stations. Pursuant to the said complaints, the petitioner and his parents were summoned to the police stations. Finding the complaints to be frivolous and false, the police never took any action on the same. The respondent left the matrimonial home on her own accord. Thereafter on 04/04/2013, she sent a lawyer notice seeking restitution of conjugal rights in which the petitioner has been picturized as a drunkard who appropriated all her valuables. This is yet another act of cruelty on the part of the respondent who made the life of the petitioner miserable by her conduct and various acts. From 03/06/2010 the respondent has deserted the petitioner after causing him much mental agony and making his life miserable. The respondent has failed in the discharge of her conjugal obligations. The marriage has irretrievably broken down and so the petitioner is not interested in continuing the relationship. Thus, the petition seeking a decree of dissolution of on the grounds of cruelty and desertion.

3. The respondent/wife denied all the allegations of cruelty.

According to her the petitioner and his family ill treated her in all possible ways. The petitioner, a drunkard under the influence of alcohol used to beat the respondent on almost all days of her stay in the matrimonial home. The petitioner and his parents treated her like an unpaid servant. The respondent never questioned or doubted the late marriage of the petitioner. She never tried to gain control of the household of the petitioner as alleged in the petition. Though the petitioner was informed of the birth of the child, he never came to the hospital. It is only the father of the petitioner who visited the respondent while she was in the hospital. The petitioner failed to pay the hospital expenses or maintain the respondent or the child till now. The respondent left with no option was constrained to move the Family Court, Coimbatore for maintenance. Interim maintenance at the rate of 6,500/- per month has been allowed as per order dated 20/02/2017 in IA 439/2017 in IA 465/2014 in HMOP 495/2013. The petitioner has failed to comply with the order till date. Besides, the respondent has also filed a petition for restitution of conjugal rights which is pending before the Family Court, Coimbatore. The respondent never deserted the petitioner, on the other hand it

was the petitioner who deserted her. The allegation that the respondent had threatened to commit suicide is false and incorrect. No frivolous complaints were made by the respondent to the police as alleged by the petitioner. The respondent along with her child had made several attempts to join the petitioner. All attempts of mediation also failed. The allegation that the respondent deserted the petitioner and that she failed to perform her marital obligations is incorrect and false. The petitioner being the defaulter, cannot claim the relief of divorce on the ground of cruelty and desertion.

4. Before the family court, the petitioner examined himself as PW1

and the respondent as RW1. No documentary evidence was produced by either side. On an appreciation of the oral evidence and after hearing both sides, the family court, by the impugned judgment found the case of desertion and cruelty set up by the petitioner to have been substantiated and hence decreed in favour of the petitioner. Aggrieved, the respondent/wife has come up in appeal.

5. The only point that arises for consideration before us is whether there is any infirmity in the findings of the family court in the impugned

judgment calling for an interference by this court.

6. Heard both sides.

7. On going through the testimony of PW1 as well as RW1, we find

incompatibility writ large in the relationship. The respondent admits that she had given complaints to the police. However, her version is that the said complaints were made as the petitioner had refused to take her to the matrimonial home. According to the petitioner, the police never took any action as they found the complaints to be false and frivolous. The respondent has not produced any evidence to show the action that had been taken by the police on the complaints given by her. In such circumstances the stand of the petitioner can only be believed that the complaints were closed as police found them frivolous and false. Even otherwise the police could not have taken any action on the complaint of alleged desertion of the respondent by the petitioner.

8. The parties have been separated right from the year 2010. Nearly

13 years have elapsed since the separation. The petitioner/husband has made it clear by way of pleadings and his testimony before court that he is not interested in continuing the relationship as the respondent by her acts of cruelty like constant bickering, harassment by filing repeated false complaints to the police, raising false allegation of he being a drunkard and wife beater, has made his life miserable and that he is not ready to condone these acts of cruelty on her part. On going through the counter filed by the respondent, her case is that the petitioner is a drunkard and wife beater and that she had been treated like a maid servant in the matrimonial home. In spite of her claims that she was made to suffer a lot and was unable to lead a life of self-respect in her matrimonial home, she still wants the marital relationship to continue and appears to be clinging on to her husband. To a query by us to the learned

counsel for the respondent/wife as to why she wants to continue the relationship in spite of the fact that the parties have been unable to reconcile their differences and come together in spite of nearly 13 years of separation, it was submitted that the petitioner/husband being the defaulter, cannot claim the relief for divorce on the ground of desertion or cruelty.

9. As held by the Apex Court in *Samar Ghosh v. Jaya Ghosh*

2007(4) SCC 511 : 2007(2) KHC 231 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. 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. 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. What is cruelty in one case may not amount to cruelty in another case. The concept of cruelty differs from person to person depending upon a person's upbringing, level of sensitivity, education, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. On a consideration of the complete

matrimonial life of the parties, if mental pain, agony and suffering as would make it not possible for the parties to live with each other is made out, then the same would come within the broad parameters of mental cruelty. The wronged party then cannot be reasonably be asked to put up with such conduct. Further, where there has been a long period of continuous separation, it can 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 situations, it would be mental cruelty to continue living with other party.

9.1. If the conduct and character of a party causes misery and agony to

the other spouse, the said conduct would certainly be an act of cruelty to the spouse justifying grant of divorce. When the parties cannot live together and when there is no possibility of the relationship being revived, there is no point in continuing the relationship. In such situations, refusal by one spouse to consent for divorce on mutual consent would certainly be an act of cruelty to the wronged spouse. [Naveen Kohli v. Neelu Kohli, 2006 KHC 621: (2006) 4 SCC 558 and Beena M.S. v. Shino G.Babu, 2022(2) KHC 11]

9.2. In K.Srinivas Rao v. D.A.Deepa, (2013)5 SCC 226, it has been

held that making unfounded allegations against the spouse or his/her relatives

in the pleadings, filing repeated false complaints and cases in the court against the spouse would amount to causing mental cruelty to the other spouse. 9.3. As held by a Division Bench of this Court in Beena M.S. (Supra), incompatibility is a factor that can be reckoned while considering the ground for cruelty, if one of the spouses withholds the consent of mutual separation, though incompatibility is not recognised as the ground for divorce. (See also Shilpa Sailesh v. Varun Sreenivasan, 2023 SCC Online SC 544).

10. In these circumstances, we find no infirmity in the impugned

judgment calling for an interference.

In the result, the appeal is dismissed. No costs. Interlocutory applications, if any pending, shall stand closed. Sd/- AMIT RAWAL JUDGE Sd/- C.S.SUDHA JUDGE
ami/

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