

X Vs Y

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SooperKanoon Citation : sooperkanoon.com/1664970

Court : Kerala

Decided On : Sep-30-2021

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Dr. Justice Kauser Edappagath

Appeal No. : Mat.Appeal/485/2019

Appellant : X

Respondent : Y

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 AGAINST THE ORDER/JUDGMENT IN OP 110/2017 OF FAMILY COURT, VADAKARA, KOZHIKODE APPELLANT: X BY ADV C.R.SIVAKUMAR RESPONDENT: Y BY ADVS. SRI.V.JOHN MANI SRI.S.JAYANT SHRI.VARGHESE SABU THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 30.09.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2- C R

JUDGMENT

A.Muhamed Mustaque, J Where parties to divorce are in pari delicto, how the Court should approach to the ground for divorce urged in a petition filed by one of the spouses in a marriage, is the central issue in this appeal.

2. This case depicts conflict of personalities in a marital tie.

The spouses had a short lived marital relationship lasting for ten days. The clash surfaced when the respondent-husband left the matrimonial home allegedly attributing mental torture he suffered during the time he spent with the appellant-wife. On a petition for divorce initiated by the respondent-husband on the ground of cruelty before the Family Court, the Court, noting the contents in the e-mail messages and in social media posts by the wife, opined that such contents amount to cruelty warranting a decree of divorce. In this appeal, the wife questions the decree granted.

3. Heard the learned counsel for the appellant Sri. C.R.Sivakumar and the learned counsel for the respondent Sri. -3- V.John Mani.

4. The learned counsel for the appellant, Sri. C.R.Sivakumar,

referred to the background of the marriage. According to him the parties came into contact through social networking website Orkut some time in the year 2008. That acquaintance made them having

intimate relationship including sexual relationship. According to the appellant-wife, it was an act of rape, on the pretext of promise to marry. The appellant-wife was working in Bangalore. She filed a complaint before the Nadakkav Police Station, Calicut, alleging rape. Thereafter, she withdrew the complaint as the parties agreed for marriage, following a settlement arrived between them. The marriage, accordingly, was solemnized on 25.09.2015 under the Special Marriage Act, 1954. The learned counsel for the appellant, Sri. C.R.Sivakumar, further pointed out that filing of an earlier petition by the husband as O.P No.135/2016 for declaring the marriage as null and void was dismissed on 27.02.2017 as the

husband failed to prove the alleged fraud and coercion. It is submitted that after dismissal, a petition for divorce was filed on -4- 3.03.2017, alleging cruelty.

According to the learned counsel, the background as above clearly establishes the ground canvassed is illusory. According to him, the marriage itself was to get over the impending criminal prosecution and such a person cannot take the advantage of his own conduct to obtain divorce.

5. Per contra, the learned counsel for respondent-husband, Sri. V. John Mani, placing reliance on the e-mail messages sent to the husband and social media posts of the appellant-wife, argued

that the respondent-husband suffered mental torture. It is also submitted that the respondent-husband has been denigrated among his friends and others, who had occasion to see such posts in the social media.

6. Cruelty, as a ground, referred to in the statutory

provisions, allude to the fault of one of the spouses to make the opposite spouse to wriggle out from the marital relationship. Cruelty is recognized as a matrimonial guilt to allow a spouse, who suffered, to seek separation. This Court, in the peculiar facts of the case, is called upon to decide the validity of the decree granted to the

-5- husband, when sufficient indications are on record to prove the conduct of the husband as also blame worthy.

7. We shall refer to the findings on facts before answering

the point of law noted as above. The respondent-husband never had real intention to marry the appellant-wife as deposed by him in the chief affidavit itself. It was a marriage created by circumstances resulted from lodging a criminal complaint by the appellant-wife before the police. After the marriage, the spouses lived together only for 10 days. The motive for the marriage, as far as the husband was

concerned, was not genuine. The spouses belonged to different communities. The husband's disinterest spurred the wife to respond in the manner indicated in the impugned judgment. Exts.A1 and A2 series are the e-mail messages sent to the respondent-husband by the appellant-wife. The emotional abuse reflected in these

messages cannot be overlooked in isolation of the genuine love the wife had expected from her husband. We are not referring to those messages that have been reproduced in the impugned judgment itself.

8. The Court has to consider this emotional abuse from the -6-

perspective of the receiver of such messages. The Court cannot ignore the fact that such an emotional abuse would do more harm than good, though it may have generated out of genuine affection or love. Patience and an ability to remain unprovoked are the essential qualities to be maintained in a true marital bonding. We are unable to brush aside the conduct of the appellant-wife reflected in the

messages she sent to the respondent-husband. All the messages referred to in the impugned judgment reflected emotional abuse. Apart from these e-mail messages, it has come out in the evidence of PW3, a friend of the respondent-husband that the appellant-wife had posted similar messages in Facebook denigrating the respondent-husband. On the side of the respondent-husband, his mother was examined as PW2. She also pointed out an instance of abuse and mental torture meted out to their family. These oral evidence cannot be eschewed if we analyse the tone and tenor of

messages sent to the husband. Emotional abuse occurs in a matrimonial relationship when one of the spouses resort to abuse and bullying. The object of such emotional abuse is to debase self -7- respect and esteem of other spouse. When emotional abuse becomes constant feature, it amounts to mental cruelty, so as to seek separation by divorce.

9. Coming back to the legal point we referred earlier, the

respondent-husband cannot be absolved from the fault he committed. The disinterest in the marriage appears to be the root cause for the marital discord. Under Sec.27(1)(d) of the Special Marriage Act, 1954, a petition for divorce on the ground of cruelty can be granted at the instance of the husband or wife. The cruelty as such would cast a stigma on one of the spouses, who is hauled up for the fault. We have no hesitation to hold that both spouses in this

case are at fault in making the marriage as unworkable. The husband's disinterest in the marriage and his attitude towards the appellant-wife are equally condemnable. The respondent-husband cannot put the entire blame on the appellant-wife to get out of the marital relationship. At the same time, we cannot also refrain from holding that the messages generated from the appellant-wife would constitute emotional and mental abuse to the respondent-husband.

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10. The ground for cruelty recognized under the statutory

provisions to grant divorce based on the fault of a spouse is on account of the fact that an innocent party can seek remedy of divorce. When both parties are found to be at fault, can the Court decline divorce? In the doctrine of comparative rectitude, we find answers to this. The Courts in common law jurisdiction often resort to this doctrine when both spouses are found to have committed

marital misconduct. Comparative rectitude is defined in Black's Law dictionary as follows:

The degree to which one spouse is less culpable than the other in damaging the marriage, so that even though both spouses are at fault, the less culpable spouse may successfully petition for a separation or divorce. Comparative rectitude tempers the doctrine of recrimination by making a divorce possible even though both parties are at fault. Comparative rectitude is now virtually obsolete because of the prevalence of no-fault divorce.

11. Comparative rectitude doctrine provides a relief to a

spouse, who is found lesser blame worthy. Comparative rectitude has been developed in common law jurisdiction to mitigate doctrine of recrimination which is used in Ecclesiastical Courts (See 19 Va -9- LAW REV, 400(1933)). Recrimination is referred in Black's Law Dictionary as follows:

In a divorce suit, a countercharge that the compliant has been guilty of an offense constituting a ground for divorce. When both parties to the marriage have committed marital misconduct that would be grounds for divorce, neither may obtain a fault divorce. Recriminations are now virtually obsolete because of the prevalence of no-fault divorce. We also find application of doctrine of comparative rectitude and discussion of doctrine of recrimination in common law jurisdiction in the following judgments. (1. [1913] P.80 [BROOKING-PHILLIPS v. BROOKING-PHILLIPS]

2. 1943 SCC onLine Can SC 43

3. 195 F. 2d 799 [BURCH v, BURCH]

4. [1919] P. 298 [EVERETT v. EVERETT AND MCCULLUM]) These judgments will also throw some light on the point of law involved in this case.

12. When both parties are guilty of cruelty to each other, can the Court hold one is blame worthy and allow the other to -10-

walkaway by petitioning to the Court for divorce. The Courts in common law jurisdiction are Courts of both law and equity. We paused ourselves on a possibility of a petitioner in a petition for divorce, who is found to have committed matrimonial cruelty to retreat from the marriage, pointing out the cruelty of other spouse which is lesser in degree. Can we allow such claim for divorce? We have to say No to such petitioner, invoking the doctrine of comparative rectitude. This doctrine allows the Court to grant the divorce only if the petitioner is able to prove that his/her misconduct is less blame worthy than that of the opponent.

13. The husbands conduct in this case shows that he

exhibited disinterest in the matrimonial life. The wife retaliated to such conduct with emotional abuse to make reunion impossible. In that case, conduct of wife outweigh the misconduct of the husband. Thus, the Family Court is justified in granting divorce to the husband. It is her conduct that made her relationship

worsened. Taking the law in the above background, we have no hesitation to hold that the husband is less blame worthy, to affirm the finding of

-11- the Family Court.

14. The respondent - husband, in this appeal, had produced

additional documents along with an application for leave. We are not considering those documents without giving an opportunity to the appellant-wife to test the veracity of the same. Therefore, we close the application to receive the additional evidences. In the light of discussions as above, we find no merit in this appeal. Accordingly, the appeal is dismissed. No costs.

Sd/- A.MUHAMED MUSTAQUE JUDGE Sd/- DR. KAUSER EDAPPAGATH
JUDGE PR

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