

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 24TH DAY OF AUGUST 2022 / 2ND BHADRA, 1944
MAT.APPEAL NO. 456 OF 2020
OP (DIV) NO. 620/2018 OF THE FAMILY COURT, ALAPPUZHA
APPELLANT/PETITIONER:

LIBIN VARGHESE,
AGED 34 YEARS,

BY ADVS.
MATHEW KURIAKOSE
SRI.J.KRISHNAKUMAR (ADOOR)
SHRI.MONI GEORGE

RESPONDENT/RESPONDENT:

RAJANI ANNA MATHEW,
AGED 38 YEARS,

BY ADVS.
B.J.JOHN PRAKASH
P.PRAMEL
NIMMY SHAJI
BALASUBRAMANIAM R.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
03.08.2022, THE COURT ON 24.08.2022 DELIVERED THE FOLLOWING:

"CR"

J U D G M E N T

Sophy Thomas, J.

A husband, who lost his case for divorce, is before us.

2. Brief facts necessary for the appeal could be stated as follows:-

The husband filed OP (Div) No.620 of 2018 before the Family Court, Alappuzha, under Section 10(1)(x) of the Divorce Act, 1869, for dissolving his marriage with the respondent, on the ground of matrimonial cruelties. He married the respondent on 09.02.2009 as per Christian rites and custom and three girl children were born in their lawful wedlock. Both of them were employed in Saudi Arabia, and their marital relationship was very smooth. But later, she developed some behavioral abnormalities, and she picked up quarrel with him for no reason, alleging illicit relationship with other women. She failed to perform her duties and responsibilities as a wife and mother. On 14.05.2018, she

slapped on his face and on 16.05.2018 she pointed a knife at him and threatened him with death. He was assaulted and humiliated in front of his children and public, and she made his close-relatives to turn against him. She compelled him to transfer the properties purchased by him into her name. Because of the indifferent, abusive and violent behavior of the respondent, he became mentally stressed and physically ill. According to him, their marital relationship was irretrievably broken and so he wanted a decree of divorce.

3. The respondent-wife vehemently opposed his petition. According to her, the appellant was concocting reasons to keep himself away from his wife and children. She was never cruel to the husband and she never assaulted or threatened him. The appellant had no financial discipline and the respondent herself purchased properties and constructed the house. She needs her husband, and her children their father.

4. After formulating necessary issues by the Family

Court, the parties went on trial. PWs 1 to 3 were examined and Exts.A1 & A2 were marked from the side of the appellant. RWs1 to 7 were examined and Exts. B1 to B7 were marked from the side of the respondent. The Family Court, on analysing the facts and evidence, found that the appellant failed to prove the allegations of cruelty against the respondent so as to dissolve their marriage, and hence the OP was dismissed, against which, the appellant has come up with this appeal.

5. We are called upon for a re-appraisal of the facts and evidence to find out whether any interference is called for in the impugned judgment and decree.

6. Admittedly, the appellant married the respondent on 09.02.2009 at St.Joseph's Church, Kayalpuram. Both of them were employed in Saudi Arabia and three girl children were born in their lawful wedlock. The appellant also is admitting the fact that they were leading a very cordial and smooth marital relationship till 2018. He is alleging that

thereafter the respondent developed some behavioural abnormalities, and she often picked up quarrel with him for no reason. If so, as a responsible husband, he was bound to know the reason for such behavioural changes of his wife, whether it be physical, mental or psychological. He has no case that he ever took his wife to a psychologist or psychiatrist to know the reason for her behavioural abnormalities.

7. The respondent wife deposed that she was working as a Nurse in Delhi and at that time, the appellant was working there in a Jewelry and they fell in love and decided to marry. The appellant was not ready even to admit the pre-marital affair between them, though his own mother RW2 and his own close-relative RW3 admitted that fact before Court. According to respondent, her marital life with the appellant was so smooth till 2018 and thereafter, he was trying to avoid her and her children. The mother and close-relatives of the appellant categorically deposed before

Court that in the year 2017, the appellant developed some illicit intimacy with a lady named Anjali and thereafter, he wanted to avoid his wife, children and even his own mother. The case of the appellant is that the respondent picked up quarrel with him alleging illicit relationship with other ladies. That seems to be the behavioural abnormality attributed against the wife by the appellant. Of course, the wife might have been worried about the extra-marital relationship of her husband spoken to by his mother and relatives.

8. The respondent deposed that there were no serious issues between them so as to dissolve their marriage, and she wanted her husband back to her life. According to her, she was not alleging any kind of illicit relationship against the appellant. Even when his mother and close-relatives were aware of the unholy alliance between the appellant and Smt.Anjali, it cannot be believed that the respondent was not aware of that fact. She was the first person to sense the change in the attitude of her husband. But may be out of

fear that, if she was attributing such an allegation, it may be termed as cruelty from her part, she denied to have such an allegation.

9. The testimony of RWs 2 to 7 will clearly show that the appellant wanted to avoid the respondent and her children to continue his unholy alliance with another woman. RW2 mother identified Ext.B5 photograph to be that of the appellant and Smt.Anjali, sharing intimate moments. According to her, Smt.Anjali belongs to her own parish and she knows her well. RW2 identified the photograph of the appellant in Ext.B6 photograph also, driving a car owned by Smt.Anjali. There is no person better than a mother to identify her own son.

10. The appellant contended that the respondent threatened to complain against him before Saudi Police to put him behind the Bars and also threatened him with suicide. In the appeal memorandum, ground No.'I'. is to the effect that "the evidence adduced from the side of the

respondent through other witnesses and documents are to the effect that the appellant is having illicit relationship with another lady. If that be so, it cannot be believed that the respondent did not pick up quarrel with the appellant as the same is not the normal human conduct." So, the appellant also is admitting that, if he had any illicit relationship with another lady, there was every possibility for his wife to pick up quarrel with him, as it was the normal human conduct. The case of the appellant that while their marital relationship was going very smoothly, the respondent developed some behavioural abnormalities assumes significance here. Without any solid reason, there was no chance for any such behavioural changes from the part of a wife, unless there were some physical, mental or psychological issues. The appellant has no case that the respondent was suffering from any mental or physical ailments leading to behavioural abnormalities. When the wife had reasonable grounds to suspect the chastity or fidelity of her husband, and if she

questions him, or expresses her deep pain and sorrow before him, it cannot be termed as a behavioural abnormality, as it is the natural human conduct of a normal wife. The normal human reactions or responses from a wife, on knowing that her husband was having illicit connection with another lady, cannot be termed as behavioural abnormality or cruelty from the part of the wife, so as to dissolve their marriage. The available facts and circumstances clearly point to the fact that in the year 2017 the appellant developed some illicit intimacy with another lady and he wanted to avoid his wife and children from his life, so as to live with that lady. The testimony of his own mother and relatives will speak against him. RW2, the mother of the appellant, deposed that even after the appellant neglected and abandoned the respondent and her children, she is taking care of RW2, and the entire affairs of the family. The close-relatives of the appellant are all admitting that the respondent is a good natured lady, loving her husband and family. The incidents of physical

assaults deposed by the appellant seems to be exaggerated stories to suit his claim for divorce on the ground of matrimonial cruelties. RW2 deposed that, since she is supporting the respondent, the appellant, who is her own son, is not happy with her. There is ample evidence to support that contention from her testimony itself. The appellant was not hesitant, even to question the chastity of his own aged mother, as she was supporting the respondent.

11. The learned counsel Sri.P.Pramel appearing for the respondent submitted that only to marry the other woman with whom the appellant was keeping illicit intimacy, he wanted to avoid the respondent, and for that purpose, he filed the divorce OP, though there was no valid grounds to dissolve their marriage. The testimony of RWs 2 to 7 coupled with Exts. B1 to B6 documents substantiate the case of the respondent. RW2, the mother, produced copy of her passport to show that she was often living with the appellant and respondent in Saudi Arabia from 2010 to 2016, and

according to her, at that time, they were leading a very happy married life. So, the motive of the appellant behind the divorce petition is obvious.

12. Courts cannot come to the aid of an erring person to legalise his activities, which are *per se* illegal. If the husband having unholy alliance with another woman wants to avoid his lawfully wedded wife and his three little children, he cannot seek the assistance of a court of law to get his present relationship legalised by dissolving his lawful marriage, without any valid reasons for the same.

13. According to the appellant, there is no meaning in continuing his marital tie with the respondent, and from 2018 onwards they are living separate, and their marriage is practically dead due to long years of separation.

14. In **Dr.Uthara vs. Dr.Sivapriyan** [2022 (2) KLT 175], we had occasion to deal with a similar question of non-co-habitation and long separation as a ground for divorce. In that decision we have held that '*the period of*

non-co-habitation however long it may be, if it was due to deliberate avoidance or due to pendency of cases filed by one party, the other party cannot be found fault with, when that party is still ready to continue his/her matrimonial life, and no grounds recognized by law are established against that party to break their nuptial tie. So legally, one party cannot unilaterally decide to walk out of a marriage, when sufficient grounds are not there justifying a divorce, under the law which governs them, saying that due to non-co-habitation for a considerable long period, their marriage is dead practically and emotionally. No one can be permitted to take an incentive out of his own faulty actions or inactions.'

15. In the case on hand, the parties are Christians governed by the Divorce Act 1869. Section 10(1)(X) of the Divorce Act, 1869 reads thus:

"10. Grounds for dissolution of marriage.--(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District

Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent—

XXX XXXX XXXX

XXX XXXX XXXX

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.”

16. The appellant has to establish that since the solemnisation of the marriage, the respondent has treated him with such cruelty as to cause a reasonable apprehension in his mind that it would be harmful or injurious for him to live with the respondent. Without establishing cruelty to such an extent, no divorce can be granted under Section 10(1)(X) of the Divorce Act.

17. From time immemorial marriage was considered as solemn, and sanctity attached to the relationship of a man and wife united in marriage was considered inseparable, and

it was the very foundation of a strong society. Marriage is a socially or ritually recognized union, or legal contract between spouses, that establishes rights and obligations between them, between them and their children, and between them and their in-laws. Family is the basic unit of the society, from where we learn virtues, values, skills and behaviour. Marriage is not a mere ritual or an empty ceremony for licencing the sexual urge of the parties.

*"Marriage is the union
of two different
surnames, in
friendship and in
love, in order to
continue the posterity
of the former sages,
and to furnish those
who shall preside at,
the sacrifices to,
heaven and earth, at
those in the ancestral
temple, and at those
at the altars to the*

*spirits of the land
and grain.”*

-Confucius.

18. Kerala, known as God's own Country, was once famous for its well knit family bondage. But the present trend it seems to break the nuptial tie on flimsy or selfish reasons, or for extra-marital relationships, even unmindful of their children. The wails and screams coming out of disturbed and destroyed families are liable to shake the conscience of the society as a whole. When warring couples, deserted children and desperate divorcees occupy the majority of our population, no doubt it will adversely affect the tranquility of our social life, and our society will have a stunted growth. Now-a-days, the younger generation think that marriage is an evil that could be avoided to enjoy free life without any liabilities or obligations. They would expand the word 'WIFE' as 'Worry Invited For Ever' substituting the old concept of 'Wise Investment For Ever'. The consumer culture of 'use

and throw' seems to have influenced our matrimonial relationships also. Live-in-relationships are on the rise, just to say good-bye when they fell apart.

19. The law and religion consider marriage as an institution by itself and parties to the marriage are not permitted to walk away from that relationship unilaterally, unless and until they satisfy the legal requirements to dissolve their marriage through a court of law or in accordance with the personal law which govern them.

20. Mere quarrels, ordinary wear and tear of matrimonial relationships or casual outburst of some emotional feelings cannot be treated as cruelties warranting a divorce. From the facts of the case on hand, it is obvious that the unholy alliance of the husband with some other lady has caused some disturbances in the family life of the appellant and respondent, which they were sailing smoothly with their three girl children. Even according to the mother and close-relatives of the appellant, such an unholy

relationship was started in the year 2017, and in the year 2018 itself, the husband moved for divorce. The parties are living separately from 2018 onwards. Even now, the respondent is ready for a reunion as she wants her husband, and her children their father. Learned counsel Sri.Mathew Kuriakose for the appellant submitted that it is only a drama played by the respondent as she is also aware of the fact that their relationship is emotionally dead due to long separation. The respondent was never separated from the appellant because of any fault from her part. Still she is living with the mother of the appellant, whenever she comes down from Saudi Arabia. It was the appellant who walked out of their marital relationship, and now he says that due to long separation, their marriage has become defunct.

21. Since, no act of cruelties, able to cause a reasonable apprehension in the mind of the appellant that it would be harmful or injurious for him to live with the respondent was proved by the appellant, he is not entitled to get a decree of

divorce on the ground of matrimonial cruelties. RWs 2 to 7 categorically deposed before the Court that the appellant and respondent were leading a happy married life, and they still want to see them live together along with their children. If the appellant is ready to come back to his wife and children, they are ready to accept him, and there is nothing to show that the chances of an amicable reunion is foreclosed forever. So the finding of the Family Court, Alappuzha, that the appellant is not entitled for a decree of divorce on the ground of matrimonial cruelties is liable to be upheld.

In the result, the appeal is dismissed. No order as to costs.

Sd/-

**A.MUHAMED MUSTAQUE
JUDGE**

Sd/-

**SOPHY THOMAS
JUDGE**