

Mini Mathew Vs. Thomas Mathew

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Court : Delhi

Decided On : Apr-10-2003

Reported in : 2003IVAD(Delhi)370; 104(2003)DLT760; II(2003)DMC33; 2003(68)DRJ481

Judge : J.D. Kapoor, J.

Acts : [Indian Divorce Act, 1869](#) - Sections 10

Appeal No. : MAT 1 of 1995

Appellant : Mini Mathew

Respondent : Thomas Mathew

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Anne Mathew, Adv

Disposition : Petition allowed

Judgement :

J.D. Kapoor, J.

1. This is a petition by the wife under Section 10 of the [Indian Divorce Act, 1869](#) (substituted by Act 51 of 2001) seeking dissolution of marriage on the ground of cruelty.

2. Put briefly the facts pleaded by the wife are as under:

The marriage between the parties was solemnised on 17.8.1992 at St. Mary's Church, Vettimukal, Kerala according to Christian religious rites. Soon after the marriage, parties stayed together for about a week in Kerala and due to want of extended leave of the respondent the parties returned to Delhi and stayed for a short while at the residence of the respondent's brother at E-440, Greater Kailash, Part II, New Delhi. Petitioner alleges that within 20 days of her marriage, she came to know that the respondent was making inquiries at Delhi about her character and morals from some of her friends and her friends in turn informed her. On questioning as to suspicious nature of the respondent the petitioner was beaten up mercilessly. However, this did not last longer since the respondent left for Muscat in September, 1992. The petitioner tried to forget these incidents and made an earnest attempt to bring about good relationship with her husband and wrote letters to him in Muscat with the firm belief that their relationship will be in order sooner than later.

3. On or about 28th July, 1993, the respondent returned to Delhi for his annual holidays. But to the petitioner's surprise, she found that, despite, her letter to him, he was not only not responsive but also maintained his suspicious attitude to her, gave expression to his suspicions whenever they met their friends. During these holidays the parties lived together in respondent's brother house at E-440, Greater Kailash Part II, New Delhi. This period was the last occasion that the parties lived and co-habited together. The petitioner was staying in Delhi since 1986 and has good friendship with the families and as a member of the Church had also taken part in youth activities and in social welfare, etc. The respondent resented such social contacts and developed unreasonable suspicion which resulted in constant quarrels and even her her own colleagues in the social activities both men and women started avoiding her and did not allow her to participate in these activities.

4. On or about December, 1994, the respondent came to Kerala while the petitioner herself was at Kerala to attend to her ailing mother. Even at the petitioner's house, the respondent picked quarrels with the petitioner and when things became unbearable, the petitioner was forced to leave Kerala for Delhi to

resume her duties. The respondent also came to Delhi and filed a complaint with the petitioner's office about her character and the petitioner cut a sorry figure in front of her superiors and colleagues in the office which was so embarrassing and painful to her. Though the period of stay by the petitioner with the respondent was too short but when they used to join together the respondent used to go out of control as if he was taking revenge against the petitioner.

5. According to the petitioner, the respondent suffers from inferiority complex and showed all the frustration because the petitioner happened to be of fair complexion. When torture and beatings under one pretext or the other became unbearable, the petitioner decided to live separately from the respondent in view of the cruelty meted out to her in a deliberate and continuous manner from her husband. From among the petitioner's friends, the respondent for some reason or the other, picked up one person by name Biju Philip who was 4 years younger to the petitioner alleging improper conduct and filed a false complaint before the SHO, Nanakpura stating that the said Biju had forcefully and illegally kept the petitioner in his custody. The respondent sent a photocopy of the complaint to the petitioner's office with a view to deprive her job and security, to her parents at Kerala with a view to malign her in front of her orthodox and conservative parents and to the parents of Biju Philip who are all residing at Kerala. Subsequently Biju Philip went and filed a police complaint stating that the allegations made in the respondent's complaint is not only defamatory but also false since the said Biju Philip lost his own sister some two years back and since the petitioner has some resemblance to his own sister and moreover the petitioner is 4 year solder to him and he is treating her as his own sister.

6. Another complaint was filed by the respondent with Crime against Women Cell, Nanakpura, on 22.12.1994 and on 23.12.1994, the petitioner received summons from the ACP, Crime Against Women Cell, Parliament Street Police Station, directing the petitioner to be present on 24.12.1994 on a false adultery charge leveled by the respondent.

7. Finding it difficult to live with the respondent who has treated the petitioner with utmost cruelty she has sought dissolution of marriage through this petition on the

ground of 'cruelty'.

8. In response respondent leveled volley of similar allegations against the petitioner by filing the written statement but left it in the midway as after 27.9.1999, neither the respondent nor did his Counsel appear and accordingly vide order dated 6.9.2000, respondent was proceeded ex-parte. Allegations mainly verge on the conduct of the petitioner in getting rid of him after having extracted huge amount as he has been seeking money from time-to-time to the petitioner by bank drafts when he was in Muscat running into thousands and lacs of rupees. It is averred that it was only in the month of December, 1993 when the petitioner wrote a letter to the respondent that he noticed drastic change in the behavior of the petitioner inasmuch as not only was the petitioner cruel and stubborn in her behavior and attitude but was also demanding and would order the respondent to send money every now and then on one pretext or the other. On 1.12.1994 the respondent came from Muscat on annual leave and went to Kerala to the house of the petitioner. The petitioner reached Kerala from Delhi on 3.12.1994. On seeing the respondent she quarrelled with him and asked him to get out of her house and threatened the respondent that in case he did not leave her house immediately she would jump in the well and commit suicide. Thereafter, the respondent came to Delhi and met the elder sister of the petitioner with whom the petitioner had been staying at Delhi but petitioner's sister told that she was not living with her and living elsewhere and about her whereabouts she showed her ignorance. Time and again the respondent requested the petitioner to live with him but she always refused to go with him and insisted for divorce. It is alleged that the respondent has also been nursing suspicion against petitioner's character and according to him her conduct and character brought bad reputation to herself and his family members and whenever he visited her hostel or her place of working, he found her absent and learnt about her illicit activities.

9. In support of her allegations, the petitioner has filed affidavit by way of evidence and proved the following documents:

(i) Exhibit P1-A is the original certificate of marriage dated 23.8.1992 proving a valid marriage between the petitioner and respondent on 17.8.1992 at St. Mary's

Cathedral, Vettimukal, Kerala; (ii) Exhibit P1-B is the true copy of the complaint filed by the respondent-husband against the petitioner-wife at Crime Against Women Cell, Parliament Street, New Delhi on 22.12.1994; (iii) Exhibits P.1 and P.9 are the letters written by the respondent to Mr. Biju Philip admitting cruelty to the petitioner by filing a criminal complaint at C.A.W. Cell against the petitioner; (iv) Exhibits P2-P8 and P10-P12 are copies of the letters written by respondent to petitioner's superior officer Mr. Rao and other family friends of the petitioner; (v) Exhibit P-15 is the original letter by respondent to Mr. Biju containing very vulgar and abusive language against the petitioner; (vi) Exhibit P-16 is the letter dated 25.1.1995 by respondent-husband to the petitioner-wife requesting the petitioner to file a divorce petition; (vii) Exhibit P-17 is the letter dated 24.1,1995 by the respondent to the parents of Mr. Biju alleging adultery by the petitioner; (viii) Exhibit P-18 is the original handwritten notice dated 14.10.1997 to the parents of the petitioner demanding settlement of issues between petitioner and respondent; (ix) Exhibits P-19 and P-20 are the letters to the parents of Mr. Biju Philip and to Mr. Biju Philip alleging adultery by the petitioner; (x) Exhibits P-21 and P-24 are the letters addressed by the respondent to Mr. Rao one of the colleagues of the petitioner alleging that the contents of the same was written by the parents of the petitioner; (xi) Exhibit P-22 is the letter by the respondent to the wife of Mr. Rao alleging that Mr. Rao is planning to kill him; (xii) Exhibit P-23 is the letter by the respondent to the friend of the petitioner containing abusive and vulgar language; (xiii) Exhibits P-25, P-29 and P-30 are letters by respondent to the Parish Priest of the Church of the petitioner; (xiv) Exhibits P-26, P-27 and P-28 are letters written by the respondent to one Thankachan and family the elder brother and family of Mr. Biju Philip containing abusive and vulgar language; and (xv) Exhibit P-31 is the true copy of the complaint filed by the respondent against the petitioner at C.A.W. Cell, Parliament Street dated 25.12.1994

10. Cruelty is a ground of divorce. The word 'cruelty' has not been defined anywhere. In olden times it used to confine only to physical violence and danger to life, limb or health. The definition of cruelty has now extended to mental cruelty.

11. In *V. Bhagat v. Mrs. D. Bhagat*, : AIR 1994 SC710 Supreme Court had the occasion to define 'Mental Cruelty' as contemplated in Indian Laws particularly

under the provisions of Section 10 of Hindu Marriage Act. These provisions are identical to other laws governing different communities in this country. The acid test to determine mental cruelty is that the conduct of the guilty party should be such that the wronged party cannot reasonably be asked to put with such conduct and continue to live with the other party and thereforee danger to life, limb or causing injury to the health of the aggrieved party is not essential. The observations of the Supreme Court in this regard are quote worthy and are as under:

'Mental cruelty can be broadly defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for the party to live with the other. In other words 'mental cruelty' must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner.

The word 'cruelty' is to be used in relation to human conduct or human behavior. It is the conduct in relation or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional.'

12. Parameters of what constitutes cruelty in matrimonial affairs have been well carved out in American Jurisprudence 2nd edition Vol 24 page 206. These are:

'The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances.'

13. However, for the purpose of Indian Law of which Indian Divorce Act is also a part, the Supreme Court has in *Dr. N.G. Dastane v. Mrs. S. Dastane*, : [1975]3SCR967 while dealing with the meaning of cruelty has taken the view that like English Law it is not necessary that the cruelty must be of such a character as to cause 'danger' to life, limb or health or as to give rise to a reasonable apprehension of such a danger. Supreme Court has laid down the following criteria to ascertain whether a particular conduct amounts to cruelty or not :

'The inquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. It is not necessary, as under the English law, that the cruelty must be of such a character as to cause 'danger' to life, limb or health or as to give rise to a reasonable apprehension of such a danger. Clearly danger to life, limb or health or a reasonable apprehension, of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other.

But under Section 10(1)(b), harm or injury to health, reputation, the working career or the like, would be an important consideration in determining whether the conduct of the respondent amounts to cruelty. Plainly, what we must determine is not whether the petitioner has proved the charge of cruelty having regard to the principles of English law but whether the petitioner proves that the respondent has treated him with such cruelty as to cause a reasonable apprehension in his mind that it will be harmful or injurious for him to live with the respondent.'

14. When analysis of such human sensibilities, affairs and conduct is under discussion, I would be failing if I don't quote Lord Denning, a celebrated and legendary Judge of this century. Lord Denning says intent to cause or inflict misery or injure the feelings is not essential element. If the conduct consists of direct actions then conclusion may be drawn that it was aimed at the other. Sometimes drunkenness, gambling, indulgence in crime amounts to such conduct which indirectly affects the husband or the wife. In the words of Lord Denning neither the intention is necessary nor the desire to injure the other or inflict the injury is necessary. The views of Lord Denning in this regard need to be reproduced and

are as under :

'When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object the butt--at whose expense the emotion is relieved.'

'When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health.....when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not. The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may-not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrance's of the innocent party provoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party.'

[Kaslefsky v. Kaslefsky, (1950) 2 All E R 398

15. Lord Tucker in Jamieson v. Jamieson, (1952) 1 All E R 875 has gone a step further and said that every such act must be judged in relation to its surrounding circumstances and the physical or mental condition or susceptibilities of the innocent spouse and has advised the Judges to refrain from attempting a comprehensive definition of matrimonial cruelty. The words of wisdom of LORD

TUCKER in the above referred case are worthy to quote. These are :

'.... Judges have always carefully refrained from attempting a comprehensive definition of cruelty for the purposes of matrimonial suits and experience has shown the wisdom of this course. It is, in my view, equally undesirable--if not impossible--by judicial pronouncement to create certain categories of acts or conduct as having or lacking the nature or quality which render them capable or incapable in all circumstances of amounting to cruelty in cases where no physical violence is averred. Every such act must be judged in relation to its surrounding circumstances, and the physical or mental condition or susceptibilities of the innocent spouse, the intention of the offending spouse, and the offender's knowledge of the actual or probable effect of his conduct on the other's health are all matters which may be decisive in determining on which side of the line a particular act or course of conduct lies. It is, generally speaking, not possible to compartment acts for the purposes of relevance as being gross so as to constitute cruelty or less gross so as not to constitute cruelty, though there may be extreme cases where the acts in themselves are so trivial as to justify dismissal of an action for lack of relevance without proof. It is with regard to the sufficiency of the facts and matters relied on as amounting in the aggregate to cruelty that I think consistorial causes are so different from many other types of action.'

[Jamieson v. Jamieson, (1952) 1 All E R 875

16. Without tarrying further on this aspect, I find that the allegations leveled by the petitioner when tested on the aforesaid criteria leave no manner of doubt that both the parties are poles apart as to their compatibility and temperament and it is these factors that have culminated in the intolerable or unbearable conduct and the petitioner cannot be reasonably expected to live with the respondent. When a spouse remains under the pall of suspiciousness as to his or her character and virtue and starts making inquiries or goes on telling the world that he or she is indulging in illicit relationships and while in anger resorts to physical torture or beating, life for such a spouse becomes miserable and insupportable and causes mental and physical harm. Since the respondent has not cared to support his allegations and counter those of the petitioner by way of evidence the allegations

of the petitioner have to be deemed as correct. Acts of respondent amount to not only physical but mental cruelty also and entitle the petitioner-wife to put an end to the marriage forever.

17. Petition is allowed. Marriage is dissolved to be followed by decree of divorce.

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