



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 24TH DAY OF MARCH 2025 / 3RD CHAITHRA, 1947

MAT.APPEAL NO. 1037 OF 2024

AGAINST THE JUDGMENT DATED 30.10.2024 IN OP NO.224 OF
2022 OF FAMILY COURT, MUVATTUPUZHA

APPELLANT/RESPONDENT:

XXXXXXX
XXXXXXX

BY ADVS.
A.T.ANILKUMAR
V.SHYLAJA
JOSE PAUL THOTTAM
FATHIMA RAZAK
ASWIN ANILKUMAR
JIBYMON JOSEPH

RESPONDENT/PETITIONER:

XXXXXXX
XXXXXXX

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
18.03.2025, THE COURT ON 24.3.2025 DELIVERED THE FOLLOWING:



CR

DEVAN RAMACHANDRAN & M.B.SNEHALATHA, JJ.

Mat.Appeal No.1037 of 2024

Dated, this the 24th March 2025

JUDGMENT

M.B.Snehalatha.J

Challenge in this appeal is by the husband against the judgment and decree of Family Court, Muvattupuzha in O.P.No.224/2022 which granted a decree of divorce sought by the wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

2. Parties in this appeal shall be referred to by their rank in O.P.No.224/2022.

3. Petitioner filed the petition for divorce contending as follows:

The marriage between the petitioner and the respondent was solemnized on 23.10.2016 as per Hindu rites and ceremonies. At the time of marriage, petitioner was given 35 sovereigns of gold ornaments by her parents. Respondent is a person having superstitious beliefs who is not interested in having sex with the petitioner and not interested in having kids. Due to his said attitude,



petitioner was put to severe mental agony and pain. Respondent often goes to pilgrimage, leaving the petitioner alone. Petitioner is an Ayurvedic doctor. Respondent did not permit her to join PG course and he compelled the petitioner to lead a life based on superstitious and false beliefs. The stipend received by the petitioner while she was studying at Rashtreeya Vidyapeedam was misappropriated by the respondent. Respondent had even sent messages to the petitioner stating that he wants divorce from the petitioner. In the year 2019, petitioner had filed O.P.No.871/2019 seeking divorce. Upon receiving notice in the said case, respondent approached the petitioner and her parents and he apologized to the petitioner and agreed that he will not repeat any further mistakes and promised to lead a good family life with the petitioner. Believing his words, petitioner withdrawn the said Original Petition and again resided with the respondent at his house. But the respondent again reverted to his superstitious beliefs. Respondent subjected the petitioner to severe mental harassment by abstaining from having sex with her and by not performing the duties as a husband and thus subjected her to cruelty.

4. Respondent filed counter denying the case of the petitioner and also stating that he has no superstitious and false beliefs as alleged and he has not subjected the petitioner to cruelty.



Respondent made all arrangements to the petitioner for her higher studies and gave her financial assistance for the same. He denied the allegation that he is not interested in having sex with the petitioner. It was contended by him that it was the petitioner, who had an adamant attitude of not to have kids before completing her M.D. After the marriage, the petitioner got a government job. For appropriating the salary of the petitioner, her parents are unnecessarily interfering in the matrimonial life of the petitioner and the respondent.

5. The point for consideration is whether the impugned judgment and decree granting divorce needs any interference by this Court.

6. Parties are Hindus. Marriage is admitted. Admittedly the marriage was solemnised on 23.10.2016. The specific case of the petitioner is that due to the disinterest and indifferent attitude of the respondent in the family life and not having sex with her, she is suffering mental agony and distress in her matrimonial life with the respondent. Her case is that respondent is a person who is more interested in spiritual affairs like visiting temples, conducting poojas and he is not at all interested in leading a matrimonial life including sex. In the petition as well as while examined as PW1, she had narrated the various instances in support of her case that the



respondent is a person having superstitious beliefs. According to her, respondent is not interested in having kids and is not interested in having sex with her. Her specific case is that as and when the respondent comes home from his workplace, he is interested only in visiting temples and ashrams and compelled her to follow his suit.

7. In the case at hand, the petitioner is categoric in her version that respondent treated her with cruelty. Unlike physical abuse, which is easier to prove, mental cruelty varies from case to case. When the petitioner/wife says that the respondent/ husband behaved in a manner so as to create an impression in her that she was totally neglected by the respondent, there is no reason for this Court to disbelieve the said version.

8. It is an admitted case that petitioner had earlier filed O.P.No.871/2019 and subsequently she had withdrawn it, since the respondent confided and promised to lead a family life with her. According to her, after withdrawing the said original petition, respondent again started to behave in the same manner as before.

9. The answers given by the respondent during his cross examination regarding his frequent visits to the temple by taking leave from the job fortifies the case of the petitioner that he is more interested in spiritual affairs than the family life.

10. A marriage does not grant one partner the authority to



dictate the other spouse's personal beliefs whether it is spiritual or otherwise. Compelling the wife to adopt his spiritual life causing emotional distress to her, amounts to mental cruelty. Husband's disinterest in family life indicates his failure to fulfill his marital duties.

11. A more flexible and comprehensive approach is needed when evaluating a case in which a wife seeks divorce on the ground of cruelty. Persistent neglect, lack of affection and denial of conjugal rights without valid reasons cause severe mental trauma to the spouse and we find no reason to disbelieve the version of the petitioner that she was subjected to severe mental trauma.

12. In *Roopa Soni v. Kamalnarayan Soni* [AIR 2023 SC 4186], the Hon'ble Supreme Court observed as follows:

“(7). Historically, the law of divorce was predominantly built on a conservative canvas based on the fault theory. Preservation of marital sanctity from a societal perspective was considered a prevailing factor. With the adoption of a libertarian attitude, the grounds for separation or dissolution of marriage have been construed with latitudinarianism.”

13. The Apex Court also observed as follows:

“..... element of subjectivity has to be applied albeit, what constitutes cruelty is objective. Therefore, what is cruelty for a woman in a given case may not be cruelty for a man, and a relatively more elastic and broad approach is required when we examine a case in which a wife seeks divorce.” (emphasis supplied by us)



14. In *Anilkumar V.K. v. Sunila.P (2025 (2)KHC 33)* this Court held as follows:

"15. A behaviour that may be seen as trivial in one marriage might be deeply hurtful in another. Therefore, cruelty is to be assessed on a case - by - case basis. What constitutes cruelty in a matrimonial relationship depends on the unique circumstances, behaviour and experience of the parties involved. Courts do not rely on a rigid definition of cruelty but has to evaluate each case based on its facts. Courts have to analyse whether the conduct makes out unreasonable for the one spouse to live with the other."

15. The evidence on record would show that the mutual love, trust and care between the spouses has been lost and the marriage has been irretrievably broken, as rightly found by the learned Family Court. The learned Family Court has granted the decree of divorce after proper analysis of the evidence and we do not find any reason to unsettle the said finding, which is based on correct appreciation of facts and evidence.

Accordingly, the appeal stands dismissed.

Parties shall suffer their respective cost.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE