

Sony Jerry vs Jerry Douglas

Sony Jerry vs Jerry Douglas

SooperKanoon Citation : sooperkanoon.com/1472607

Court : Kerala

Decided On : Jun-17-2022

Judge : Honourable Mr. Justice a.Muhammed Mustaque,Honourable Mrs. Justice Sophy Thomas

Appeal No. : Mat.Appeal/478/2016

Appellant : Sony Jerry

Respondent : Jerry Douglas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
FRIDAY, THE 17TH DAY OF JUNE 2022 / 27TH JYAISHTA, 1944
MAT.APPEAL NO.478 OF 2016 AGAINST THE JUDGMENT & DECREE
IN OP 868/2009 OF FAMILY COURT, THIRUVANANTHAPURAM
APPELLANT/PETITIONER: XXXXX BY ADVS.
SRI.P.B.SAHASRANAMAN SRI.T.S.HARIKUMAR
RESPONDENT/RESPONDENT: XXXXX BY JERRY DOUGLAS(Party-
In-Person) THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY
HEARD ON 17.06.2022, ALONG WITH MAT.APPEAL No.693 OF 2016

AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mat.Appeal No.478 of 2016 & conn. cases 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS FRIDAY, THE 17TH DAY OF JUNE 2022 / 27TH JYAISHTA, 1944 MAT.APPEAL NO. 693 OF 2016 AGAINST THE JUDGMENT DTD.13.01.2016 IN OP 868/2009 OF FAMILY COURT, THIRUVANANTHAPURAM.

APPELLANT/COUNTER PETITIONER: XXXXX BY GERRY DOUGLAS(Party-In-Person) RESPONDENT/PETITIONER: XXXXX BY ADVS. SRI.T.S.HARIKUMAR SRI.P.B.SAHASRANAMAN THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 31.05.2022, ALONG WITH Mat.Appeal.478/2016 AND CONNECTED CASES, THE COURT ON 17.06.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.478 of 2016 & conn. cases 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS FRIDAY, THE 17TH DAY OF JUNE 2022 / 27TH JYAISHTA, 1944 MAT.APPEAL NO. 1433 OF 2017 AGAINST THE JUDGMENT DTD.07.10.2017 IN OP 746/2014 OF FAMILY COURT, PATHANAMTHITTA APPELLANT/PETITIONER: XXXXX BY GERRY DOUGLAS(Party-In-Person) RESPONDENTS: 1 XXXXX 2 XXXXX 3 XXXXX 4 XXXXX BY ADVS. SRI.T.S.HARIKUMAR SRI.P.B.SAHASRANAMAN THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 31.05.2022, ALONG WITH Mat.Appeal.478/2016 AND CONNECTED CASES, THE COURT ON 17.06.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.478 of 2016 & conn. cases 4

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS FRIDAY, THE 17TH DAY OF JUNE 2022 / 27TH JYASHTA, 1944 MAT.APPEAL NO.117 OF 2021 AGAINST THE ORDER DTD. 26.05.2020 IN OP 1269/2014 OF FAMILY COURT, PATHANAMTHITTA APPELLANT/PETITIONER: XXXXX BY GERRY DOUGLAS(Party-In-Person) RESPONDENT/RESPONDENTS 1 TO 3: 1 XXXXX 2 XXXXX 3 XXXXX BY ADVS. P.B.SAHASRANAMAN T.S.HARIKUMAR THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 31.05.2022, ALONG WITH Mat.Appeal.478/2016 AND CONNECTED CASES, THE COURT ON 17.06.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.478 of 2016 & conn. cases 5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS FRIDAY, THE 17TH DAY OF JUNE 2022 / 27TH JYASHTA, 1944 OP (FC) NO. 31 OF 2017 AGAINST THE COMMON ORDER DTD.13.1.2016 IN I.A.2448/14, THIRUVANANTHAPURAM PETITIONER/PETITIONER: XXXXX BY GERRY DOUGLAS(Party-In-Person) RESPONDENT/COUNTER PETITIONER/PW2: XXXXX BY ADVS. SRI.T.S.HARIKUMAR SRI.P.B.SAHASRANAMAN THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 31.05.2022, ALONG WITH Mat.Appeal.478/2016 AND CONNECTED CASES, THE COURT ON 17.06.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.478 of 2016 & conn. cases 6

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS FRIDAY, THE 17TH DAY OF JUNE 2022 / 27TH JYASHTA, 1944 OP (FC) NO. 32 OF 2017 AGAINST THE COMMON ORDER DTD.13.1.2016 IN I.A.2448/14, THIRUVANANTHAPURAM

PETITIONER/PETITIONER: XXXXX BY GERRY DOUGLAS(Party-In-Person)
RESPONDENT/COUNTER PETITIONER/PW3: XXXXX BY ADVS.
SRI.T.S.HARIKUMAR SRI.P.B.SAHASRANAMAN THIS OP (FAMILY COURT)
HAVING BEEN FINALLY HEARD ON 31.05.2022, ALONG WITH
Mat.Appeal.478/2016 AND CONNECTED CASES, THE COURT ON 17.06.2022
DELIVERED THE FOLLOWING: Mat.Appeal No.478 of 2016 & conn. cases 7

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE
HONOURABLE MRS. JUSTICE SOPHY THOMAS FRIDAY, THE 17TH DAY OF
JUNE 2022 / 27TH JYAISHTA, 1944 OP (FC) NO. 42 OF 2017 AGAINST THE
COMMON ORDER DTD.13.1.2016 IN I.A.2449/14 IN O.P No.868/2009 OF
FAMILY COURT, THIRUVANANTHAPURAM PETITIONER/PETITIONER: XXXXX
BY GERRY DOUGLAS(Party-In-Person) RESPONDENT/COUNTER
PETITIONER/PW1: XXXXX BY ADVS. SRI.T.S.HARIKUMAR
SRI.P.B.SAHASRANAMAN THIS OP (FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 31.05.2022, ALONG WITH Mat.Appeal.478/2016 AND CONNECTED
CASES, THE COURT ON 17.06.2022 DELIVERED THE FOLLOWING:
Mat.Appeal No.478 of 2016 & conn. cases 8

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED
MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
FRIDAY, THE 17TH DAY OF JUNE 2022 / 27TH JYAISHTA, 1944
CRL.REV.PET NO. 757 OF 2018 AGAINST THE JUDGMENT
DTD.22.3.2017 IN CRL.A 558/2012 OF ADDITIONAL DISTRICT &
SESSIONS COURT - V, THIRUVANANTHAPURAM AGAINST THE
ORDER/JUDGMENT IN MC 67/2010 OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE ,TRIVANDRUM

REVISION PETITIONER/APPELLANT No.1/RESPONDENT No.1: XXXXX BY
GERRY DOUGLAS(Party-In-Person)
RESPONDENTS/RESPONDENTS/PETITIONER: 1 XXXXX 2 XXXXX BY ADVS.
T.S.HARIKUMAR P.B.SAHASRANAMAN THIS CRIMINAL REVISION PETITION
HAVING COME UP FOR ADMISSION ON 31.05.2022 ALONG WITH
Mat.Appeal.478/2016 AND CONNECTED CASES, THE COURT ON 17.06.2022
DELIVERED THE FOLLOWING: Mat.Appeal No.478 of 2016 & conn. cases 9
A.MUHAMED MUSTAQUE &

SOPHY THOMAS, JJ.

----- Mat.Appeal Nos.478 & 693 of 2016, 1433 of
2017, 117 of 2021, O.P (F.C) Nos.31, 32 & 42 of 2017 & CrI.R.P No.757 of 2018
----- Dated this the 17th day of June, 2022

JUDGMENT

Sophy Thomas , J.

The parties to the proceedings are husband and wife. The

wife filed O.P No.868 of 2009 before Family Court, Thiruvananthapuram for recovery of gold ornaments and money from the husband. The husband filed O.P No.746 of 2014 before Family Court, Pathanamthitta for recovery of gold from the wife. He filed O.P No.1269 of 2014 before Family Court, Pathanamthitta for dissolution of marriage. The Family Court, Thiruvananthapuram decreed in part O.P No.868 of 2009 filed by the wife. Against rejection of her prayer for return of patrimony, she preferred Mat.Appeal No.478 of 2016,

Mat.Appeal No.478 of 2016 & conn. cases 10

and against the decree granted in her favour, the husband preferred Mat.Appeal No.693 of 2016. Alleging perjury against PWs 1 to 3 in O.P No.868 of 2009, the husband filed I.As, under Section 340 of Cr.P.C to prosecute them. Against dismissal of those I.As by the Family Court, he preferred O.P (FC) Nos.31 of 2017,

32 of 2017 and 42 of 2017.

2. Against dismissal of O.P No.1269 of 2014 for

divorce, the husband preferred Mat.Appeal No.117 of 2021, and against dismissal of his O.P No.746 of 2014 for recovery of gold, he preferred Mat.Appeal No.1433 of 2017.

3. Against the protection order obtained by the wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005, the husband preferred Crl.Appeal No.558 of 2012 before Additional District and Sessions Court-V, Thiruvananthapuram and against dismissal of that appeal, he has preferred Crl.R.P No.757 of 2018.

4. The husband and wife shall be referred as the appellant and respondent hereinafter, for the purpose of convenience.

5. The marriage between the appellant and the Mat.Appeal No.478 of 2016 & conn. cases 11

respondent was solemnised on 16.09.1995 at St.Jude Malankara Syrian Catholic Church, Kulanada in Pathanamthitta district. According to the respondent, 125 sovereigns of gold ornaments and Rs.5 lakh was the patrimony given to her from her family. The entire gold ornaments and cash were entrusted with the appellant and his father, in trust for her. At the time of marriage, the appellant was working in Kuwait and he took

the respondent also to Kuwait on a housemaid visa. After reaching Kuwait, she was working on temporary basis in different institutions, and her entire salary was received by the appellant and misappropriated by him. Two children were born in their wedlock. Her matrimonial life was miserable as she was ill-treated mentally and physically by the appellant. In July, 2009 she was sent back from Kuwait and she was not allowed even to take her children along with her. After reaching her paternal home at Thiruvananthapuram, she filed O.P No.868 of 2009 for getting back her patrimony as well as her salary received by the appellant.

6. In the year 2014, the appellant approached Family Court, Pathanamthitta, with O.P No.1269 of 2014 for Mat.Appeal No.478 of 2016 & conn. cases 12 dissolution of marriage on the ground of adultery, cruelty and desertion, and he filed O.P No.746 of 2014 before the very same court for getting back 96.25 sovereigns of gold ornaments allegedly entrusted with the respondent or its equivalent value. The Family Court, Pathanamthitta was pleased to dismiss both the O.Ps filed by him.

7. Admittedly the appellant and respondent are living

separately from 2009 July onwards, filing cases against each other, and making allegations and counter allegations to their detriment. The elder daughter became major by this time, and she is married away. The younger son is now 17 years old and is pursuing his Plus 2. 54 cases are there to their credit, filed for and against. But it seems that, even now they have not lost their vigour to continue their fight against each other.

8. Now let us examine each case one by one to find out whether any interference is warranted in the judgments/orders impugned. Mat.Appeal.117 of 2021

9. This appeal is filed by the husband, against dismissal of O.P No.1269 of 2014 filed by him, for getting Mat.Appeal No.478 of 2016 & conn. cases 13 divorce from the wife.

10. The appellant was claiming divorce on the ground of

cruelty, adultery and desertion. The Family Court found that the adultery alleged against the wife with respondents 2 and 3 was a false story and in fact, the appellant hired the 2nd respondent to cook up a case against her. Learned counsel Sri.T.S.Harikumar appearing for the respondent pointed out that, the 2nd respondent appeared before the Family Court, even without getting a notice from the court, and he gave

evidence against the respondent, in collusion with the appellant. The case of adultery with the 3rd respondent also was not found to be genuine, and there is nothing on record to enter into a different finding. So the dismissal of the divorce

petition, finding that the ground of adultery was not proved against the respondent, is liable to be upheld.

11. The ground of desertion was also found against the

appellant by the Family Court. The available facts and evidence are sufficient to show that, when the ill-treatment became unbearable, the respondent made a complaint before the embassy in Kuwait on 08.06.2009, with a request to send her Mat.Appeal No.478 of 2016 & conn. cases 14

back to her native. Meanwhile on 02.07.2009, a divorce decree was passed by Kuwait Ministry of Justice, on a petition filed by the appellant, and visa of the respondent was cancelled on the very same day. On 16.07.2009 the appellant handed over her passport and ticket at the Airport, and she was deported from Kuwait. Thereafter, they never lived together. From the available facts and evidence, it has to be held that the case of desertion alleged against the respondent could not be proved against her, and so, the dismissal of divorce petition for not proving desertion is only to be justified.

12. The appellant contended that the respondent was a cruel wife to him. She never attended the affairs of the

appellant or his children. she refused to have sexual relationship with him. He was not permitted even to sleep with her inside the bedroom. She was very rude and she used abusive words against him. She was compelling him to dissolve their marriage. She tried to kill him by adding poison to his food. She did not attend him when he suffered acid injury to

his eyes. On 17.07.2009, she convened a press meet at Thiruvananthapuram inviting media people and made baseless Mat.Appeal No.478 of 2016 & conn. cases 15 allegations against the appellant defaming him in public. With all these acts of cruelty, he is not in a position to continue his conjugal relationship with the respondent.

13. The respondent also is making counter allegations

against the appellant. According to her, the appellant was leading an adulterous life with one Smt.Prestina Antony. He was subjecting the respondent to all sorts of mental and physical torture during her stay in Kuwait. He exploited her physically and financially misappropriating her patrimony,

salary etc. She is admitting the press conference, but according to her, she was deported from Kuwait, after a fake decree of divorce obtained by the appellant from the Kuwait Ministry, and on consequent cancellation of her visa, even without permitting her to take her little children with her. She was crying throughout her journey from Kuwait, and several persons noticed the same, and later when the media people asked her about the incident, she divulged the things to them, out of pain and agony of forcible separation from her children. In that case, it cannot be termed as an intentional act, aimed to defame or malign the appellant, and it could be termed only

Mat.Appeal No.478 of 2016 & conn. cases 16 as an outcry of a mother, who was forced to separate from her little children.

14. The respondent herself is admitting that from 2005

onwards there is no husband and wife relationship between them. The appellant would say that the respondent refused sex to him without any valid reasons and that itself will amount to cruelty. The respondent also is rather admitting lack of intimacy between herself and the appellant after birth of the second child. In Ext.A5, mother of the respondent gave testimony to the effect that the appellant and respondent were sleeping in two different rooms even in 2003 and they had no physical relationship. The refusal to have sexual relationship without valid reasons can be termed as cruelty from the part of a wife.

15. The respondent filed complaint against the appellant

before the Embassy in June 2009 alleging physical torture, and with a request to send her to her native. In July 2009, the appellant obtained a decree of divorce from the Kuwait Ministry and it was served on the respondent. She was sent back from Kuwait on 16.07.2009. For the last 14 years, the appellant and Mat.Appeal

No.478 of 2016 & conn. cases 17 respondent are living separately, filing cases one after another

against each other. As we have already seen, 54 cases are there to their credit, and presently we are dealing with 8 cases pending between them. The respondent also is admitting that there is no chance for a reunion and their relationship is dead practically and emotionally. During pendency of these matters, we tried for an amicable settlement but it did not work out.

16. It is true that a few isolated instances over a certain

period will not amount to cruelty but the married life has to be assessed as a whole. The ill-conduct must be persisting for a fairly lengthy period. Here the couple live separately for the last more than 14 years, with their heart full of resentment and dirty allegations against each other. They have proved themselves that there is no rose, and only thorns are left, and there is no scope for their conjugal life to sprout again. Their relationship has deteriorated to a point that it is not possible or feasible for them to live together.

17. As held by the Hon'ble Supreme Court in Samar Ghosh vs. Jaya Ghosh ((2007) 4 SCC 511) once the parties have separated and separation has continued for a sufficient Mat.Appeal No.478 of 2016 & conn. cases 18 length of time, and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken

down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

18. In Navin Kohli vs. Neelu Kohli ((2006) 4 SCC

558), the Apex Court held that if the parties cannot live together on account of obvious differences, one of the parties is adamant and callous in attitude for having divorce on mutual consent, such attitude can be treated as the cause of

mental cruelty to other spouse.

19. We had held interactions with the appellant,

respondent and also their children to see whether any chances are there for an amicable settlement. Both parties are not willing for a reunion, and even their children are not intending for a reunion of their parents. Even then, the respondent is not amenable for a divorce on mutual consent, by which she can Mat.Appeal No.478 of 2016 & conn. cases 19 be set free from all sorts of wild allegations levelled against her by the appellant. But she is adamant and she is not willing.

20. We had occasion to deal with a case like this, in

Beena vs. Shino G.Babu reported in (2022 (2) KLT 139), in which we have held that 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. If the court is able to form an opinion that due to incompatibility, the marriage failed and one of the spouses was withholding consent for mutual separation, the court can very well treat that conduct itself as cruelty. If one of the spouses is refusing to accord divorce on mutual consent after having convinced of the fact that the marriage failed, it is nothing but cruelty to spite the other spouse. No one can force another to continue in a legal tie and relationship if the relationship deteriorated beyond repair. The portrayal of such conduct

Mat.Appeal No.478 of 2016 & conn. cases 20 through manifest behaviour of the spouse in a manner understood by a prudent as 'cruelty' is the language of the lawyer for a cause before the court.

21. There is no useful purpose served in prolonging the

agony any further and the curtain should be rung at some stage. Both the appellant and respondent are alleging adultery and cruelty against each other. They are living separately for the last more than 14 years. There is no chance for a

reunion as admitted by both. Though she is alleging all sorts of physical and mental torture against the appellant, she has not filed any petition for divorce against him. At the same time, she is opposing the divorce petition filed by her husband, and she is not willing even for filing a joint petition for divorce, even though she is well aware of the fact that, she could get a decree of divorce on mutual consent, without leaving any stigma on her.

22. As we have found, the respondent was denying

sexual life to the appellant as borne out from their own testimony and the testimony of her mother. Moreover even on fully knowing that their relationship is dead practically and Mat.Appeal No.478 of 2016 & conn. cases 21

emotionally and there is no chance for a reunion, she is not willing for a divorce on mutual consent to the detriment of the other party, which will also amount to cruelty as it was held in Beena's case (supra). There is no merit in preserving intact a marriage when the marital tie becomes injurious to the parties and a burden to their children. We could see no signs of life in their dead relationship and there is no chance to save their marriage.

23. Considering all these facts and circumstances, we have no hesitation to dissolve their marriage on the ground of matrimonial cruelties.

24. Hence, Mat. Appeal No.117 of 2021 is allowed dissolving the marriage between the appellant and respondent solemnised on 16.09.1995, setting aside the impugned

judgment dated 26.05.2020.

Mat.Appeal No.478 of 2016 and 693 of 2016.

25. These appeals arise out of the same judgment in O.P No.868 of 2009 on the file of Family Court, Thiruvananthapuram. The respondent filed that O.P for recovery of patrimony of 125 sovereigns of gold and Rs.5 lakh Mat.Appeal No.478 of 2016 & conn. cases 22

along with recovery of her salary received in Kuwait, which the appellant had misappropriated. The Family Court turned down her prayer for recovery of patrimony, but permitted her to recover Rs.8,17,500/- with interest from the appellant, being her salary received by him, and also to receive the Fixed Deposit of Rs.6 lakh with interest from Federal Bank, Pandalam Branch. Against denial of patrimony, she filed Mat.Appeal No.478 of 2016, and against the money decree granted in her favour, the husband filed Mat.Appeal No.693 of 2016.

26. The respondent contended that at the time of

marriage she was given 100 sovereigns of gold ornaments by her parents and she received 25 sovereigns of gold coins and other ornaments as marriage gift from relatives. Rs.5 lakh was given as patrimony amount from her family. The gold ornaments and cash were entrusted with the appellant and his father, but they never returned the same.

27. It has come out in evidence that the marriage between the appellant and respondent was solemnised on 16.09.1995. After marriage the appellant returned to Kuwait Mat.Appeal No.478 of 2016 & conn. cases 23 where he was working, leaving the respondent in Kerala. So, normally she might have made arrangements to keep her gold

ornaments safe, in the absence of her husband. She herself admitted that Ext.A10 series wedding photographs will not show 100 sovereigns of gold ornaments, and the explanation given by her is that among Malankara Syrian Catholics, there is no practice of wearing all the ornaments at the time of marriage, and so the balance gold ornaments were kept by her without wearing at the time of marriage. Since the respondent was here in Kerala, even after the appellant went back to Kuwait, it is difficult to believe that she had entrusted her 125 sovereigns of gold ornaments with the husband or his parents. The appellant would say that after the marriage the respondent was staying at her paternal house, and she used to go to her matrimonial home only occasionally. PW1 admitted that she had attended DSM course at Thiruvananthapuram during 1995- 96 after the marriage, and so obviously she was staying at her paternal house even after the marriage. According to her, she was taken to Kuwait only in September 1996, though the

marriage was in September 1995. So she was here for one

Mat.Appeal No.478 of 2016 & conn. cases 24 year after the marriage. There is no proof to show that the respondent was having 125 sovereigns of gold ornaments at the time of marriage, and there is nothing to show that her gold ornaments were entrusted with the appellant or his parents.

28. Regarding the patrimony of Rs.5 lakh also, there is

no cogent evidence to support the claim of the respondent. If Rs.5 lakh was handed over to the appellant or his father, definitely the respondent would have been able to show the source of that money. The case of the respondent is that during betrothal ceremony Rs.4 lakh in cash was given, and a Fixed Deposit for Rs.1 lakh was handed over by her mother to

the father of the appellant. If there was F.D for Rs.1 lakh, definitely documents from bank also would have been there, to substantiate that fact. But no evidence is forthcoming to prove the source of Rs.5 lakh alleged to have been given by her mother to the father of the appellant. The testimony of witnesses also could not inspire confidence of the Family Court to prove that transaction.

Mat.Appeal No.478 of 2016 & conn. cases 25

29. So the finding of the Family Court that the

respondent could not prove entrustment of 125 sovereigns of gold ornaments and Rs.5 lakh with the appellant and his father towards her patrimony, is liable to be confirmed.

30. Now regarding the recovery of salary claimed by the

respondent, she would say that though she reached Kuwait on a housemaid visa, she was working temporarily in different institutions and was getting salary. Her entire salary received in her bank account was taken by the appellant, and she was not permitted to use the same. But according to the appellant since she was on housemaid visa, and not on any work visa, she was not supposed to do any work in Kuwait, and if at all she worked there and earned some amount, it will

amount to black money. It has come out in evidence that the respondent is a Post Graduate in Chemistry with B.Ed. The appellant was not having any good job in Kuwait to provide family visa for his wife. So obviously to support the family, the respondent who was well qualified might have gone for some job in Kuwait, even if she was not there on a work visa.

Mat.Appeal No.478 of 2016 & conn. cases 26

31. According to the respondent, she worked as a teacher, chemist and also as a Laboratory Analyst on

temporary basis. Rs.6 lakh received from her salary was deposited in Federal Bank, Pandalam branch in the year 2004, and though the F.D is in the joint name of herself and the appellant, that amount absolutely belongs to her. During interaction with the parties, the appellant also was ready to permit the respondent to receive that amount. So obviously that amount was deposited out of her salary, and so she is entitled to receive the amount covered by Ext.A6 series F.D

receipts from Federal bank, Pandalam. So the finding of the Family Court that the respondent is entitled to receive the F.D amount of Rs.6 lakh with interest from Federal Bank, Pandalam branch is liable to be upheld.

32. The Family Court found that the salary which the

respondent might have received while working as a temporary teacher or as a chemist at Riqqua Sewage Treatment Plant, amounting to Rs.2,81,100/- in total, as claimed by her, might have been utilised for her personal expenses. At the same time, the Family Court found that the respondent could not Mat.Appeal No.478 of 2016 & conn. cases 27 prove her temporary job as a teacher, or the remuneration received by her either as a teacher or as a chemist. But even then the Family Court took into account, the alleged salary that might have been received by her from those temporary jobs, and adjusted it towards her personal expenses. Since there was no evidence to prove those jobs, or the income received therefrom, the Family Court could not be justified in adjusting the salary allegedly received by her, towards her personal expenses, without any proof for

the same.

33. The available facts and evidence, especially Exts.A4,

A5, A7, A8 and A12 will prove her employment with Central Environmental Laboratory as an Analyst, with a monthly salary of 350 K.D. So for 27 months, she might have received total remuneration of Rs.14,17,500/-, as observed by the Family Court. Since Rs.6 lakh was seen deposited out of her salary in Federal Bank, Pandalam, she was found eligible to receive the balance amount of Rs.8,17,500/- from the appellant and his assets. But, as she was living with family of two children, we cannot accept her case that her entire salary was given to the appellant. Moreover, it is the case of the respondent that their

Mat.Appeal No.478 of 2016 & conn. cases 28

relationship was never cordial, and she was ill-treated and tortured by the appellant. If that be so, she might have been expending money from her own pocket to meet the personal needs of herself and her children. So even if she had earned Rs.14,17,500/- as her salary from Central Environmental Laboratory, we cannot presume that after depositing Rs.6 lakh

as F.D, the entire balance was given to the appellant. After deducting amounts towards the personal expenses of the respondent and her children, we are of the view that the respondent is entitled to get back Rs.5 lakh from the appellant apart from the F.D receipt for Rs.6 lakh.

34. Since the respondent is now employed as Administrative Officer in a private Engineering College earning more than Rs.25,000/- per month, she is not entitled to get maintenance from the appellant.

35. From the foregoing discussion, Mat.Appeal No.478 of 2016 filed by the respondent/wife is liable to be dismissed, and Mat.Appeal No.693 of 2016 filed by the appellant/husband is to be allowed in part as follows : Relief No.(i) is modified reducing the amount to be Mat.Appeal No.478 of 2016 & conn. cases 29

recovered to Rs.5 lakh with interest at the rate of 6% per annum from the date of petition till realisation, from the appellant and his assets. Relief No.(ii) in the impugned

judgment is hereby upheld.

Mat. Appeal No.1433 of 2017

36. The appellant filed O.P No.746 of 2014 before Family

Court, Pathanamthitta for recovery of 96.25 sovereigns of gold ornaments allegedly entrusted with the respondent or its equivalent value Rs.20,12,250/-. The Family Court rejected his claim, against which he has preferred this appeal.

37. The case of the appellant is that he was working in

Kuwait since 1994, and after his marriage in the year 1995, he took the respondent also to Kuwait in the year 1996. At the time of marriage he had given a thali chain weighing 5 sovereigns and thali weighing 2 grams to the respondent. Moreover before he returned to Kuwait, he entrusted his ornaments weighing 6 sovereigns with the respondent. In

Kuwait he had kept 85 sovereigns of gold ornaments in his cupboard. When the respondent returned to Kerala from Kuwait, she wrongfully removed those ornaments also from the cupboard. Mat.Appeal No.478 of 2016 & conn. cases 30

38. The respondent is admitting receipt of thali chain and

thali from the appellant but according to her it was weighing only 2 sovereigns. In the year 2008, the appellant snatched away the thali chain from her, and she had to return to Kerala even without her thali chain. He never purchased or entrusted

any gold ornaments with the respondent. In fact he clandestinely obtained divorce from Kuwait Ministry and she was deported on cancellation of her visa. She had to leave Kuwait at midnight, even without taking her little children. In such a situation, the case of the appellant that the respondent had removed 85 sovereigns of gold ornaments from his cupboard is difficult to be believed.

39. The Family Court, on analysing the evidence adduced

from either side, came to the conclusion that there was no entrustment of gold ornaments with the respondent and the allegation of removal of 85 sovereigns of gold ornaments also was found against. After reaching the native, the respondent filed O.P No.868 of 2009 before Family Court, Thiruvananthapuram to get back her patrimony and salary from the appellant. The appellant approached Family Court, Mat.Appeal No.478 of 2016 & conn. cases 31

Pathanamthitta, only in the year 2014 alleging removal of his gold ornaments by the respondent. Admittedly, the respondent was sent back from Kuwait in the year 2009 and only after five years of her return, he made a claim for recovery of gold against her. That itself will show the falsity of his claim. Moreover, no reliable documents were produced by the

appellant to prove purchase of 85 sovereigns of gold ornaments while he was in Kuwait. So, the finding of the Family Court that there was no proof for the entrustment of gold or its wrongful removal by the respondent is only to be confirmed. Hence, Mat.Appeal No.1433 of 2017 is liable to be dismissed. O.P(F.C) Nos. 31, 32 and 42 of 2017

40. These original petitions are filed by the appellant, against dismissal of I.A. Nos.2448, 2449 and 2450 of 2014 in O.P No.868 of 2009 on the file of Family Court,

Thiruvananthapuram. The appellant filed those I.As against PWs 1 to 3 in that O.P to initiate prosecution against them under Section 340 of the Cr.P.C, for the offence of perjury.

41. The respondent had filed O.P. No.868 of 2009 for recovery of money and gold from the appellant. In order to Mat.Appeal No.478 of 2016 & conn. cases 32 prove her case, she herself got examined as PW1 and two

other witnesses were examined as PWs 2 and 3. It was the case of PW1 that 125 sovereigns of gold ornaments and Rs.5 lakh in cash were given as her patrimony. PWs 2 and 3 supported her saying that, they had witnessed handing over of the

amount by the mother of the respondent to the father of the appellant.

42. According to the appellant, PWs 1 to 3 were stating falsehood before court, to suit the case of entrustment of

patrimony, fully knowing that their statements were false. So they have committed offence of perjury to be prosecuted under Section 340 of Cr.P.C. Moreover, PW1 suppressed the factum of her employment in order to claim maintenance from the appellant, and she gave false evidence to the effect that she was working in Kuwait, though she had no work permit. So also she is liable to be prosecuted.

43. Learned Family Court, on appreciating the facts and

evidence, found that, at no stretch of imagination the evidence adduced by PWs 1 to 3 could be characterised as false evidence. Even if the evidence adduced by PWs 1 to 3 was Mat.Appeal No.478 of 2016 & conn. cases 33 found not reliable to substantiate the claim, it is not sufficient to proceed against them under Section 340 of Cr.P.C. (Reliance placed on Varghese vs. State of Kerala (1989 (1) KLT 625).

44. Intention is the essential ingredient in the constitution

of the offence of perjury. If the statement was false and known or believed to be false, it may be presumed that, in making that statement, he intentionally gave false evidence. A person can be held guilty under Section 193 of IPC, if he had the intention of fabricating evidence in order that it should appear in evidence in a judicial proceeding. The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding, is not by itself always sufficient to justify a prosecution for perjury under Section 193 of IPC, but it must be established that the deponent has intentionally given a false statement in any stage of the judicial proceedings or fabricated false evidence for the purpose of being used in any stage of the judicial proceedings.

45. In family disputes, we often see warring couples making allegations and counter allegations to suit their claims and they may examine any number of witnesses in support of Mat.Appeal No.478 of 2016 & conn. cases 34

their claim, even if it is bogus. The statement of witnesses may or may not be convincing, and accordingly the court may accept or reject their testimony. The statement of witnesses sometimes may not tally with the attending circumstances or may not corroborate the pleadings. If the statement of a witness is found to be not acceptable, or is found not tallying with the pleadings in the petition, it is not a circumstance warranting prosecution for perjury. If prosecution has to be initiated in such matters, it will be a non-ending process.

46. As a civil court, the Family Court is taking decision in

a given cause based on preponderance of probabilities. If a particular fact pleaded is found to be probable from attending evidence and circumstances, the court will accept the same as proved, to grant a relief based on that finding. The testimony given by witnesses may be contradictory to each other or even it may be self contradictory. Unless and until such statements are made intentionally, knowing it to be false, it may not come

under the definition of perjury. In the case on hand, essentially the dispute is between the husband and wife regarding their matrimonial life. Relatives or neighbours may Mat.Appeal No.478 of 2016 & conn. cases 35 support their claim, and there may occur discrepancies or contradictions which may prevent the court from accepting their testimony. On the mere fact that the testimony given by the witnesses was contradictory and it was not relied upon by the court, we cannot jump into a conclusion that the witnesses were giving false evidence knowingly.

47. The appellant was alleging that the respondent was

guilty of adultery and she was having adulterous relationship with two men in Kuwait. The Family Court found that there was collusion between the appellant and the persons with whom he

was alleging adultery for his wife. So, his case of adultery against his wife was disbelieved by the court and his prayer for divorce on the ground of adultery was rejected. If we go by the proposition put forward by the appellant, he is also liable for prosecution for manipulating false evidence. That is not the spirit or intention of

the legislature in a prosecution for perjury, and it should be initiated only if it is expedient in the interest of justice.

48. From the available facts and circumstances, we are convinced that, the Family Court rightly rejected the I.As filed Mat.Appeal No.478 of 2016 & conn. cases 36 by the appellant for prosecution under Section 340 of Cr.P.C. So the original petitions are liable to be dismissed. Crl. R.P. No. 757 of 2018

49. The appellant is challenging the judgment of

Additional District and Sessions Judge-V, Thiruvananthapuram dismissing his Crl. Appeal No.558 of 2012, which was filed against the order of Additional Chief Judicial Magistrate, Thiruvananthapuram in M.C. No.67 of 2010.

50. M.C No.67 of 2010 was filed by the respondent, under Section 12 of the Protection of Women from Domestic

Violence Act, 2005. Learned Additional Ch

violence to her and from dispossessing her or from trespassing into the shared household Flat No.5B, Muthoot Valley Apartment. The appellant would say that on the strength of that order, the respondent and her mother broke open his flat and started residence there. Since she was working in Administration Department of Lurdhu Matha College of Science and Technology, Kuttichal, Thiruvananthapuram in the year Mat.Appeal No.478 of 2016 & conn. cases 37 2010, it was convenient for her to commute from that flat at that time. But in the year 2012, she secured a new job in Mar Baselious Engineering College, Nalanchira and then she shifted her residence to a two storied building in her parental property i.e. House No.4, Mosque Lane, Kesavadasapuram. In M.C No.67 of 2010, the address of the petitioner who is the respondent herein, is house No.4, Mosque Lane, Kesavadasapuram. It supports the case of the appellant that in the year 2012 the respondent was staying in the house at her parental property. According to him, in the year 2019, the children also joined the respondent to reside with her in her parental house.

51. The appellant contended that though the wife obtained favourable orders with respect to the flat owned by him, she was not residing there since 2012. For the last ten

years that flat was lying vacant. In the year 2021, daughter of the appellant and respondent, moved out from her mothers house and now she is staying in flat No.5B owned by the appellant. Mat.Appeal No.478 of 2016 & conn. cases 38

52. The appellant produced additional documents in

Crl. R.P. No.757 of 2018 which was accepted as per order in Crl.M.A. No.1 of 2021. Annexure A2 series will show that there was no energy consumption in that flat from June, 2020 till August, 2021. It will show that nobody was residing there during that period. The appellant further contended that now his daughter is married and she is staying in his flat and she had obtained a protection order from Judicial First Class Magistrate-XI, Thiruvananthapuram against her own mother, who is the respondent herein, from committing domestic violence against her. The respondent is not disputing the fact that now she is not staying in flat No.5B of Muthoot Valley Apartment, which stands in the name of the appellant. She is not disputing the fact that now her daughter is staying there. She is not disputing the statement of the appellant that now she is staying in her parental house at Kesavadasapuram and is working in Mar Basellious Engineering College.

53. In Mat. Appeal No.117 of 2021, we have set aside the judgment in O.P No.1269 of 2014 of Family Court, Pathanamthitta, and dissolved the marriage between the Mat.Appeal No.478 of 2016 & conn. cases 39 appellant and the respondent solemnised on 16.09.1995. So the question of domestic violence and shared household is now out of place.

54. Since the respondent is not staying in the flat owned

by the appellant and she is staying in her parental house, and the marriage between the appellant and the respondent stands dissolved, flat No.5B in Muthoot Valley Apartment which stands in the name of the appellant is no more her shared household and so she is not entitled to get any protection order with respect to that

flat. Crl.R.P.No.757 of 2018 is accordingly allowed.

On an overall analysis of the facts and evidence, above cases are disposed of as follows: i) Mat.Appeal Nos.478 of 2016 and 1433 of 2017 are dismissed. ii) Mat.Appeal No.117 of 2021 is allowed dissolving the marriage between the appellant and respondent solemnised on 16.09.1995 on the ground of matrimonial cruelty, setting aside the impugned

judgment and decree.

Mat.Appeal No.478 of 2016 & conn. cases 40

iii) Mat.Appeal No.693 of 2016 is allowed in part upholding relief No.(ii) and modifying relief No.(i) by reducing the amount to be recovered to Rs.5 lakh with 6% interest per annum from the date of petition till realisation, recoverable from the appellant and his assets. iv)O.P (F.C.) Nos.31, 32 and 42 of 2017 are dismissed. v) Crl.R.P. No.757 of 2018 is allowed. Both parties shall suffer their respective costs. The Registry is directed to mask the name of parties while uploading the judgment. Sd/-
A.MUHAMED MUSTAQUE JUDGE

Sd/- SOPHY THOMAS JUDGE smp Mat.Appeal No.478 of 2016 & conn. cases 41
APPENDIX OF OP (FC) 31/2017 PETITIONER'S EXHIBITS: EXHIBIT P1- TRUE COPY OF IA.NO.2450/2014 IN OP.NO.868/2009 DATED DAY OF AUGUST 2014. EXHIBIT P2- EXTR.P4 TRUE COPY OF THE OBJECTION FILED TO EXT.P1 DATED 17/09/14. EXHIBIT P3- TRUE COPY OF THE COMMON ORDER DATED & 2450/14 IN O.P. NO.868/2009 ON THE FILES OF THE FAMILY COURT, THIRUVANANTHAPURAM. RESPONDENT'S EXHIBITS: NIL True Copy
P.S to Judge smp Mat.Appeal No.478 of 2016 & conn. cases 42 APPENDIX OF OP (FC) 32/2017 PETITIONER'S EXHIBITS EXHIBIT P1 TRUE COPY OF I.A.NO.2448/2014 IN O.P.NO.868/2009 DATED 2ND DAY OF AUGUST 2014 EXHIBIT P2 TRUE COPY OF THE OBJECTION FILED TO EXT.P1 DATED 17.9.2014 EXHIBIT P3 TRUE COPY OF THE COMMON ORDER DATED 13.1.2016 IN I.A.2448/14, 2449/14 & FILES OF THE FAMILY COURT,

THIRUVANANTHAPURAM RESPONDENT'S EXHIBITS: NIL. True Copy P.S to Judge smp Mat.Appeal No.478 of 2016 & conn. cases 43 APPENDIX OF OP (FC) 42/2017 PETITIONER EXHIBITS P1 TRUE COPY OF I.A NO. 2449/2014 IN O.P. NO 868/2009 DATED 2ND DAY OF AUGUST 2014. P2 TRUE COPY OF THE OBJECTION FILED TO EXT.P1 DATED 17.9.2014. P3 TRUE COPY OF THE COMMON ORDER DATED

13.1.2016 IN I.A2448/14, 2449/14 &2450/14 IN O.P. NO.868/2009 ON THE FILES OF THE FAMILY COURT, THIRUVANANTHAPURAM.

P4 TRUE COPY OF THE JUDGMENT DATED 13.11.2016 IN O.P NO.868/2009. RESPONDENT'S EXHIBITS: NIL. True Copy P.S to Judge smp Mat.Appeal No.478 of 2016 & conn. cases 44 APPENDIX OF CRL.R.P 757 OF 2018 ANNEXURES: ANNEXURE A/1 : SUMMARY OF LITIGATIONS BETWEEN REVISION PETITIONER & RESPONDENT 2 ANNEXURE A/2 (a): TRUE COPIES OF KSEB BILLS OF CONSUMER TO A/2(G) No.1146767009375 FROM JUNE 2020 TILL AUGUST 2021 (7 BILLS) ANNEXURE A/3 : TRUE COPY OF ORDER DTD.18/12/2019 IN CRL.RP 44/2017 BY HON'BLE ADDL.SESIONS JUDGE-II, THIRUVANANTHAPURAM. True Copy P.S to Judge smp

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com