

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 21ST DAY OF JANUARY 2022 / 1ST MAGHA, 1943

MAT.APPEAL NO.1119 OF 2015

AGAINST THE ORDER/JUDGMENT IN OP 1339/2009 OF FAMILY COURT,

ERNAKULAM

APPELLANT/RESPONDENT:

MARY MARGRET,
AGED 51 YEARS,
D/O.M.T.JOHN, MANAKKIL HOUSE, NEW LANE,
THOTTAKKATTUKARA, ALUVA.

BY ADVS.
SRI.P.GEORGE WILLIAM
SMT.ACHU SUBHA ABRAHAM
SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENT/PETITIONER:

JOS P THOMAS
AGED 52 YEARS
S/O.LATE K.P THOMAS, 21/740, MAJOR ROAD, VYTTILA,
KOCHI-682 019, NOW RESIDING AT 31/791-A, LANE 12
KACHAPPALLY ROAD, VYTTILA, ERNAKULAM - 682 019

BY ADVS.
SRI.V.V.ASOKAN (SENIOR.)
SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.C.N.SREEKUMAR
SRI.K.T.THOMAS
SRI.K.I.MAYANKUTTY MATHER

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
22.12.2021, THE COURT ON 21.01.2022 DELIVERED THE FOLLOWING:

**A.MUHAMED MUSTAQUE &
SOPHY THOMAS, JJ.**

C.R

Mat. Appeal No.1119 of 2015

Dated this the 21st day of January, 2022

J U D G M E N T

Sophy Thomas, J.

“I take you to be my wife/husband, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's Holy Law, in the presence of God, I make this vow.”

In a Christian marriage which is a holy sacrament, the couple enters into a matrimonial covenant by taking this beautiful and meaningful wedding vow, on the fervent hope that it is a partnership of love and life for the whole of their life till death separates them. But, sometimes their beautiful dreams, hopes and aspirations stumble in bitter realities of life, and incompatibilities compel them to part their ways, even when the wedding vow taken by them in the name of God, stares at them.

2. Here is a case where the appellant and respondent, a Christian couple, got married as per the Christian rites and ceremonies taking the wedding vow on 23.10.1988. Both of them are well educated and they hail from respectable and educated families. In their wedlock, two girl children were born. The husband, who is an Engineer cum Yoga Trainer filed O.P.No.1339 of 2009, before the Family Court, Ernakulam to dissolve their marriage under Section 10 of the Divorce Act, alleging cruelties, both mental and physical, and desertion, from the part of the wife, who is a Post Graduate.

3. The husband was alleging that, from the very inception of marriage, the wife was showing behavioural disorders. She was intolerable even on minor domestic problems and she was abusive and assaultive in nature. She did not give proper attention to the children. She often threatened the husband that she would slice his throat and even strangulated him during sleep. Whenever he did not accede to her demand for unnatural sex, she threatened to slice away his penis. She often threatened him with suicide, and once she jumped out of a running car. She went out of the house during night hours without informing the husband, and there was occasion to bring her from street during midnight. Though she was taken to

various psychologists and psychiatrists, she was not co-operating with the treatment. In July 2005, she returned to her paternal house and thereafter, she never came back to live with her husband and children. The two girl children were taken care of by the husband and his mother. She was not bothered about the girl children, who were school going children, when she left her matrimonial home. When the husband was admitted in hospital due to heart attack, she did not care, even to visit him in hospital. She was extending her cruelties to the age old mother-in-law also. As it was impossible for the husband to continue his marital relationship with her, due to her cruel nature and attitude and also because of desertion, he filed the above O.P for dissolution of his marriage.

4. The wife was contending that the grounds alleged by the husband for divorce were absolutely false, and in fact, she was ill-treated by the husband and his mother. She was married while she was doing her post graduation, and she was not even provided food or clothing by the husband. Whenever the torture became unbearable, she went back to her paternal house. But the husband and his mother were attempting to depict her as a mental patient. She was ready to attend counselling and to undergo treatment to save her family life. The husband was not ready to do anything to

make his wife happy, and in fact, he was treating her as a slave. The bitter experiences in life, put her under great mental stress and strain. The husband also was advised for treatment, but he was not willing. She was never abusive and she never assaulted him. The threat of homicide and suicide are only false allegations. She was willing to lead a normal family life with the husband, but to prevent her from entering his house, his mother filed an injunction suit. According to her, there is no ground to dissolve their marriage, and still she is intending to live with her husband and children.

5. The Family Court formulated necessary issues and the parties were permitted to adduce evidence. PWs 1 to 4 were examined and Exts.A1 to A3 were marked from the side of the petitioner-husband. RW1 was examined and Exts.B1 and B2 were marked from the side of the respondent-wife. On analysing the facts and evidence, the Family Court found that the petitioner-husband could establish the grounds of cruelty and desertion against the respondent-wife, and so, the O.P was decreed vide judgment dated 20.08.2015, dissolving their marriage.

6. Challenging the said judgment and decree, the wife has come up in this appeal alleging that, by the impugned judgment, the husband was given an incentive for his own cruelty and

desertion. According to her, the husband manipulated and fabricated false evidence of impulse control disorder for the wife, and influenced and tutored the children to give testimony against their mother. The Family Court ought to have found that she had never intended to terminate her matrimonial life with the husband. In fact, she was prevented from entering her matrimonial home, by an injunction suit filed by the mother-in-law.

7. Now let us have a re-appraisal of the entire facts and evidence, in the light of the grounds urged by the appellant to assail the impugned judgment and decree.

8. The wife and husband shall be referred as the appellant and respondent respectively, hereinafter.

9. The respondent was granted a decree of divorce on the ground of cruelty and desertion. Let us discuss these grounds one by one.

10. In matrimonial life, cruelty can be defined in many ways. It has many perspectives which depend upon the socio- economic status and circumstances of parties to the marriage. It varies from person to person. It also varies with time, place, economic status and other circumstances. Cruelty can be physical and mental. Physical cruelty provides more of a direct evidence, that it can be

perceptible when compared to mental cruelty. Mental cruelty can be drawn from the facts and circumstances of the case, whereas physical cruelty can be drawn from the conduct of one spouse towards other spouse which endangers the other spouse's physical health. It is true that, mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty. The married life should be reviewed as a whole, and a few isolated instances over a period of years will not amount to cruelty.

11. The Apex Court in **Samar Ghosh vs. Jaya Ghosh** ((2007) 4 SCC 511) elaborately discussed the nature and scope of mental cruelty as a ground of divorce. It was held therein, in paragraph 101, as follows:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset

may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage

becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

12. In the case in hand, the respondent is alleging physical as well as mental cruelty from the part of wife. He was alleging that the appellant used to get irritated over minor domestic issues, and on one such occasion, since he could not heed to her request for purchasing a nighty from a shop, she bit off a portion of his shoulder muscle, and the bite mark is still there on his shoulder. His mother had to call the Police to manage that situation. The appellant also is admitting the bite mark on the shoulder muscle of the husband, but, according to her, the elder child bit on his shoulder leaving the bite mark. PW2, the elder child of the respondent, gave testimony denying the allegation made by her mother.

13. The respondent deposed before the Family Court that, the appellant had threatened to slice his throat during sleep, and she even threatened to slice his penis whenever he refused her demand for unnatural sex. She was treating the children also in a cruel manner, and she abused and assaulted them for silly things. She

strangled him many a times during sleep. She often threatened him with suicide and once she tried to jump out of a moving car.

14. The allegations of abusive and assaultive nature of the appellant is fully supported by her own daughters, PWs 2 and 3. Both of them gave testimony to the effect that the appellant-mother always abused and insulted them and she was always fighting with their father. She went back to her paternal house leaving them at the mercy of their father and grandmother, while they were school going children. They informed the appellant when they became biologically mature, but she did not care to come, even to see them. They have heard their mother threatening to kill their father or to kill herself. Both the children were categorical in their statement that, violence was always initiated by the mother, and she verbally and physically abused their father. She used to throw everything at her reach, and they were victims of the violent behaviour of their mother.

15. The respondent has got a case that, the appellant was having some behavioural problems and she was taken to various psychologists and psychiatrists for treatment. RW1, the wife, admitted before court that she had taken treatment from psychiatrists. But, according to her, she had no mental problem but

only mental stress and strain, due to the matrimonial cruelties she was subjected to, by her husband and mother-in-law.

16. The appellant admitted that she had gone to PW4 Dr.Rajiv, a Psychiatrist attached to PVS hospital for treatment. She is admitting that she was taken to Renewal Centre, Kaloor where she had consulted Dr.Sr.Pious who was also a Psychiatrist. She is admitting that the treatment by Dr.Rajiv could not be completed, because the respondent did not co-operate. Thereafter, no treatment was taken by her, and according to her, she did not go for further treatment as she had no psychiatric problems. She would say that, due to family problems, she was having some tension, and the medicines she had taken, were only for reducing her tension.

17. PW4 is Dr.Rajiv, a Psychiatrist who was working in PVS hospital. Ext.A1 treatment records of the appellant for the period 19.06.2007 to 12.11.2007 was proved through him. In Ext.A1, it is clearly mentioned that, earlier she had been under the treatment of Dr.Venugopal. She was brought to the doctor with the history of "always fights over trivial matter, loss of temper and throw things". There was history of family discord and separation from family for past two years. The doctor prescribed medicines for her and there was regular review till 12.11.2007, as seen from Ext.A1. That

document further shows that she was accompanied by her mother-in-law on 12.09.2007.

18. The testimony of PW4 Doctor is to the effect that, the appellant was suffering from impulse control disorder which means, not able to control anger, and exhibiting anger in an excessive manner, which may adversely affect marital life. The persons suffering from impulse control disorder may be assaultive in nature and may throw things or may exhibit homicidal or suicidal tendency as stated by the doctor. The doctor further stated that there is no complete cure for this illness, but it could be controlled under proper medication. Even according to the appellant, after 12.11.2007, she had not continued the treatment. The allegations of arrogance, and abusive and assaultive nature of the appellant, spoken to by her husband and children, get corroboration from Ext.A1 medical report, and the testimony of PW4 Doctor.

19. One may suffer mental stress or strain due to very many reasons. But, not taking treatment for the same in order to bring out a peaceful and harmonious family atmosphere, also may have to be counted as cruelty to the persons at the receiving end. The appellant has no case that, she had any difficulty to continue the treatment, but according to her, she had no psychiatric problem and

so she discontinued the treatment. The doctor gave testimony to the effect that, the impulse control disorder, will definitely affect a normal family life. If proper treatment is given, it can be brought under control.

20. During re-examination of PW4 Doctor, learned counsel for the appellant suggested that, persons suffering from hyperthyroidism may also exhibit symptoms of similar nature, and the doctor answered it in the affirmative. But, the appellant did not have a case in her objection that she was suffering from hyperthyroidism, and no scrap of paper has been produced by her, to substantiate that allegation. According to her, mental stress and strain was caused due to family problems and she had taken treatment to reduce tension. But, her own testimony, coupled with the testimony of PW1 and Ext.A1 document, will show that she was having some behavioural disorders which created troubles in her family life and she was not continuing her treatment, so as to lead a normal family life with her husband and children.

21. The appellant herself admitted before court that the husband was taking her to college while she was doing post-graduation, and she was taken for foreign trips and she was also gifted with gold ornaments, and even then she was alleging that

she was treated like a slave. Learned counsel for the respondent would contend that, making bald allegations against the husband, also will amount to cruelty.

22. PWs 2 and 3, the daughters of the appellant, are of the view that, if the appellant is permitted to continue her matrimonial life with the respondent, they will lose their father. PW3, the younger daughter, was definite in her statement that, it is better to be the children of divorced parents, rather than children of parents who murdered the father. The mother went back to her paternal house in the year 2005, while they were school going children, and she did not come back, even when their father was hospitalised due to heart attack.

23. In ***Sobha Rani vs. Madhukar Reddi*** ((1988) 1 SCC 105), the Apex Court examined the concept of cruelty and held that the word 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i)(a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the

nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

24. In **Narayan Ganesh Dastane vs. Sucheta Narayan Dastane** ((1975) 2 SCC 326), the Apex Court observed that, the enquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.

25. In **V.Bhagat vs. D.Bhagat** (Mrs) ((1994) 1 SCC 337), it is observed that "Mental cruelty in S. 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove

that, the mental cruelty is such, as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made”.

26. In *Samar Ghosh's case* (supra), the Apex Court observed that “the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in

consideration". There cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. The cruelty, whether it be mental or physical, is a question of fact depending on the evidence in each case. No uniform standard can be laid down to determine whether an act would amount to cruelty or not. An act which is tolerable to one may be intolerable to another.

27. This Court, in **A:husband** vs. **B: Wife** (2010 (4) KLT 434) held that the 'nature of cruelty which would entitle a spouse in matrimony for divorce must certainly be identical in all religions. Law cannot recognise different varieties of cruelty as Hindu cruelty, Muslim cruelty, Christian cruelty or secular cruelty to justify a decree for divorce. The mere fact that Hindu Marriage Act and the Special Marriage Act refer to cruelty without any rider or explanation or the fact that the Divorce Act and the Dissolution of Muslim Marriage Act give indication of the nature of matrimonial cruelty that ought to be established, cannot justify the conclusion that the nature of matrimonial cruelty which would entitle the spouses for divorce is different under different personal laws. It would be absolutely safe to draw inspiration from Art.44 of the Constitution also to jump to the conclusion that nature of cruelty

justifying a decree for divorce cannot be different under different personal laws. To our mind, it appears that matrimonial cruelty must have a uniform definition or conceptualisation to justify the founding of a decree for divorce. Under S.10(1)(x), the cruelty must be such as to cause reasonable apprehension in the mind of the petitioner, spouse that it would be harmful or injurious for the petitioner to live with the respondent. The expression harmful or injurious cannot be limited to physical harm or injury. Anything that would hinder the ability of the spouse to blossom into his/ her fullness and to enjoy life in matrimony must be held to fall within the sweep of S.10(1)(x) of the Divorce Act. Cruelty which is not defined in S.13(1)(1a) of the Hindu Marriage Act and S.27(1) of the Special Marriage Act and cruelty which is explained in S.2(viii) of the Dissolution of Muslim Marriage Act and S.10(1)(x) of the Divorce Act must all take inspiration from such understanding of matrimonial cruelty. We discard the theory that the concept of matrimonial cruelty to entitle a spouse for divorce can be dissimilar and different for persons belonging to different religious faiths merely because different words are used in the relevant personal law statutes'.

28. In the case in hand, the husband is seeking divorce on

the ground of matrimonial cruelty envisaged under Section 10(1) (x) of the Divorce Act, 1869. From the available facts and evidence, he has amply proved that the appellant has treated him with such cruelty as to cause reasonable apprehension in his mind that it would be harmful or injurious to him to live with the appellant. His children also are so anxious to save the life of their father and according to them, if the appellant and respondent are again put together, they will lose their father. The facts and evidence on board are sufficient to show that the nature and behaviour of the appellant towards the respondent was sufficient enough to cause reasonable apprehension in his mind that continuance of matrimonial life with the appellant was harmful and injurious to his life.

29. Regarding the desertion alleged by the husband, the appellant herself admitted before court that, in July 2005, she went back to her paternal house. She has no case that before her mother-in-law filed injunction suit against her, she preferred any complaints or petitions before any authority seeking restitution of conjugal rights or even for getting custody of her minor girl children. She has no case that, when she left her matrimonial home, she was prevented from taking her children with her. So,

obviously, she left her matrimonial home even without caring her little girl children. PWs 2 and 3, the children would say that, even when she was informed about their biological maturity, she did not care to see them. In the year 2005, the respondent was hospitalised due to heart attack and then also, the appellant did not turn up. Though the appellant contended that, during the period 2005-2009 occasionally she reached her matrimonial home and stayed with her husband and children, no evidence is forthcoming to support that fact.

30. PWs 1 to 3 contended that in the year 2009, when the appellant and her parents tried to make a forcible entry in the house of her mother-in-law, the mother-in-law filed a civil suit and obtained injunction. It is true that the injunction was later vacated and subsequently the mother-in-law not pressed that suit. Only after the civil suit, the appellant filed Ext.A2 complaint under the Domestic Violence Act for getting residence order in the shared household. In Ext.A1 medical report also, the doctor has noted that when he examined the patient on 19.06.2007, the appellant was living separated from her family, for the past two years. So, that also corroborates the testimony of PWs 1 to 3 that she deserted her husband and children in the year 2005. There is nothing to show

that after 2005, the appellant and respondent lived together as husband and wife, except the fact that she lodged Ext.A2 complaint in the year 2009 for a residence order. If she was forcibly sent away from her matrimonial home, and if she wanted to stay with her husband and children, she need not have waited for four years to file a complaint. Admittedly, she did not file any petition for restitution of conjugal rights or even to get custody of her children. If her case that she was ill-treated by her husband and mother-in-law, and so she often went back to her paternal home is true, definitely, she should have examined her parents or family members, who had first hand information about their family life. But no witnesses were examined by the appellant to substantiate her contentions. All these facts lead to the irresistible conclusion that the appellant went back to her paternal house on her own, in the year 2005 and thereafter she never turned up to live with her husband and children.

31. As observed by the Apex Court in *Samar Ghosh's case* (supra), where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases,

does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

32. On an overall consideration of the factual aspects and evidence would prove that the appellant was treating her husband with cruelty both physical and mental, and in the year 2005, she deserted him.

33. There is no merit in preserving intact a marriage, when the marital tie becomes injurious to the parties. When there is no rose, and only thorns left, and there is no scope for the plant to sprout again, there is no meaning in watering the same, knowing that it is dead for ever.

34. For the last more than 16 years, the parties are living separate and their marriage is to be treated as a deadwood where we could not see any signs of life. Even during the appellate stage, we tried for a reconciliation. But we could not succeed.

35. We are of the firm view that the appellant could not succeed in assailing the impugned judgment and decree on the grounds alleged by her. Whereas the respondent could prove that the appellant treated him with cruelty causing reasonable apprehension of harm and injury in his mind, and she deserted him in the year 2005.

In the result, this appeal fails and hence dismissed, confirming the impugned judgment and decree. The parties shall suffer their respective costs.

Sd/-

**A.MUHAMED MUSTAQUE
JUDGE**

Sd/-

**SOPHY THOMAS
JUDGE**

smp