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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

WEDNESDAY, THE 21<sup>ST</sup> DAY OF MAY 2025 / 31ST VAISAKHA, 1947

MAT.APPEAL NO. 68 OF 2023

AGAINST THE JUDGMENT DATED 13.10.2022 IN

OP NO.251 OF 2021 OF FAMILY COURT, MALAPPURAM

APPELLANT/RESPONDENT:

XXX

XXX

BY ADVS. JOHN JOSEPH VETTIKAD

C.JOSEPH JOHNY

SAMSON MATHEW SAM

RESPONDENT/PETITIONER:

XXX

XXX

BY ADV K.RAKESH

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD  
ON 21.05.2025, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



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'C.R.'

## JUDGMENT

Devan Ramachandran, J.

This case lays bare the searing plight of a woman, forced to endure an unhappy marriage, characterized by violence - both physical and mental.

2. The appellant - husband is before us, challenging the judgment of the learned Family Court, Malappuram, which allowed OP No.251/2021- filed by the respondent - wife seeking divorce - finding him to have treated the latter with abject cruelty.

3. The respondent, in her pleadings, recounted her misery, stating that her marriage with the appellant was solemnized on 29.01.2006 in accordance with the Christian rites. She says



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that, though two children were born in their union, she had been continuously treated with cruelty by the appellant and that she had even suffered grievous injuries and wounds in some of those episodes. She says that she was thus pushed to the wall - in a manner of speaking - particularly when she was physically assaulted on 03.12.2012 - which required the Police to intervene and rescue her - compelling her to file a complaint against the appellant as C.C.No.544/2012, which, however, ended in his acquittal because she resiled from her stand solely to protect him, as also his employment as a Higher Secondary School Teacher. She alleged that, however, the situation turned to the worse and that she, therefore, filed an application for divorce against the appellant, numbered as OP No.999/2013; but that it was withdrawn by her



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under the hortative hope that he would mend his ways.

4. The respondent submits that since it did not so happen, she filed another Original Petition for divorce, namely OP No.198/2016, which was also dismissed for default, since she chose not to prosecute it, again for the same reason afore; but that this emboldened the appellant to further instances of assault - evident from Ext.A9 discharge summary, relating to an injury which she sustained when she was hit on the head by him with an iron rod. She admits that she did not press charges in this incident either; but that the scenario became far worse, which led to Crime No.717/2020, as also Crime No.259/2022, being forced to be registered against him, invoking various provisions, including Sections 447, 451, 427,



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324 and 506 of the Indian Penal Code (IPC). She says that, therefore, she was left without any other option but to file the present Original Petition, seeking divorce.

5. In response, the appellant erected defence before the learned Trial Court that he had been acquitted in all the earlier cases filed against him and that he is suffering from issues of "anger management", which he sought to prove through Ext.B1, being a prescription issued by his doctor on 07.05.2022.

6. However, the learned Family Court found - in our view correctly - that Ext.B1 carries no worth since the doctor had not been even cited as a witness or examined; and further that the admitted Crimes subsequently registered against the appellant, after the earlier ones had been acquitted or withdrawn or dismissed as not being



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pressed, would establish that he was treating the respondent with grave cruelty consistently. It thus allowed the petition and granted divorce under the provisions of Section 10(1)(X) of the Divorce Act, 1869 ('Act' for short).

7. As said above, the appellant challenges the findings and the order of the learned Family Court as being untenable and illegal.

8. We have heard Sri.John Joseph Vettikad - learned counsel for the appellant and Sri.K.Rakesh - learned counsel for the respondent.

9. Sri.John Joseph Vettikad argued the matter on its merits and then digressed to inform us that his client is also concerned about the well-being of his children. He submitted that his client is now sincerely contrite for what he had done in the past and



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that he wants to live with his family again, especially because the children are in their most formative age.

10. Sri.John Joseph Vettikad then contended that the evidence on record would not be sufficient to prove cruelty as statutorily required under Section 10(1)(X) of the 'Act' and hence that the findings of the learned Family Court are in error.

11. Sri.K.Rakesh, to the contrary, submitted that his client had acted only as a wife would do in normal circumstances. He conceded that his client had condoned various acts of violence committed by the appellant against her in the past; and further admitted that the earlier cases and Crimes had been either withdrawn or dismissed on account of her own deposition. He, however, argued that this



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would not take away the gravity of the situation, particularly because the conduct of the appellant is to such extent that it can endanger not only his client, but also the entire family, including the children. He predicated that the evidence on record is inescapable to the conclusion that the appellant had treated his client with immeasurable cruelty; and hence that no fault can be found with the learned Family Court in having allowed the Original Petition.

12. We have examined the evidence on record and have evaluated it underpinned on the arguments and pleadings available.

13. The respondent deposed as PW1 and produced Exts.A1 to A14 documents on her side; while, the appellant examined himself as RW1 and produced Ext.B1, which is the aforementioned



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medical prescription issued by a Psychiatrist.

14. Before we move forward, we must answer one of the primary arguments of Sri.John Joseph Vettikad, that the appellant is suffering from a mental illness and thus entitled to some amount of latitude.

15. We are afraid that we cannot find favour with the afore argument because, not only did the appellant offer himself as a witness and depose as RW1; but he did not even choose to impel any such case even after having produced Ext.B1 on record, so as to invoke the jurisdiction of the court under the provisions of Order XXXII, Rule 15 of the Code of Civil Procedure (CPC). He never wanted a "Next Friend" for himself, and this ineluctably establishes that his case of mental illness is one now being projected as a desperate defence, to get over



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the allegations proved against him.

16. There is little doubt that the instances of assault and cruelty had begun as early as in the year 2012 or so. This is manifest from Ext.A3 - which is the Final Report of the Police in Crime No.179/2012, charged against the appellant under Sections 498A, 406 and 506 of the IPC, subsequently taken on file as C.C.No.544/2012; as also Ext.A4 - which is the Final Report in Crime No.1038/2015, again lodged under Sections 498A and 506 of the IPC. Both these Crimes had been registered on the basis of the complaints of the respondent; and a third case was also registered as C.C.No.1360/2015. All these facts remain expressly admitted by the appellant in his testimony as RW1.

17. To add to this, Ext.A5 establishes



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that OP No.999/2013 had been filed by the respondent for divorce against the appellant, followed by OP No.198/2016 because the former one was withdrawn as being not pressed. True, OP No.198/2016 was dismissed for default, as evident from Ext.A8; and also that the respondent did not press charges on her allegation that she was assaulted by an iron rod by the appellant, which she now proves through Ext.A9 discharge summary.

18. The afore being so, it is further conceded by the appellant as RW1, that he is suffering Ext.A2 order of protection in MC No.57/2015 filed by the respondent, under the provisions of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act); which was followed by at least two other cases, namely that evident from Ext.A11 - the Final



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Report in Crime No.717/2020, and Exts.A12 and A13, being the FIR and Final Report in Crime No.259/2022.

19. *Au contraire*, the appellant, as seen above, attempts to project a case that he was not keeping well cognitively and tried to prove this through Ext.B1, which remains uncorroborated and unproved because the doctor was not even summoned, much less examined.

20. The attempt of the appellant - to take advantage of the dismissal and closure of the earlier Crimes and cases against him - as already detailed above, could surely not run to his benefit because, as noticed, the outcome was to such effect only because the respondent had consciously and voluntarily chosen to speak in his favour, and she has credibly explained this by saying that she wanted to save him, as also



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his job as a teacher.

21. It is not unusual for a wife to have done so!

22. We have no doubt that the respondent did so since she expected the appellant to turn a new leaf, but alas, it was not to be.

23. A woman will forgive and condone to protect her matrimonial union and family. Forgiveness in such sense is not a passive act, but is an active and transformative one, to heal emotional wounds and to obtain inner peace. For a woman, this is not a sign of her weakness, but a powerful act of strength, ingrained in her inner power; by which the chain of resentment and bitterness is consciously broken. The emotional burden of holding on to grudges happens very often in many relationships and families; and it is the power of a woman to



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forgive, that enables families to rise above pain and create healthy relationships.

24. But, there is always a limit to what a woman can endure!

25. Our discussion above is inevitable to the conclusion that the learned Family Court has acted correctly and has evaluated the evidence in the manner expected in law. We, therefore, find no cogent reason to interfere with the impugned order in any manner.

26. The learned Family Court has correctly found the ground of cruelty to have been established by the respondent under Section 10(1)(X) of the 'Act' and hence that the respondent is entitled to a decree for divorce, which we also find to be fully justified in the matrix of the factual and evidential circumstances and factors, as have been



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presented and established.

In the afore circumstances, this Appeal is dismissed; however, without making any order as to costs and directing the parties to suffer their respective costs.

The Registry is directed to anonymise the names and identities of the parties, in order to preserve their privacy.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M. B. SNEHALATHA

JUDGE

akv



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APPENDIX OF MAT.APPEAL 68/2023

PETITIONER ANNEXURES

ANNEXURE A                    CERTIFIED COPY OF THE JUDGMENT IN C.C.  
NO.544/2012 OF THE JFCM MALAPPURAM  
DATED 9.6,2015

ANNEXURE B                    CERTIFIED COPY OF THE JUDGMENT IN C.C.  
NO.1360/2015 OF THE JFCM MALAPPURAM  
DATED 27.9,2017