2026:KER:6855

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 29TH DAY OF JANUARY 2026 / 9TH MAGHA, 1947

MAT.APPEAL NO. 537 OF 2014

AGAINST THE JUDGMENT DATED 15.06.2013 IN OP NO.573 OF 2012 OF FAMILY COURT, MUVATTUPUZHA

APPELLANT/PETITIONER :

BY ADVS.
SHRI.M.P.RAMNATH
SHRI.P.RAJESH (KOTTAKKAL)
SMT.S.SANDHYA
SMT.UMA R.KAMATH

RESPONDENT/RESPONDENT:

BY ADV SRI.N.K.SUBRAMANIAN

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON 21.01.2026, ALONG WITH MAT.APPEAL.538/2014, THE COURT ON 29.01.2026 DELIVERED THE FOLLOWING:

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SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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Mat.Appeal Nos.537 & 538 OF 2014

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Dated this the 29th day of January, 2026

JUDGMENT

P.Krishna Kumar, J.

These appeals arise out of a common judgment rendered by the Family Court, Muvattupuzha. O.P. No. 573/2012 was instituted by the husband seeking dissolution of marriage, while O.P. No. 574/2012 was filed by the wife seeking return of gold ornaments and money, along with past maintenance.

2. By the impugned common judgment, the Family Court granted a decree of divorce on the ground of desertion and also allowed the wife's claim for return of gold and money, as well as maintenance. Though the husband succeeded in obtaining a decree of divorce, he has preferred these appeals insofar as the Family Court declined to grant divorce on the additional grounds of adultery and cruelty urged by him, and also challenging the decree granting the

aforesaid reliefs to the wife.

3. The brief facts necessary for the disposal of the disputes are as follows: The marriage between the appellant and the respondent was solemnised on 08.06.2003 in accordance with the religious rites and customs prevailing in the Christian community. The respondent claimed recovery of ₹2,00,000/- and 28 sovereigns of gold ornaments from the appellant, contending that at the time of marriage her relatives entrusted a sum of ₹3,50,000/- with the father of the appellant (who is the second respondent in O.P. No. 574/2012) towards her share in the parental properties. It was further contended that, using ₹1,50,000/- out of the said amount, 44 sovereigns of gold ornaments were purchased for the respondent. According to her, most of the ornaments, except those used for daily wear, were kept in the custody of the appellant’s father.

4. It was alleged that when the respondent became pregnant, she returned to her parental home. The appellant did not take her back after she gave birth to a child on 20.12.2005. The parties have been living separately

thereafter. The respondent further alleged that the appellant has been retaining her 28 sovereigns of gold ornaments and that she is therefore entitled to recover the same along with the balance amount of ₹2,00,000/-.

5. Though the appellant admitted receipt of ₹3,50,000/-, he contended that the 44 sovereigns of gold ornaments worn by the respondent at the time of marriage were purchased by him from his own funds. He further contended that his gold ornaments are still in the possession of the respondent and that she is bound to return the same.

6. Claiming that she was unable to maintain herself and the minor child, the respondent sought past maintenance of ₹49,500/- for herself and ₹16,000/- for the child. She alleged that the appellant was employed in the Central Industrial Security Force and was earning ₹12,000/- per month. The appellant opposed the claim for maintenance contending that the respondent had deserted him.

7. Upon appreciation of the evidence, the Family Court allowed the respondent to recover ₹2,00,000/- with interest

at the rate of 6% per annum and further directed the appellant and his father to return 28 sovereigns of gold ornaments or its market value. The court also awarded ₹25,500/- as past maintenance to the respondent and ₹8000/- to the minor child.

8. We have heard Sri.M.P.Ramnath, the learned counsel appearing for the appellant and Sri.N.K.Subramaniam, the learned counsel for the respondent.

9. During the course of hearing, learned counsel for the appellant submitted that, though an appeal was preferred against the order in the divorce petition to the extent it declined to grant divorce on the grounds of cruelty and adultery, the appellant is now satisfied with the decree granted on the ground of desertion. In view of the said submission, we do not propose to examine the question whether the grounds of cruelty and adultery were established. It was further submitted that the appellant does not intend to oppose the direction in the judgment for payment of past maintenance to the child.

10. Thus, the points that arise for consideration are as

follows:

(1) Is the respondent entitled to get the gold ornaments and money claimed in the petition?

(2) Is the respondent entitled to get past maintenance?

11. It is not in dispute that a sum of ₹3,50,000/- was entrusted to the appellant by the relatives of the respondent at the time of the marriage engagement. It is also not disputed that the respondent had adorned 44 sovereigns of gold ornaments at the time of marriage and that the said ornaments were purchased by the appellant. The contentions raised by the appellant are twofold: first, that the gold ornaments were not purchased by utilising the amount given by the respondent and hence she has no right over them; and secondly, that the amount was not given to his father.

12. Let us now examine the evidence to resolve these contentions. To substantiate the contentions that the said

ornaments were purchased using the money given by the respondent, and that the appellant retained 28 sovereigns of gold ornaments when they fell apart, the respondent relied on her own testimony and the oral evidence of PW2, her mother. Both witnesses deposed substantially in tune with each other and consistently with the pleadings. Though they were subjected to lengthy cross-examination, no material sufficient to discredit their version has been elicited.

13. Sri M.P. Ramnath, learned counsel appearing for the appellant, contended that even though the respondent stated during cross-examination that the sum of ₹3,50,000/- was handed over to the appellant's father at the church—implying the presence of several persons—she did not attempt to prove that fact by examining any independent witness. It was further contended that one Xavier, the brother of the respondent's father, who is said to have handed over the amount, was also not examined. Drawing our attention to the answer given by PW1, the respondent, to a question as to whether the gold ornaments were purchased prior to the engagement ceremony, to which she answered in the

affirmative, learned counsel contended that the said answer demolishes her entire case, since it would then be impossible to contend that the gold was purchased by utilising the money given only at the time of engagement. For these reasons, it is urged, while the appellant may be bound to return the amount received, he cannot be compelled to return the gold ornaments.

14. Upon a careful evaluation of the evidence in its entirety, we are unable to accept the aforesaid contentions. It is true that the respondent answered in the affirmative when such a question was put to her during cross-examination. However, in the facts and circumstances of the present case, we are of the view that the said answer, by itself, is insufficient to discard her entire testimony, particularly when it is corroborated by the evidence of PW2 on the same point. What the respondent admitted was only a suggestion put to her that the ornaments were purchased prior to the engagement. Such an answer cannot, in our opinion, be treated as an admission on the fact in issue, namely, whether the gold ornaments were purchased using the

amount entrusted at the time of engagement.

15. It is only an inference drawn from her answer to the suggestion that, if the gold was purchased prior to the engagement, the money used for its purchase could not have been the amount given at the time of engagement. When a witness is subjected to cross-examination, several factual situations may be put to him or her for different purposes, including testing veracity. The effect of such inferential aspects has to be analysed in the totality of the circumstances and not in isolation. Significantly, the appellant has no case in his pleadings that the gold ornaments were purchased prior to the engagement. No such case was put forward even in his chief affidavit. PW2, the mother of the respondent, has categorically deposed that the gold ornaments were purchased by utilising the amount given to the appellant at the time of engagement. Above all, the effect of admission made by RW1 during his cross-examination is also relevant in the above context. The first paragraph of his cross-examination reads as follows:

"Arranged marriage ആയിരുന്നു. വധുവിന് share പണം കൊടുക്കുന്ന

പതിവ് സമുദായാചാര പ്രകാരം ഉണ്ട് . പണത്തിന് നിങ്ങൾ സ്വർണ്ണം വാങ്ങുമോ അത് ഭർത്താവിന്റെ ഇഷ്ടമാണ് . വധുവിന് സ്വർണ്ണം കൊടുക്കുന്ന പതിവ് ഇല്ല. 3 1/2 ലക്ഷം രൂപ share ആയി വിവാഹത്തിന് മുൻപ് തന്നു. മനസമ്മത ചടങ്ങിനാണ് തന്നത് . സ്വർണ്ണം എറണാകുളം, Beema, Alappatt jewellery യിൽ നിന്ന് എടുത്തു. ഹർജിക്കാരി, എന്റെ വീട്ടുകാർ ഉണ്ടായിരുന്നു. 44 പവൻ സ്വർണ്ണം എടുത്തു. സ്വർണ്ണത്തിന് എത്ര രൂപയായിരുന്നു (q) (A) 2 1/2 ലക്ഷം രൂപയുടെ സ്വർണ്ണം എടുത്തു."

It is evident from his testimony that he received Rs.3,50,000/- at the time of engagement and when the gold ornaments were purchased from Ernakulam Bhima and Alappat Jewellers, the respondent and family members were present. This circumstance is consistent with the respondent's case that a sum of ₹3,50,000/- was given at the time of engagement and that thereafter all of them together went to the aforesaid jewellers and purchased the gold ornaments for the marriage. If the gold ornaments were purchased by the appellant, they were, in all probability, purchased after the engagement, particularly since the respondent was also present at the jewellery shop.

16. Apart from the above, the appellant failed to produce any documentary evidence to establish that he had purchased the gold ornaments using his own funds. If the gold ornaments had in fact been purchased by him from his

personal funds, he could have produced some record in that regard. We therefore conclude that the answer given by the respondent during cross-examination is not of any material significance and that the gold ornaments were purchased by utilising the funds provided by the respondent and her family.

17. On appreciating the evidence adduced by both sides, we are of the view that the version of PW1 and PW2 is more probable than that of the appellant, and is sufficient to hold that the amount was entrusted to the father of the appellant (the second respondent in O.P. No. 574/2012) at the time of engagement and that the purchase of ornaments was utitlising a portion of the said amount. The appellant failed to elicit any material in cross-examination to discredit the testimony of the respondent’s witnesses on that aspect.

18. Likewise, on the question whether the appellant retained 28 sovereigns of gold ornaments when the respondent went to her parental home for delivery, there is no reason to disbelieve the oral testimony of PW1. It is a matter of

common knowledge that, upon reaching the matrimonial home after marriage, a bride may not retain all her gold ornaments in her personal possession. Ordinarily, such ornaments are kept in the custody of the husband or his close relatives for safekeeping. In this case, the appellant himself admitted during cross-examination that the gold ornaments were kept in his custody after the marriage. He deposed as follows:

> ഹർജിക്കാരി സ്വർണ്ണം അത്യാവശ്യം മാത്രം ധരിച്ചിരുന്നു. ബാക്കി സ്വർണ്ണം ഞാൻ പെട്ടിയിൽ സൂക്ഷിച്ചിരുന്നു. Suit-case - ൽ സൂക്ഷിച്ചിരുന്നു. സാധാരണ 16-17 പവൻ ധരിച്ചിരുന്നു . മാറിമാറി ധരിച്ചിരുന്നു.

In the above circumstance, the trial court is completely justified in ordering recovery of gold ornaments. It is clear from the evidence that money was given to the appellant for purchasing the gold for the respondent. Thus, the appellant or his father cannot evade their responsibility to return the ornaments by merely returning the amount entrusted at the time of engagement.

19. No argument was advanced to challenge the liability of the appellant to return Rs.2,00,000/- to the respondent. At any rate, the finding of the trial court in that regard

is perfectly justified, as the appellant admitted the receipt of the said amount.

20. As far as the question of past maintenance of the respondent is concerned, we notice a peculiar situation in this case. The divorce decree passed against her on the ground of desertion has become final, as she did not prefer any appeal against it. When the court has categorically found that the respondent has deserted the appellant, her entitlement to get maintenance is a matter which requires careful examination. It is submitted by Shri N.K.Subramaniam, the learned counsel for the respondent that unlike the provisions in the Hindu Marriage Act, 1955, Section 10 of the Divorce Act, 1869, ('the Act', for short) does not state that an act of desertion presupposes lack of reasonable causes for such an act.

21. “Desertion” is defined under Section 3(9) of The Divorce Act, 1869 as follows:

> “ “desertion”, implies an abandonment against the wish of the person charging it.”

It is not explicitly stated anywhere in the Act that abandonment without a reasonable cause alone would amount to desertion for the purpose of Section 10. On the contrary, the Explanation to Section 27 of the Special Marriage Act, 1954 and Section 13(1) of the Hindu Marriage Act, 1955 states specifically that the term 'desertion' means desertion of a person by the other party to the marriage without reasonable cause. Though the Act does not expressly state so, in our view, the term cannot be understood otherwise; as a contrary construction would treat a spouse who lives apart for a just or reasonable cause, as guilty of a matrimonial offence, and it may lead to the severance of the marital tie—an outcome that cannot be reconciled with constitutional principles of reasonableness and fairness. The Act, being a pre-constitutional enactment, its provisions cannot be construed in isolation from the constitutional guarantees under Articles 14 and 21.

22. In **A:Husband v. B:Wife** (2010(4)KHC 435), the Division Bench of the Kerala High Court, while interpreting the expression “cruelty” under Section 10 of the Act, categorically held that its content and meaning cannot

differ from that attributed to the same term under the Hindu Marriage Act, 1955 or the Special Marriage Act, 1954 as assigning divergent meanings to identical matrimonial concepts solely on the basis of the terms used in the personal law would offend the constitutional mandate of equality.

23. The same reasoning applies with equal force to the expression “desertion”. Interpreting the term “desertion” under the Act in a strictly literal sense would result in hostile discrimination between similarly situated spouses governed by different personal laws, without any rational nexus, and would infringe Article 21 by compelling cohabitation in circumstances that are unjust, unsafe, or inconsistent with dignity and personal autonomy. Therefore, the expression “desertion” occurring in Section 10 of the Act must receive a purposive and constitutionally compliant interpretation. We also notice that a similar view has been expressed by the Calcutta High Court in ***Adelaide Mande Tobias v. William Albert Tobia*** (AIR 1968 Cal.133).

24. When the finding that the respondent has deserted

the appellant became final, it also means she deserted him without any reasonable cause or justification. It is relevant to note that, as per Section 37 of the Act, before awarding alimony to a wife, the court has to consider her conduct. Having found that the respondent deserted the appellant, the trial court ought not have awarded past maintenance to her. To the above extent, the impugned judgment is liable to be interfered with.

In the result, Mat.Appeal No.537/2014 is dismissed. Mat.Appeal No.538/2014 is partly allowed and the direction to pay past maintenance to the wife is set aside. The impugned judgment is upheld in other respects. No costs.

Sd/-
SATHISH NINAN

JUDGE

Sd/-

sv **P. KRISHNA KUMAR**

JUDGE