

Lini Mohan John Vs. Mohan John

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Court : Kerala

Decided On : Mar-13-2001

Reported in : AIR2001Ker309

Judge : D. Sreedevi, J.

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

Appeal No. : OP(DIV) No. 28473 of 2000 (M)

Appellant : Lini Mohan John

Respondent : Mohan John

Advocate for Def. : Jomy George and; V.C. Sabu, Advs.

Advocate for Pet/Ap. : Bechu Kurain Thomas, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D. Sreedevi, J.

1. Petitioner under Section 10 of the Indian Divorce Act.

2. Petitioner is the wife and the respondent is the husband. They are Indian Christians governed by the Indian Divorce Act for the purpose of matrimonial reliefs. Their marriage was solemnised on 14-7-1986 at the St. George Orthodox Church, Paliyekkara, Thiruvalla. While they were living together a child was born to them and she is now 10 years of age. The petitioner has filed this O.P. for a decree of divorce on the ground that she was treated with cruelty and that she was deserted and neglected for more than a period of two years. The petitioner has alleged that she has been subjected to mental and physical cruelty. She has narrated the instances of mental cruelty, as failure to look after the welfare of the child, addiction to gambling and refusal to speak the truth. According to the petitioner, even after the birth of the child, his attitude towards her has not changed, but only worsened. Even when she was admitted in the hospital for delivery, the respondent did not show any love and affection towards her. The respondent has taken the petitioner to Dhamam in Saudi Arabia in February, 1987. She was never permitted to go out of the house or talk to any person. She was never allowed to contact any person. He refused to keep a telephone in his house while they were abroad. Absence of telephone and lack of any pocket money cut off the petitioner from the outside world. She came back to India in 1988. Then there was a mediation talk and after conciliation the respondent agreed to mend his ways and believing his words the petitioner again went to Saudi Arabia. Though for a short period there was no problem, again he started creating problems. He spent his time for gambling. For cheating his employer a police case was registered. The respondent has not cared even to buy dress for his child. As he was addicted to gambling, he had incurred huge debts. He has lost the entire money given by the petitioner's father towards her share. He had also collected large amount of money from the petitioner's father. A total sum of Rs. 6.15 lakhs was taken by the respondent from the petitioner's father after making false statements in addition to Rs. 3 lakhs paid earlier at the time of marriage. He used to call her father asking for huge amounts and threatened that unless the amounts are given, the petitioner and the child will not return to India. Immediately after his office work he used to visit places of gambling and returns only late in the night. He used to lock up the house from outside. Thus the addiction to gambling has caused much mental agony to the petitioner. The petitioner was brought up in

an extremely religious atmosphere. Misappropriation of company funds and indulging in various unlawful activities also caused much mental agony to the petitioner. He had continuously manhandled her. In order to extract money from the petitioner's father he had brutally assaulted her. She was also slapped when she questioned his gambling addiction. When he started physical assault to her even to the child she felt insecurity. She was extremely scared to live with the respondent. Therefore, she was sent back to India by the respondent on 28-7-1996. Thereafter also he never cared to look after the petitioner and her child. Even though he came to India he did not care to visit her or to enquire about her and the child. She was deserted and neglected from 1996 onwards. For more than a period of four years they been living Separately. He has never cared to have sexual relationship with the petitioner for the last 10 years. Therefore, the petitioner prays for a decree of divorce.

3. The respondent filed a counter denying the averments regarding cruelty and desertion, After marriage the petitioner was taken to Saudi Arabia and they were leading a very happy married life. The company provided them a new Toyota car and accommodation. While so, she became pregnant and gave birth to a child in a private hospital at Thiruvalla. The respondent arrived in India a week before the petitioner's delivery and went back after three weeks and again he came to India to attend Baptism of the child on 24-2-1990. Till the Kuwait war the petitioner and the child were in Saudi Arabia. They were sent back to Kerala to safeguard their interests. During early 1996 there started some trouble in the professional career of the respondent. Being a Marketing Manager, he cleared articles of the company to certain persons who cheated him and his company. But the company fixed the liability on the respondent. There was no-payment of about 15 lakhs of rupees. Some of his relatives borrowed about 3 lakhs of rupees. The respondent found it very difficult to get over the situation. He had arranged money through his brothers-in-law, his father and finally he approached the petitioner's father for one lakh rupees under the guarantee of his father's property. Only after solving the problem the petitioner and the child were sent back to India. Thereafter the respondent also came to India and was doing business. He denies all the allegations regarding cruelty, neglect and desertion. He wants to resume the married life.

4. The petitioner was examined as P. W. 1. She has deposed to the averments in the petition. She states that she did not get love and affection from her husband and that he is an addict to gambling. Even on the first day of her marriage he went for gambling and returned only in the next morning and after his return from office he used to go for gambling and will be back only late in the night i.e. about 2 O'clock or 3 O'clock early in the morning. All that time she will be alone in the house and the house will be locked from outside when he leaves home. There was no telephone facility and hence she could not contact any other person. As he incurred a lot of debts due to his gambling he wanted money from her and her father gave Rs. 6.15 lakhs to the respondent in addition to Rs. 3 lakhs paid at the time of marriage. As he was in need of money he has misappropriated funds from the company. He had also borrowed money from various persons. He had even sold away the air conditioner fitted in the house and she found it very difficult to live there without the air conditioner. The creditors also started knocking at the door and thus she has lost her feeling of security there. Ext. P1 is a letter issued by the employer, of the respondent to the petitioner's father. This letter is in reply to the letter sent by P.W.2, her father which reads as follows :

'.....As you are aware that he embezzled from us and our customer a sum of SR. 1,36,000.00 and absconded from our Company with a forged Passport. During the time he was working with us, we came to know from his neighbours that he was not taking care of his family also. He didn't pay his flat rent amounting to SR. 18,000. Also he didn't pay electric charges of his flat amounting SR.3,800.00 for more than one year. Because of that the electric supply cut off. Even though he stays with his family in the same flat without a fan or A.C. In the hot season when temperature was more than 50C. We came to know that he was taking his family to one of Air Conditioned Super Market to get some cool air. We filed Police case against him when we came to know that he misappropriated our money amounting SR. 157,800 and escaped from here, The case is still in force'

This letter is proved by P.W.2, the father of the petitioner. Ext. P2 is a letter sent by the petitioner to her parents on 3rd July, 1995 wherein she has stated that the respondent has incurred huge debts and she was left without any means for her livelihood. She also states that the respondent spent a lot of money for gambling.

She further states that she suffered much in Dhamam. Ext. P3 is another letter sent by one of her friends. This letter goes to show that her husband borrowed money from one of her friends, Sophia George. She has sent this letter demanding repayment of the amount due. Ext. P4 is the letter sent by P.W.2 to the respondent. This also shows that the respondent has treated his daughter and the child with cruelty and that they were put to much hardship. He has sent back his wife and child without getting even the transfer certificate of the child from the school. The mental agony of the father is evident from this letter, This also shows that he has sent Rs. 6.15 lakhs to the respondent in addition to Rs. 3 lakhs paid at the time of marriage. Ext. P5 is another letter sent by Sophy, one of her friends to the petitioner's parents. In this letter she has stated that she was worried about the condition of the petitioner and the respondent in Daman and she expressed her inability to help them. P.W.2, the father of the petitioner deposed that his daughter was put to much hardship because the respondent has misappropriated money from the company for the purpose of his gambling. Nothing was brought out in cross-examination to discredit his testimony. Therefore, I believe him. R.W.1 is the respondent's father. According to him his son was leading luxurious life in Daman. He had a car. He denied the allegation that the petitioner was treated with cruelty by his son. He admits that the company proceeded against his son and that he had paid off the amount due to the company and at the request of the petitioner she was sent back and his son is ready and willing to take back the petitioner and the child. R.W.2 is another witness. He was examined to prove-that the respondent used to look after the petitioner and the child. According to him, gambling and liquor are prohibited in Saudi Arabia and the only entertainment there is outing. He does not know whether the respondent is involved in criminal cases and he pleaded ignorance about the respondent's company transactions. His evidence is not of much help to substantiate the respondent's contention.

5. The learned counsel for the petitioner invited my attention to the decision reported in *A v. B* (1996)1 Ker LT 275 : (1996 AIHC 1727) wherein it is stated that the legal concept of cruelty which is not defined by statute, is generally described as conduct of such character as to have caused danger to life, limb or health or as to give rise to a reasonable apprehension of such danger, He also relies on the decision in *Princy v. Varkey* (2000) 1 Ker LT 756. Regarding the nature of cruelty

for the purpose of divorce the court held that the question of cruelty is to be Judged on the basis of evidence on record and circumstances of the case. Whether a spouse is guilty of cruelty is essentially a question of fact and the Court must consider the aforesaid matters in view of physical condition, custom and manners of the parties. To constitute cruelty, physical violence is not absolutely necessary. Inflicting mental agony is also cruelty. Mental cruelty can consist of verbal abuses and insults by using filthy, abusive language leading to constant marital discord. It may cause even more serious injury than physical harm. Here in this case, the petitioner was taken to Dammam where the respondent was working. Ext. P2 letter which was sent by her in 1995 goes to show that on the very day when they landed at Saudi Arabia the respondent left for gambling and came back only early in the night, viz. at 3 O'clock. This letter also goes to show that he had borrowed money from his friends and others. The mental agony of the petitioner is evident from Ext. P2 letter. Her anxiety was how long she has to suffer the cruelty of the husband. She states that her husband used to tell lies to his friends and other regarding the misappropriation of money. She also states that she is scared of the situation in Dammam. It is the human right of a person to live happily and to develop his personality. He used to lock the door from outside when he goes out and the petitioner will be alone in the house. There was no air conditioner or telephone facility. All along she has left alone till the husband comes back early in the next morning. In addition to this the creditors used to knock at the door demanding money due from her husband. The husband asked her to bring money from her father. He had also threatened her father saying that unless the money is paid the petitioner and the child will not be sent back to Kerala. Fearing that something untoward will happen to the petitioner and her child her father sent money. In spite of that he had borrowed money from the creditors and misappropriated money from the company. He has not paid the rent of the quarters and also the electricity charges. In such a situation one can imagine the mental agony of a wife who has no source of income other than the salary of her husband for her livelihood. This itself is sufficient to show that the respondent has treated the wife with cruelty and made her life miserable. The love towards her has been lost for ever. Therefore, in order to save the petitioner from the agony of mind and from the matrimonial discord a divorce is a must. It is also evident that

the petitioner and her daughter were sent back to Kerala in July, 1996. Thereafter, there was no contact between the petitioner and the respondent. The respondent has not even cared to look after the child and to provide maintenance. The petitioner has proved that after 1996 there was no resumption of cohabitation. She was forced to leave Dammam under the circumstances mentioned above. Therefore, I can find that she was compelled to leave Dammam because of the cruel acts of the respondent. Therefore, there is constructive desertion on the part of the respondent, for the last four years they have been living separately. Thus he has' neglected and deserted the petitioner and her child. Section 10 of the Indian Divorce Act does not help the petitioner to file a petition for divorce on the ground of cruelty and desertion, but in view of the Full Bench decision in *Mary Sonia Zacharia v. Union of India* (1995)1 Ker LT 644 the petitioner is entitled to get a decree of divorce on the ground of cruelty and desertion. The petitioner has proved by the evidence of P.Ws. 1 and 2 and also by the documentary evidence Exts. P1 to P5 that she was treated with cruelty and was deserted by her husband for more than a period of two years. Therefore, the petitioner is entitled to get a decree as prayed for.

In the result, the O.P. is allowed and the marriage between the petitioner and the respondent which was solemnised on 14-7-1986 at St. George Orthodox Church, Pallyekkara, Thiruydlla, is hereby dissolved by a decree nisi.

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