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Somaraj.C. vs E.X.Juliet

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Court : Kerala Orders

Decided On : Jan-28-2021

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mr.Justice C.S.Dias

Appeal No. : Mat.Appeal/109/2014

Appellant : Somaraj.C.

Respondent : E.X.Juliet

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 28TH DAY OF JANUARY 2021 / 8TH MAGHA, 1942 Mat.Appeal.No.109 OF 2014 AGAINST THE JUDGMENT IN OP 785/2007 DATED 30-11-2013 OF FAMILY COURT,THIRUVANANTHAPURAM APPELLANT/COUNTER PETITIONER: SOMARAJ.C. AGED 52 YEARS S/O LATE J.CHARLES,PULLUVILA VEEDU,ARAMADA.P.O,THRIKKANNAPURAM,THIRUVANANTH APURAM NOW RESIDING AT SOJUS,T.C.18/1184(5),ARAMADA.P.O,

THRIKKANNAPURAM,THIRUVANANTHAPURAM. BY ADVS. SRI.D.KISHORE SMT.MINI GOPINATH RESPONDENT/S: E.X.JULIET D/O.E.T.XAVIER,EDATHURUTHI HOUSE,THEVARA,KOCHI,NOW RESIDING AT T.C.7/1688,'SIVAM'PANGODE, THIRUVANANTHAPURAM-695001. R1 BY ADV. SMT. MEERA RADHAKRISHNAN R1 BY ADV. SMT.K.KUSUMAM R1 BY ADV. SMT.RENY ANTO THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 28.01.2021, ALONG WITH Mat.Appeal.507/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 28TH DAY OF JANUARY 2021 / 8TH MAGHA, 1942 Mat.Appeal.No.507 OF 2015 AGAINST THE UDGMENT IN OP 1237/2008 DATED 30-11-2013 OF FAMILY COURT,THIRUVANANTHAPURAM APPELLANT/PETITIONER: SOMARAJ.C. AGED 52 YEARS, S/O.LATE J.CHARLES, PULLUVILA VEEDU, ARMADA.P.O., THRIKKANNAPURAM, THIRUVANANTHAPURAM NOW RESIDING AT SOJUS,T.C.NO.18/1184(5), ARAMADA.P.O., THRIKKANNAPURAM, THIRUVANANTHAPURAM. BY ADVS. SRI.D.KISHORE SMT.MINI GOPINATH RESPONDENT/COUNTER PETITIONER: E.X.JULIET D/O.E.T.XAVIER, EDATHURUTHI HOUSE, THEVARA, KOCHI, NOW RESIDING AT T.C.7/1688, 'SIVAM', PANGODE, THIRUVANANTHAPURAM-695 001. R1 BY ADV. SMT.K.KUSUMAM THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 28.01.2021, ALONG WITH Mat.Appeal.109/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

COMMON JUDGMENT

Dated this the 28th day of January 2021

C.S.Dias, J.

As these appeals arise out of a common judgment

passed by the Family Court, Thiruvananthapuram in O.P. No.785/2007 and O.P. No.1237/2008 and the parties are the same, they are being disposed of by this common judgment.

2. Juliet - the wife of Somaraj had filed O.P.

under clauses (ix) and (x) of Sub-Section (1) of Section 10 of the Divorce Act, 1869 (in short 'Act'). Somaraj filed O.P. No.1237/2008 against Juliet seeking a decree

for restitution of conjugal rights as provided underSec.32 of t

Somaraj and allowed O.P. No.785/2007 filed by Juliet, whereby, the marriage between the spouses stands dissolved by a decree of divorce.

3. Being aggrieved by the allowing of O.P.

No.785/2007 and the dismissal of O.P. No.1237/2008, Somaraj is before this Court in the above appeals. For the sake of convenience, Juliet is being referred to as petitioner and Somaraj is being referred to as respondent as per their status in O.P No.785/2007.

4. The concise case of the petitioner in OP No.785/2007 is as follows: The petitioner was married to the respondent on 14.1.1991. The parties are Christians. Both of them are Engineering Assistants in All India Radio. Two months after the marriage, the respondent started to treat the petitioner with cruelty. He abused her in public places, even for the

reason that she looked at the face of a Pedestrian. He assaulted the petitioner at the bus station. The Police patrol had to intervene and chasten the respondent. The respondent maintained an inferiority complex as

he belonged to the CSI community. The respondentu

(Mukkothi). He also humiliated the petitioner byaddressing

respondent neglected to maintain the petitioner and meet to the household expenses. In 1997, the respondent physically assaulted the petitioner and abused her in vituperative language. Even though the couple decided to construct a house by availing housing loan and the respondent undertook to repay the monthly installments, he retracted from his promise, compelling the petitioner to repay the loan. The couple was blessed with a child on 3.3.2004. The petitioner joined for B.Tech evening course. She

used to return only by 9.30 p.m. The respondent started spreading canards against the petitioner, imputing that she had leading an immoral life and questioned her chastity. He assaulted her and she sustained injuries on her face, and thereafter he locked her in a room. On 30.9.2006, the respondent physically assaulted the petitioner. On 8.7.2007, the respondent banged the petitioner's head against the wall. A case was registered against the respondent for an offence punishable under Section 324 of the Indian Penal Code. The petitioner is apprehensive of her life and limp due to the continuous and unabated cruelty meted out on her. The respondent had constructively deserted the petitioner from 20.2.2004. The marriage is irretrievably broken and hence the same may be dissolved.

5. The respondent filed a written objection refuting the allegations in the original petition. It was his case that the petitioner maintained a distance as they belonged to different community denominations. The petitioner treated the respondent badly and abused him. It was the respondent who paid the EMIs for the housing loan. He also played an active role in getting admission for the petitioner to join the B.Tech course. The petitioner became a spendthrift after joining the B.Tech Course. She splashed money for clothing, money and ornaments etc. The petitioner treated the respondent's father as an unwanted element. The petitioner has not made out any ground for dissolution of their marriage. Hence the original petition may be dismissed.

6. The respondent filed O.P. 1237/2008 on the very same lines as in the written objection in O.P. No.785/2007. The petitioner filed a written objection also in tune

with her case in O.P No. 785/2007.

7. The Family Court consolidated and jointly

tried the original petitions. The petitioner and a witness were examined as PW1 and PW2 and Exts.A1 to A15 were marked through them. The respondent was examined as CPW1 and Exts.B1 to B4(a) were marked through him.

8. The Family Court, after evaluating the pleadings and materials on record, by the impugned common judgment, allowed O.P. No.785/2007 and dismissed O.P. No.1237/2008.

9. Heard Sri.D.Kishore, the learned counsel appearing for the appellant/respondent and Sri.Basant Balaji, the learned counsel appearing for the respondent/petitioner.

10. The learned counsel appearing for the appellant vehementally argued that the Family Court has gone wrong in allowing O.P. No.785/2007 and dismissing O.P. No.1237/2008. According to him, the allegations pleaded and testified by the petitioner are

all trivial and puerile, which does not warrant the extreme step of dissolution of the sacred bond of marriage. At the worst, the incidents alleged are normal wear and tear in a married life. As the couple have two daughters, it would always be better for the couple to resume cohabitation, at least for the welfare and interest of the children. The findings of the Family

Court are all based on conjunctures without evaluating the pleadings and evidence in its proper perspective. Hence he prayed that the appeals be allowed and a decree of restitution of conjugal rights be passed in favour of the appellant/respondent.

11. The learned counsel appearing for the respondent, on the contrary, argued that there is absolutely no error committed by the Family Court in granting a decree of divorce in favour of the respondent/petitioner. The specific instances of cruelty pleaded and proved by the respondent justifies the common judgment

passed by the Family Court. The

couple are living separately since 2004. Hence the marriage has become a deadwood and there is no point, at this distance of time, in interfering with the common judgment passed by the Family Court. The children have attained majority and they may be left to their choices. He drew our attention to the undisputed fact that all the monetary dispute between the couple were settled on the basis of a compromise arrived at between the parties. This Court recorded the compromise and disposed of Mat.Appeal 320/2015. This aspect also shows that nothing survives in the martial relationship between the couple. He hence prayed that the appeals be dismissed.

12. The question that emerges for consideration

in these appeals is whether the common judgment

passed by the Family Court is correct or not.

13. The marriage and paternity of the children are not disputed. The petitioner had filed O.P. marriage with the respondent on the grounds that the respondent treated her with cruelty and had with an animus deserted her.

14. In Samar Ghosh v Jaya Ghosh [(2007) 4 SCC

511], a three-Judge Bench of the Honourable Supreme Court has laid down exhaustive guidelines on the acts that constitute 'cruelty'. The ultimate conclusions are relevant, which reads as under: 98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of mental cruelty within which all kinds of cases of mental cruelty can be covered. No Court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human

behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty

cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc., etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice-versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for

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

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire

matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct

and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount

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

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

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

(vi) Sustained unjustifiable conduct and behaviour of

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

(vii) Sustained reprehensible conduct, studied neglect,

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

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

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

> and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period,

where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

xxx xxx xxx

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

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

15. The specific instances of cruelty averred by the petitioner are that the respondent used to humiliate her in public places, used to call her ' a

fisher woman', used to call her 'a daughter of a prostitute', used to economically abuse her by not repaying the housing loan, used to suspect her chastity, physically assaulted her on 30.9.2006 and 8.7.2007 and with an animus deserted her since 20.2.2004.

16. The Family Court after appreciating the pleadings and materials on record, particularly Ext.A3 outpatient ticket issued by the General Hospital, Thiruvananthapuram, which substantiates that the petitioner was admitted with contusion on the left side of her face. Likewise, Ext.A9 substantiates that the petitioner was constrained to file MC No.10/2010, invoking the provisions of the Protection of Woman from Domestic Violence Act, and Ext.A11 prohibitory

order was passed against the respondent restraining

him from committing any act of domestic violence. Similarly, Ext.A12 complaint filed by the petitioner before the Circle Inspector of Police, Poojappura, also

establishes that the respondent attempted to violate the interim orders passed by the Family Court.

17. Going by the above materials and the oral testimonies of PWs 1 and 2, it stands proved beyond

any shadow of doubt that there were serious differences between the couple right from inception of their marriage till the twilight of their separation. The respondent has not produced any material to discredit the materials on record or controvert the oral testimonies of PWs 1 and 2.

18. On a comprehensive appraisal of the matrimonial life between the couple at least from 2006 to 2010 i.e., prior to the institution of the original petitions and the subsequent events, we are satisfied that the appellant has meted out cruelty on the petitioner. The petitioner was even compelled to invoke the provisions of the Protection of Woman from Domestic Violence Act, and seek prohibitory and restraint orders. The act of the respondent has certainly caused a feeling of deep anguish in the mind of the petitioner and she being apprehensive for her

life and limb. The specific instances of cruelty

have spanned right after the marriage in the year 1991 till 2010, i.e., for a period nearly two decades. The petitioner has not taken a hasty decision to snap the

marital knot. The overwhelming evidence on recordc

matrimonial cruelty falling within the parameters in Samar Ghosh (supra).

19. Now with regard to the ground of desertion. It is on record that the couple parted ways on 20.2.2004. The petitioner's case is that due to the extreme cruelty that was meted out on her by the respondent, she was constrained to live separately

from the respondent. We have already found that the respondent has treated the petitioner with cruelty. Therefore, we have no hesitation to hold that the respondent is guilty for constructive desertion as laid down by the Hon'ble Supreme Court in Ravikumar v Julmidevi [2010) 4 SCC 476]. The oral testimonies

of PW1 and PW2 with the materials on record substantiate that the couple are living separately since 20.2.2004. The petitioner has proved that the respondent has deserted the petitioner for two years prior to the institution of O.P. No.785/2007.

20. On an overall re-appreciation of the pleadings and materials on record in an apposite manner, we are of the considered opinion that the marriage between the petitioner and the respondent is shattered beyond

redemption and has become a deadwood. The petitioner has pleaded and proved specific instances of cruelty and that the respondent has deserted the petitioner for more than two years. In the above discussed legal and factual

background, our inevitable conclusion is that there is absolutely no error in the common judgment passed by the Family Court in O.P. No.785/2007 dissolving the marriage between the petitioner and the respondent by a decree of divorce, and by dismissing O.P. No.1237/2008. The appeals fail and are consequently dismissed.

Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- C.S.DIAS ma/29.01.2021 JUDGE /True copy/

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