

Nadine vs Dr.Thomas

Nadine vs Dr.Thomas

SooperKanoon Citation : sooperkanoon.com/1473525

Court : Kerala

Decided On : Feb-28-2022

Judge : Honourable Mr. Justice a.Muhammed Mustaque,Honourable Mr.Justice P. Krishna Kumar

Appeal No. : Mat.Appeal/1052/2016

Appellant : Nadine

Respondent : Dr.Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA,
1943 MAT.APPEAL NO. 1052 OF 2016 AGAINST THE
ORDER/JUDGMENT IN OP 1714/2013 OF FAMILY
COURT,ERNAKULAM APPELLANT/RESPONDENT IN O.P 1714/2013:
NADINE AGED 37 YEARS FROM 12-B TRINITY CROWN, TRINITY
FLATS, EDAPPALLY P.O., COCHIN, NOW RESIDING AT FLAT NO.6B,
GOLDEN RESIDENCY, S.A. ROAD, BEHIND ICICI BANK,
KADAVANTHARA. KOCHI- 682 020. BY ADVS. SRI.M.P.RAMNATH

SRI.JOY JOSEPH SRI.BEPIN PAUL SMT.B.J.MEYFLOWER
SRI.P.RAJESH KOTTAKKAL SMT.SIKHA S.NAIR SRI.SHALU
VARGHESE SMT.S.SANDHYA SMT.UMA R.KAMATH
SEI.M.VARGHESE VARGHESE RESPONDENT/PETITIONER IN OP
1714/2013: DR.THOMAS AGED 48 YEARS S/O. P.T. OUSEPH,
PATHIPARAMB HOUSE, KORATTY P.O., MUKUNDAPURAM TALUK.
PIN- 680 309. BY DR.THOMAS(Party-In-Person) THIS MATRIMONIAL
APPEAL HAVING BEEN FINALLY HEARD ON 17.08.2022, ALONG
WITH Mat.Appeal.1056/2016 AND CONNECTED CASES, THE COURT
ON 28.02.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.1052 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
MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA,
1943 MAT.APPEAL NO. 1056 OF 2016 AGAINST THE
ORDER/JUDGMENT IN OP 452/2014 OF FAMILY
COURT,ERNAKULAM APPELLANT/RESPONDENT IN O.P 452/14:
NADINE AGED 37 YEARS FROM 12-B TRINITY CROWN, TRINITY
FLATS, EDAPPALLY P.O., COCHIN NOW RESIDING AT FLAT NO. 6B,
GOLDEN RESIDENCY. S.A. ROAD, BEHIND ICICI BANK,
KADAVANTHARA, KOCHI-682 020. BY ADVS. SRI.M.P.RAMNATH
SRI.JOY JOSEPH SRI.BEPIN PAUL SMT.B.J.MEYFLOWER
SRI.P.RAJESH KOTTAKKAL SMT.SIKHA S.NAIR SRI.SHALU
VARGHESE SMT.S.SANDHYA SMT.UMA R.KAMATH
SEI.M.VARGHESE VARGHESE RESPONDENT/PETITIONER IN OP
No.452/2014: DR.THOMAS AGED 48 YEARS, S/O. P.T.OUSEPH,
PATHIPARAMB HOUSE, KORATTY P.O., MUKUNDAPURAM TALUK,
PIN- 680 309. BY DR.THOMAS(Party-In-Person) THIS MATRIMONIAL
APPEAL HAVING BEEN FINALLY HEARD ON 17.08.2022, ALONG
WITH Mat.Appeal.1052/2016 AND CONNECTED CASES, THE COURT

ON 28.02.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.1052 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
MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943
MAT.APPEAL NO. 1057 OF 2016 AGAINST THE ORDER/JUDGMENT IN OP 2354/2013 OF FAMILY COURT, ERNAKULAM APPELLANT/PETITIONER IN OP No.2354/2013: NADINE AGED 37 YEARS FROM 12-B TRINITY CROWN, TRINITY FLATS, EDAPPALLY.P.O, COCHIN, NOW RESIDING AT FLAT NO.6B, GOLDEN RESIDENCY, S.A.ROAD, BEHIND ICICI BANK, KADAVANTHRA, KOCHI-682020. BY ADVS. SRI.M.P.RAMNATH SRI.BEPIN PAUL SRI.K.V.JOSEPH SMT.B.J.MEYFLOWER SRI.P.RAJESH KOTTAKKAL SMT.SIKHA S.NAIR SRI.SHALU VARGHESE SMT.UMA R.KAMATH SEI.M.VARGHESE VARGHESE
RESPONDENT/RESPONDENT IN OP No.2354/2013: DR THOMAS S/O.P.T.OUSEPH, PATHIPARAMB HOUSE, KORATTY.P.O, MUKUNDAPURAM TALUK, PIN-680309. BY DR THOMAS(Party-In-Person) THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 17.08.2022, ALONG WITH Mat.Appeal.1052/2016 AND CONNECTED CASES, THE COURT ON 28.02.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.1052 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
MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943
MAT.APPEAL NO. 1058 OF 2016 AGAINST THE ORDER/JUDGMENT IN OP 2268/2014 OF FAMILY

COURT,ERNAKULAM APPELLANT/PETITIONER IN OP 2268/2014: NADINE AGED 37 YEARS FROM 12-B TRINITY CROWN, TRINITY FLATS, EDAPPALLY P.O., COCHIN, NOW RESIDING AT FLAT NO.6B, GOLDEN RESIDENCY, S.A.ROAD, BEHIND ICICI BANK, KADAVANTHRA, KOCHI 682 020. BY ADVS. SRI.M.P.RAMNATH SRI.JOY JOSEPH SRI.BEPIN PAUL SMT.B.J.MEYFLOWER SRI.P.RAJESH KOTTAKKAL SMT.SIKHA S.NAIR SRI.SHALU VARGHESE SMT.UMA R.KAMATH SEI.M.VARGHESE VARGHESE RESPONDENT/RESPONDENT IN OP 2268/2014: DR.THOMAS AGED 48 YEARS S/O.P.T.OUSEPH, PATHIPARAMB HOUSE, KORATTY P.O., MUKUNDAPURAM TALUK, PIN: 680 309. BY DR.THOMAS(Party-In-Person) THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 17.08.2022, ALONG WITH Mat.Appeal.1052/2016 AND CONNECTED CASES, THE COURT ON 28.02.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.1052 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 MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943 MAT.APPEAL NO. 36 OF 2017 AGAINST THE ORDER/JUDGMENT IN OP 452/2014 OF FAMILY COURT,ERNAKULAM APPELLANT/PETITIONER: DR.THOMAS AGED 48 YEARS, S/O.P.T.OUSEPH,PATHIPARAMBAN HOUSE, KORATTY,MUKUNDAPURAM TALUK, MURINGOOR P.O.,PIN-680309, CHALAKUDY, THRISSUR DISTRICT(NOW RESIDING AT 12B, TRINITY CROWN,TRINITY FLATS, EDAPPALLY PO, KOCHI-682 024. BY DR.THOMAS(Party-In-Person) RESPONDENT/RESPONDENT: MRS.NADINE AGED 38 YEARS, W/O.THOMAS, RESIDING AT 6B,GOLDEN RESIDENCY, S.A.ROAD, BEHIND ICICI BANK,KADAVANTHRA PO, KOCHI -680 020. THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 17.08.2022, ALONG

WITH Mat.Appeal.1052/2016 AND CONNECTED CASES, THE COURT ON 28.02.2022 DELIVERED THE FOLLOWING: Mat.Appeal No.1052 of 2016 & conn. cases 6 A.MUHAMED MUSTAQUE &

SOPHY THOMAS, JJ.

----- Mat.Appeal Nos.1052, 1056, 1057 & 1058 of 2016 & 36 of 2017 ----- Dated this the 28th day of February, 2022

JUDGMENT

Sophy Thomas, J.

These appeals arise out of the common judgment of the Family Court, Ernakulam in O.P Nos.2354 of 2013, 2268 of 2014, 1714 of 2013 and 452 of 2014.

2. The husband is the appellant in Mat.Appeal No.36 of 2017

and in all other appeals, wife is the appellant. O.P No.1714 of 2013 was filed by the husband for restitution of conjugal rights, and that O.P was allowed, against which, the wife preferred Mat.Appeal No.1052 of 2016. The wife filed O.P No.2354 of 2013 for divorce, and as it was dismissed, she preferred Mat.Appeal No.1057 of 2016. The wife filed O.P No.2268 of 2014 for recovery of money from the husband, and on its dismissal, she filed Mat.Appeal No.1058 of

2016. The husband filed O.P No.452 of 2014 for getting permanent Mat.Appeal No.1052 of 2016 & conn. cases 7 custody of his minor children and since it was dismissed, he

preferred Mat.Appeal No.36 of 2017. Against the observations in paragraph 19 of the common judgment pertaining to O.P No.452 of 2014, the wife filed Mat.Appeal No.1056 of 2016.

3. The necessary facts in short are as follows: The wife is referred as the appellant and the husband is referred as the respondent, hereinafter.

4. The marriage between the appellant and respondent was

solemnised on 07.07.2002 as per Christian rites and custom. Two girl children were born out of the wedlock. The appellant is a housewife and the respondent is a Dental Surgeon. The appellant is the only daughter of Dr.Vincent Joseph Athickal, an Orthopedic Surgeon. Her father died when she was only 13 years of age. She did her B.A (Literature), and while doing M.A (Sociology) in

St.Theresa's College, Ernakulam, she was married to the respondent. Her matrimonial life was miserable, since the respondent treated her with cruelty, both mental and physical, as detailed in the O.P. He was not cordial even with his own family members. He shifted his residence along with the appellant to the Mat.Appeal No.1052 of 2016 & conn. cases 8 flat of her mother at Ernakulam, to save the household expenses. In the year 2004, he went to Oman to put up a Dental Clinic there. Though the appellant was taken to Oman, soon she was sent back to

Kerala. While she was admitted in Ernakulam Medical Centre for delivery, he created scenes in the hospital, saying that, she could have been admitted in a Government hospital, to reduce the expenses. He was not showing any interest for the new born baby, and he did not even settle the hospital bills. On 03.03.2006, for the purpose of renewing the family visa, the appellant and child were

taken to Oman, but they were sent back on 26.07.2006. On 07.03.2007, her mother took her to Oman and left her with the respondent. There she was harassed and treated like a slave, and she was not even provided food. After five months of stay at Oman, when she conceived again, she was sent back to Kerala on 12.08.2007. The respondent did not care to see the second child for three months after the delivery. The respondent always evaded his responsibility in looking after the children and attending their education.

5. The mother of the appellant purchased flat No.11A at Mat.Appeal No.1052 of 2016 & conn. cases 9 Golden Residency, Kadavanthra in the year 2005 and rented out the

same to maintain the family of the appellant. Due to financial stringency, she sold away that flat on 01.02.2012, and the sale proceeds were utilised for payment of LIC premium, purchase of dental equipments for the clinic of the respondent at Salalah, and for payment of amounts to persons as directed by the respondent. The respondent filed O.S No.33 of 2012 before the Munsiff's Court, Ernakulam seeking permanent prohibitory injunction restraining the

appellant from alienating flat No.11A at Golden Residency, Kadavanthra. Thereafter he filed O.P No.1759 of 2012 for setting aside the sale deed executed by the appellant, and in the alternative, claiming Rs.23,25,000/- from her. She filed M.C No.1 of 2012 before the Chief Judicial Magistrate Court, Ernakulam under the Protection of Women from Domestic Violence Act, seeking protection, maintenance and compensation from the respondent. The respondent was in the habit of defaming the appellant and her mother, and he denied the legitimate needs of the appellant and her children. They are living separate from November 2011 onwards. It is not possible to continue her matrimonial life with the respondent

Mat.Appeal No.1052 of 2016 & conn. cases 10 without sacrificing her life. So, she prayed for a decree of divorce. Since the respondent was not attending the domestic, hospital, educational and maintenance expenses of herself and her children, she put forward a claim for money against the respondent.

6. The respondent filed counter affidavit denying the cruelty alleged against him by the appellant. According to him, he was a

responsible husband and a caring father. After he joined employment in Oman in the year 2003, he was regularly sending amounts in the name of the mother of the appellant as the appellant was not a capable lady. She was in fact a puppet in the hands of her mother. He used to come down from Oman, three to four times every year to live with his wife and children. The allegations made by the appellant are only to counterblast the restitution O.P filed by him. Utilising the amounts sent by him, in the year 2005, a flat was purchased at Kadavanthra in the name of the appellant. The mother of the appellant did not permit her to see the respondent, and whenever he reached the flat, she quarreled with him, even without disclosing

the whereabouts of the appellant. Only to defeat the respondent and to satisfy her ego, mother of the appellant sold away Mat.Appeal No.1052 of 2016 & conn. cases 11 the flat which was purchased exclusively with his funds. Though the respondent tried to meet the appellant to continue his family life, there was no attempt from the part of the appellant. So, he filed O.P for restitution of conjugal rights, and another O.P for getting permanent custody of the children. According to him, there is no ground to grant a decree of divorce to the appellant. He is ready and capable to attend the affairs of the children and so, he has to get permanent custody of the children.

7. After formulating necessary issues, all the four O.Ps were

tried together by the Family Court treating O.P No.2354 of 2013, the Divorce O.P filed by the appellant, as the leading case. PWs 1 to 3 were examined and Exts.A1 to A33 were marked from the side of the petitioner/wife and DWs 1 and 2 were examined and Exts.B1 to B7 series were marked from the side of the respondent/husband.

8. On analysing the facts and evidence, the Family Court found

that the respondent/husband is entitled for a decree for restitution of conjugal rights and so, the appellant/wife was directed to resume cohabitation with him along with the children. The O.Ps for Divorce as well as recovery of money, filed by the appellant were dismissed. Mat.Appeal No.1052 of 2016 & conn. cases 12 The O.P filed by the respondent for getting permanent custody of the children was also dismissed, finding that no separate order for custody was necessary, since the appellant was directed to resume cohabitation with the respondent, along with the children. Assailing the common judgment and decree, above Mat.Appeals were preferred.

9. Let us revisit the facts and evidence, to see, whether any interference is called for in the findings of the Family Court. As per

order in I.A.Nos.1 of 2021, 1 of 2022 and 2 of 2022, additional

documents produced by the appellant as well as respondent were admitted.

10. PW1, the appellant, is claiming a decree of divorce on the

ground of matrimonial cruelties. According to her, she was subjected to both mental and physical cruelties by the respondent. She was treated like a slave and was made to do all the household works, apart from attending the children, and he used to beat her with broom and plastic hose, if there was delay in attending the works. He often used filthy language against her and her mother, and he threatened to set fire to the house. He was not attending

Mat.Appeal No.1052 of 2016 & conn. cases 13 the affairs of the children and their education. He used to lock the house from outside while she was staying at Salalah. She was not allowed to use the telephone, and she could not lead a normal family life with him. He did not care to see the second child and he came

down from Salalah after three months of her delivery. He was reluctant to take the child to hospital even when the child was suffering from high temperature. He questioned her chastity and even called her and her mother as prostitutes, in front of the ladies assembled in the lounge of their flat. He was in the habit of making defamatory comments against the appellant and her mother, to their relatives. There was occasion even to make a police complaint

against him to restore peace. She had filed a petition under the Domestic Violence Act to get protection for herself and her children from the respondent. He was alleging false stories, connecting her name with a Driver named Anil. Violating the court order, he forcibly took the children from school and dropped them near the flat. He was making immoral allegations against her mother connecting her

name with a neighbour. He is a man of suspicion and he even deputed the Watchman of the flat to do spy work on her and her

Mat.Appeal No.1052 of 2016 & conn. cases 14mother. He filed aspersions about her mental capacity, and he sent anonymous letters to various persons including her relatives, alleging dirty comments against herself and her mother. She was a smart and intelligent girl. But, after the marriage, due to the mental and physical torture she was subjected to, she lost her abilities and talents,

and the respondent destroyed her, physically and mentally.

11. The respondent flatly denied all the allegations of cruelties

put forward by the appellant. But his case is that, the appellant is a person lacking mental maturity, and she is not capable of taking decisions on her own, and she is a puppet in the hands of her mother. At the same time, he would say that, he wants to continue

his marital life with the appellant. Though the cruelties were detailed by the appellant before the Family Court, the respondent cross examined her mainly with respect to the financial transactions between himself and his mother-in-law. According to him, he sent huge amounts from Oman to the account of his mother-in-law for purchasing properties in the joint name of himself and the

Mat.Appeal No.1052 of 2016 & conn. cases 15 respondent, but she purchased it either in her own name, or in the

name of the appellant. He produced Ext.B4 series documents to prove transfer of amounts to the account of his mother-in-law. He would say that flat No.11A at Golden Residency, Kadavanthra was purchased using his own funds in the name of the appellant, and subsequently, the appellant tried to sell away that flat under the instigation of her mother, without his consent or knowledge. So, he filed O.S No.33 of 2012 before the Munsiff's Court, Ernakulam. When the injunction order was vacated as per Ext.A14 order, the

appellant sold away that flat to one Mr.P.J Thomas. Then he filed O.P No.1759 of 2012 to set aside that sale deed or to get back Rs.23,25,000/-, and that suit is still pending. Annexure R1 is the copy of the petition in O.P.No.1759 of 2012 and Annexure R2 is the

copy of objection. According to him, the sale of that flat was the root cause for their matrimonial issues, and before that, there were no cases or complaints between them. Annexure B8 is the copy of proof affidavit filed by the appellant in M.C.No.1 of 2012 before CJM Court, Ernakulam and Annexure B7 is the copy of order of the CJM directing PW2 in that case who is the mother of the appellant to

Mat.Appeal No.1052 of 2016 & conn. cases 16 produce her statement of accounts.

12. The monetary transactions between the respondent and

his mother-in-law is not a matter to be discussed in the petition for divorce based on matrimonial cruelties alleged by the wife. If that flat was purchased using the funds of the respondent sent through Ext.B4 series documents, he can seek appropriate relief in O.P No.1759 of 2012, which is pending consideration of the Family Court. The appellant produced Exts.A6 to A11 documents to show that, her mother purchased that flat by availing loans and chitty amounts. But, that also is not a matter to be discussed here as it is

the 'lis' in another pending suit. The appellant produced Ext.A22 document, which shows receipt of amounts by her and her assurance to reconvey the flat as and when demanded. According to her, the respondent forged that document, and she produced Annexure A1 report from FSL to substantiate her case.

13. The respondent is relying on Ext.A23 to say that, the appellant was a person of low IQ, below average intelligence and poor comprehension abilities. The Clinical Psychologist observed that, her mother was very dominating and was in conflict with the Mat.Appeal No.1052 of 2016 & conn. cases 17

respondent over financial matters. The Counsellor attached to 'Bhoomika', a Gender based Violence Management Centre attached to General Hospital, Ernakulam reported that, the appellant was slow in household duties and was having immature behaviour pattern. But, it was observed that the appellant and respondent had no personality disorders. It was further observed that, the respondent was irresponsible in protecting and maintaining the appellant and her children. The parties accepted the suggestion of the Counsellor that, the respondent would permanently live at Kerala along with the

appellant and children maintaining them and not to make disturbances to the mother of the appellant in regard to financial and other responsibilities.

14. The appellant produced Exts.A25 to A27 documents to show that, she did her B.A Degree and Computer Diploma course

and was a trainee in Centurion Bank. The respondent also is admitting that, while she was doing M.A (Sociology) in St.Theresa's College, Ernakulam, he married her. There was age difference of 14 years between the appellant and respondent. The very fact that the appellant and respondent were living together as husband and wife

Mat.Appeal No.1052 of 2016 & conn. cases 18 for about ten years in Kerala as well as in Salalah would show that, there was no abnormality or incapacity for the appellant to lead a normal family life with the respondent, and otherwise he would not have insisted for restitution of conjugal rights. So, it goes without saying that, even if there was little lack of efficiency or smartness from the part of the appellant, he was ready to accept the same to continue his marital life. But, the evidence adduced by PWs 1 to 3 would show that, the respondent was calling her a mentally retarded person and during cross examination in page No.28, he was admitting that, at the time of marriage, he did not know that the appellant was an incapable lady having no intelligence, and he had a feeling that he was cheated. Annexures A6 and A7 produced by the appellant will show that, the respondent was alleging mental illness

against the appellant, and he wanted to subject her to medical examination. Regarding Ext.A24 letter, though it was an anonymous one, the appellant would say that, it was written by the respondent as she could identify his handwriting. In that letter, he was making all sorts of allegations against the appellant and her mother. In that letter, it is specifically stated that, the appellant is a mentally

Mat.Appeal No.1052 of 2016 & conn. cases 19

retarded person. From the contents of that letter also, we could presume that, it was written by the respondent himself, as it contained informations which were within his exclusive knowledge. So, after addressing his wife as a mentally retarded person incapable of doing anything, we could see no bonafides in his prayer for restitution of conjugal rights.

15. The appellant was cross examined at length by the respondent and she was giving rational answers to all the questions put to her. She was attending the children while staying with the respondent at Salalah. Now also, the children are being taken care of by her. She was working as a trainee in Centurion Bank and Ext.A27 shows that her personality traits were good, and she was disciplined at work. She secured Post Graduate Diploma in Computer Application. The certificate of the Clinical Psychologist is

dated 23.04.2013. Their marriage was in the year 2002. The appellant would say that she has been ruined physically and mentally due to the torture from the part of the respondent. According to her, the respondent killed her abilities and talents and thereafter, he is depicting her as a mentally retarded person among Mat.Appeal No.1052 of 2016 & conn. cases 20 her close relatives.

16. The appellant would say that the respondent was a man of

suspicion and he was making defamatory and derogatory aspersions against herself and her mother, connecting their names with other persons. In cross examination, the respondent deposed that, one Mr.Stephen, a neighbour and Mr.Anil, a Driver were not of good character and so, he did not like them to mingle with his children. In O.P No.452 of 2014, in paragraph 11, the respondent has pleaded that, the mother of the appellant had more friendly connection with an unmarried person named Stephen who is residing in the adjacent apartment, and under his instigation, the appellant filed Divorce O.P against him. In paragraph 12 of that O.P, he has pleaded that Driver Anil is a person of mean character and he is suspecting that, he may seduce the children at any time. These statements support the case put forward by the appellant that the respondent is of a suspecting character, and he was making derogatory remarks against his wife and mother-in-law.

17. PW2, a close relative of the appellant, deposed before court that, she had occasion to see the respondent creating a scene

Mat.Appeal No.1052 of 2016 & conn. cases 21 in the lobby of their flat addressing the appellant and her mother as prostitutes. PW3, the mother of the appellant, also

stated about the matrimonial cruelties the appellant was subjected to, by the respondent.

18. As already found, the specific statements of cruelties put

forward by the appellant, were not subjected to cross examination by the respondent. All along, he was beating around the monetary transactions between himself and his mother-in-law, purchase and sale of flat etc., and there was no specific denial or explanation for the incidents of cruelties narrated by the appellant. The litigations between the appellant and respondent started in the year 2012, are still pending and several mediation and counselling sessions were attended by the parties. But, the appellant is stern in her decision that, she cannot pull on with the respondent suffering all these

cruelties. Ext.A30 judgment of this Court in O.P (FC) No.192 of 2016 shows that the appellant/wife submitted before the Bench that, she does not want to continue the matrimonial relationship, and so, the parties were referred for mediation, but they could not succeed.

19. The appellant would say that, the respondent is a man not Mat.Appeal No.1052 of 2016 & conn. cases 22 respecting the orders of the court and she produced Exts.A31 and

A33 orders to show that, even though there was prohibition order

restraining the respondent from meeting the children at school, he barged into the school bus and took custody of the children after creating scenes, and later, they were dropped in front of the flat. Ext.A33 shows that a case was registered against him under Section 31(1) of the Domestic Violence Act, for violating the lawful orders passed by the court. That fact also supports the statement of the appellant, that she cannot expect a peaceful family life with the respondent.

20. The lower court seems to have been carried away by the

financial transactions between the mother of the appellant and the respondent. The appellant is admitting that, the respondent had sent amounts to the account of

her mother during the period 2004 to

2011. Admittedly, properties covered by Exts.B1 to B3 were

purchased either in the name of the appellant or in the name of her mother during that period. If those properties were purchased using the funds of the respondent, he is legally entitled to proceed against them to recover the property or the money expended by him. But, Mat.Appeal No.1052 of 2016 & conn. cases 23 that does not mean that, if the wife was subjected to matrimonial cruelties by the husband, she cannot seek a decree of divorce for dissolving their marriage.

21. The respondent subjected the appellant to matrimonial cruelties and she was even depicted as a mentally retarded and

incapacitated person, among her neighbours and relatives. The incidents of matrimonial cruelties stated by the appellant was not subjected to cross examination by the respondent and so, it stands without any confrontation. The respondent even violating the court orders, took custody of the children from the school bus. Annexures A2 to A5 will show that the respondent even forged a fake LLB certificate and practiced law in various courts at Ernakulam and a criminal case was registered against him. So, obviously, he is a man

upto anything as contended by the appellant. The available facts

and evidence sufficiently prove that the alleged acts of cruelties were of such a character as to cause in the mind of the appellant a reasonable apprehension that it will be harmful or injurious for her

to live with the respondent.

So she is eligible to get a

get a decree for restitution of conjugal rights as there is no chance for a peaceful family life between them. It is clarified that the decree of divorce will not have any bearing in the monetary disputes between the respondent and his mother-in-law or regarding the purchase or sale of immovable properties.

22. The appellant filed O.P No.2268 of 2014 for recovery of amounts including delivery expenses, educational expenses and past

maintenance for herself and her children. The Family Court found that, no bills were produced by the appellant to prove the hospital expenses or the education expenses of the children. The appellant admitted that, no bills were produced by her and Exts.A3, A19 and A20 were prepared by herself which includes day-to-day household expenses even for purchasing provisions. The respondent would say that, he was entrusting money with the appellant to meet the household expenses. The appellant is admitting receipt of amounts given by the respondent and she is also admitting amounts sent by the respondent to the account of her mother evidenced by Exts.B4

series documents. In the light of admission by the appellant that the respondent was giving amounts to her and her mother, which is Mat.Appeal No.1052 of 2016 & conn. cases 25 supported by Ext.B4 series documents, we concur with the finding of the Family Court that, the appellant is not entitled to get the amounts claimed in O.P.No.2268 of 2014.

23. Two children were born in the wedlock of the appellant and respondent. The elder one Sona Maria Thomas was born on 23.04.2005 and she will attain 17 years of age this year, and she is

doing her Plus 2. The younger one Kareena Treesa Thomas was born on 09.11.2007 and now she is in 9 th Std. We have interacted with the children and they are reluctant to go with their father. The respondent has no case that, the appellant is not caring the children and their education. The children were living with the appellant

throughout, and they are performing well in their education. The appellant is of the view that, the respondent is irresponsible and he never cared the welfare or well-being of the children or their education. The permanent custody of the children with the appellant need not be disturbed, as the children are comfortable with their mother and they are studying well in good schools. Moreover, since they being girl children, for their comfort and well-being, it is better to stay with the mother. The

sister of the respondent deposed that,

Mat.Appeal No.1052 of 2016 & conn. cases 26 if custody of the children is given to the respondent, she is ready to take care of the children. But she is having her own family to attend, and so we cannot expect her to devote her time for the

children of her brother. So, the respondent is not entitled to get permanent custody of the children. Regarding visitation rights also, since he once violated the court order and took the children from the school bus, it may not be safe to give a blanket order for visitation, especially as the children are girls at their teenage. Moreover the appellant is not a law abiding citizen as borne out from records. So, whenever the respondent wants to see or interact with the children, he can approach the jurisdictional Family Court for specific orders of visitation, and the Family Court will pass appropriate orders taking into account the then prevailing situations, and on interacting with the children, without affecting their education.

24. In the result, Mat.Appeal No.1057 of 2016 is allowed, dissolving the marriage between the appellant and respondent solemnised on 07.07.2002, in supersession of the impugned

judgment and decree in O.P No.2354 of 2013.

25. Mat Appeal Nos.1052 and 1056 of 2016 are allowed,

Mat.Appeal No.1052 of 2016 & conn. cases 27 setting aside the judgment and decree in O.P No.1714 of 2013 for restitution of conjugal rights, and also the direction in that decree to resume cohabitation along with the children. Mat.Appeal Nos.1058 of 2016 and 36 of 2017 are dismissed. In all the appeals, the parties are directed to suffer their

respective costs. Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- SOPHY THOMAS JUDGE smp Mat.Appeal No.1052 of 2016 & conn. cases 28 APPENDIX OF MAT.APPEAL 1052/2016 RESPONDENT ANNEXURES Annexure R1 TRUE PHOTOCOPY OF THE RECEIPT DATED 27.03.2017, ISSUED FROM THE WOMEN CELL FOR PETITIONER NO.41750/2017 Annexure R2 TRUE

PHOTOCOPY OF THE RECEIPT DATED 10.05.2017, ISSUED FROM THE CITY POLICE OFFICE FOR PETITION NO.32658/2017/EC Annexure R3 TRUE PHOTOCOPY OF THE FIR IN CRIME NO.0643/2017 OF THE HILL PALACE POLICE STATION PETITIONER ANNEXURES Annexure 1 IN A TRUE COPY OF THE ORDER PASSED BY THIS I.A.757/18 HON'BLE COURT DATED 31.05.2017 FOR THE CUSTODY OF THE MINOR CHILDREN IN MAT APPEAL NO.1052/2016

Annexure 1 IN THE TRUE PHOTOSTAT COPY OF THE JUDGMENT

I.A.1134/18 OF THE HON'BLE COURT OF KERALA DATED 30.07.20214 IN OP(FC) NO.373/2014 AWARDING RS.8,000/- INTERIM MAINTENANCE TO CHILDREN Annexure 2 IN I.A THE TRUE PHOTOSTAT COPY OF THE FEES 2017-18 LAST ACADEMIC YEAR, ISSUED FROM THE RAJAGIRI PUBLIC SCHOOL, KALAMASSERY RESPONDENT ANNEXURES

Annexure R(a) THE TRUE PHOTOSTAT COPY OF THE JUDGMENT

DATED 15.12.2017 THIS HON'BLE COURT IN Mat.Appeal No.1052 of 2016 & conn. cases 29 WPC 30010/2017

Annexure R(b) THE TRUE PHOTOSTAT COPY OF THE JUDGMENT

DATED 04.01.2018 OF THIS HON'BLE COURT IN WA NO.2689/2017 True Copy P.S to Judge smp Mat.Appeal No.1052 of 2016 & conn. cases 30 APPENDIX OF MAT.APPEAL 1057/2016 PETITIONER ANNEXURES Annexure A1 THE COURT CERTIFIED COPY OF THE ENTIRE REPORT FROM THE FORENSIC SCIENCE LABORATORY, THIRUVANANTHAPURAM, WITH THE LETTER DT. 24.5.2019 OF THE DIRECTOR OF FORENSIC SCIENCE LABORATORY WITH THE ENCLOSURES THEREWITH CONTAINING THE REPORT OF THE SCIENTIFIC OFFICER, QUESTIONED DOCUMENTS AND STANDARD DOCUMENTS. Annexure A2 THE COURT CERTIFIED COPY OF THE FINAL REPORT,

CHARGE SHEETING THE RESPONDENT FOR OFFENCES UNDER S. 197, 416, 468 AND 420 IN CRIME NO. 311/2019 OF THE KADAVANTHRA POLICE STATION AS RECEIVED FROM THE JUDICIAL FIRST CLASS MAGISTRATE COURT VIII, ERNAKULAM. Annexure A3 THE ORIGINAL OF THE LETTER DT. 07.10.2020 BEARING NO. KBC/1404/2020 ISSUED FROM THE BAR COUNCIL OF KERALA EXTRACTING THE MINUTES OF THE MEETING HELD ON 18.08.2019 AND ITEM NO. 112 IN THE MEETING AND THE RESOLUTION NO. 208/2019. Annexure A4 THE ORIGINAL OF THE LETTER DT. 18.10.2021 BEARING NO. KBC/RTI/1938/2021 ISSUED FROM THE BAR COUNCIL OF KERALA UNDER THE RIGHT TO INFORMATION ACT. Annexure A5 THE ONLINE PRINT OUT OF THE JUDGMENT DT 24.09.2020 IN CRL.M.C. NO. 2718/2020 OF THE HON'BLE HIGH COURT OF KERALA.

Annexure A6 THE COURT CERTIFIED COPY OF THE JUDGMENT

DT. 15.12.2017 IN W.P.C NO. 30010/2017 OF THE HON'BLE HIGH COURT OF KERALA.

Annexure A7 THE COURT CERTIFIED COPY OF THE JUDGMENT

Mat.Appeal No.1052 of 2016 & conn. cases 31 DT. 04 01.2018 IN W.A. NO. 2689/2017 OF THE HON'BLE HIGH COURT OF KERALA. RESPONDENT ANNEXURES Annexure B1 A TRUE COPY OF THE ORDER OF CJM COURT, ERNAKULAM DATED 14.11.2016 FOR THE DISMISSAL OF THE M.C. NO. 1/2012 CASE AS NOT PRESSED. Annexure B2 TRUE COPY OF THE REPORT DATED 25.05.2017 OF DISTRICT REGISTRAR (GENERAL), ERNAKULAM IN CONNECTION WITH THE SALE OF 10 CENTS OF LAND. Annexure B3 TRUE COPY OF THE REPORT IN CONNECTION WITH SALE OF FLAT MADE BY THE DISTRICT REGISTRAR (AUDIT), ERNAKULAM DATED 19.08.2017. Annexure B4 TRUE COPY OF THE SALE AGREEMENT MADE BETWEEN THOMAS AND MR. K.T. JOHN DATED 11.05.2018. Annexure B5 TRUE COPY OF THE O.S.NO. 795/2018 FILED BY APPELLANTS MOTHER MRS. KOCHURANI VINCENT AGAINST IYPE JOSEPH. Annexure B6 TRUE COPY OF 161 STATEMENT OF APPELLANT'S MOTHER MRS. KOCHURANI VINCENT

BEFORE KADAVANTRA POLICE STATION IN CRIME NO. Annexure B7 TRUE COPY OF HTE ORDER OF HON'BLE CJM

COURT VIDE CMP No.2061/16 IN MC.1/12 DTD 29.09.2016 TO PRODUCE THE BANK STATEMENT OF APPELLANT'S MOTHER.

ANNEXURE B8 A CERTIFIED COPY OF THE PROOF AFFIDAVIT FILED BY THE APPELLANT BEFORE CJM COURT IN MC 1/2012 Mat.Appeal No.1052 of 2016 & conn. cases 32 Annexure R1 THE TRUE COPY OF THE PETITION IN OP NO. FILED BY THE RESPONDENT IN THIS APPEAL AS PETITIONER , AS AVAILABLE WITH THE APPELLANT. Annexure R2 THE TRUE COPY OF THE OBJECTION/WRITTEN

STATEMENT FILED BY RESPONDENTS 1 & 2 IN OP NO. 1759/2012 BEFORE FAMILY COURT, ERNAKULAM, AS AVAILABLE WITH THE APPELLANT IN THIS APPEAL. Annexure R3 THE TRUE COPY OF THE PLAINT IN O.S. NO. ERNAKULAM AS OBTAINED BY THE APPELLANT FROM HER MOTHER. True Copy P.S to Judge smp

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