

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Mat.Appeal.No. 312 of 2007

[AGAINST THE JUDGMENT IN OP(HMA)No. 1147/2004 & O.P(G&W)NO.474/06 of
FAMILY COURT,THIRUVANANTHAPURAM DTD.20.4.2007]

APPELLANT(S)/PETITIONER:

RAJKUMAR NAIR, S/O.M.P.RAJESWARAN NAIR,
RESIDING AT SREE, R.G.163,
KOCHULLOOR, THIRUVANANTHAPURAM.

BY ADVS.SRI.M.RAJENDRAN NAIR (THONNALLOOR)
SRI.SREEJITH R.NAIR
SRI.A.D.SHAJAN

RESPONDENT(S)/RESPONDENT:

V.V. JAYA, D/O.VARGHESE, MANAGER,
BHAIRAVI SCHOOL OF MUSIC, GNAYALLOOR BUILDINGS,
OPPOSITE S.B.I. NEAR NEST, KESAVADASAPURAM,
THIRUVANANTHAPURAM.

BY ADV. SMT.P.RADHIKA [CONCILIATOR]
BY ADV. SMT.SATHYASREEPRIYA[CONCILIATOR]
BY ADV. SRI.GEORGE VARGHESE KIZHAKKAMBALAM
BY ADV. SRI.K.B.PRADEEP[CONCILIATOR]
BY ADV. SRI.P.T.GIRIJAN
BY ADV. SRI.M.S.NARAYANAN
BY ADV. SRI.N.SUBRAMANIAM

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

Mat.Appeal No.312 of 2007

Dated this the 2nd day of December, 2015

JUDGMENT

MARY JOSEPH, J.

The appellant is the petitioner in O.P.No.1147/04 on the files of the Family Court, Thiruvananthapuram (for short 'the court below'). A common judgment was passed by the court below in O.P.(HMA) No.1147/04 and O.P.(G&W)No.474/06 on 20.04.2007, whereby O.P. (HMA)No.1147/04 was dismissed and O.P.(G&W)No.474/06 was allowed granting permanent custody of the elder child 'Malavika' to the petitioner. This appeal is directed against the dismissal of O.P.(HMA) No.1147/04.

2. For the sake of convenience, the parties are referred to in this judgment in their original status as in O.P.(HMA)No.1147/04. The circumstances which necessitated the filing of the original petition and relevant for disposal of this appeal, are reproduced hereunder:-

The petitioner married the respondent at Guruvayoor Temple on 17.05.1994 as per the hindu religious rites. The respondent belonged to

Christian religion at the time of the marriage. The relationship between the petitioner and the respondent was cordial and two children were born in their wedlock. But shortly thereafter, the respondent changed considerably in her attitude towards the petitioner. She became a spendthrift and started showing arrogance in her dealings with the petitioner, despite the extensive support rendered by the latter in developing her personality and career. Meanwhile, the respondent secured a temporary job with 'Asianet' but that did not last long due to her non-compromising conduct. Thereafter, a musical trust namely, "Bhairavi M.D.Ramanathan Trust" was started by her along with five others. The respondent was unsuccessful in pursuing with activities of the trust, and therefore, within a short span of time it came to a standstill. Accordingly, the petitioner, who had spent an amount of ₹50,000/- towards the establishment of the above said trust, sustained loss. Thereafter the respondent ventured to form a Health Club namely 'Slim Beauty'. Despite the heavy loss suffered in her previous projects, the petitioner made investment of a huge sum of ₹3,50,000/- in the new

project. The new venture also turned a futile exercise and therefore the respondent made up her mind to revive her first venture namely “Bhairavi M.D.Ramanathan Musical Trust”. The petitioner was reluctant to make any contribution to that project again and therefore the respondent approached some sponsors for help. The petitioner's refusal even to hold presidentship of the trust, made her hysterical and consequently, she attempted to cut her vein in front of her daughter. She even went to the extent of forging the signature of the petitioner for getting her project materialized. Throughout the subsistence of the marital life, the respondent was a non-compromising wife and a non-caring mother respectively, to the petitioner and to the children. Being a spendthrift, she started pledging gold ornaments in secrecy to raise money to meet her needs. She had availed of a sum of ₹2 lakhs from the Pattom Branch of the State Bank of India, without informing the petitioner and had even gone to the extent of entertaining the Bank Manager at the house, while the petitioner was away at Bombay. The respondent was desirous of being independent, both financially and

socially, from her husband and her family. Ultimately, she became a non trustworthy wife and irresponsible mother. She developed the habit of wandering outside frequently and returning home late night. The petitioner was constrained to take the burden of preparing food for himself and the children. She had always behaved disrespectfully to the petitioner and her in-laws. She even went to the extent of tarnishing the image of the petitioner by making stories linking his name with one among his girl students, who was a member of her health club. On several occasions of quarrel, she had left home even packing up her belongings. There was no cohabitation between the petitioner and the respondent for about an year. The petitioner's mental peace was totally disrupted by the aforesaid conduct of the respondent. The children have been thrown to an atmosphere, which is unpalatable to their growth and personal development due to the temperament and arrogant attitude of the respondent. The petitioner lost concentration in his job. His marital life with the respondent turned to an utter failure. He had lost all his earnings and reputation. He thrived hard to sustain the marital

relationship for the sake of the children. But all his endeavors turned a futile exercise due to the non-co-operation of the respondent. His sufferance crossed all the limits and it became intolerable and unbearable for him to continue life with the respondent. Accordingly, the petitioner expressed his desire for a divorce on mutual consent. But to his utter dismay, that also did not work out successfully. The marriage was irretrievably broken on account of the uncompromising behaviour and conduct of the respondent and in the said circumstances, the petitioner was constrained to move O.P.(HMA).No.1147/04 before the court below seeking for a decree for dissolution of marriage.

3. The respondent, in the written statement filed before the court below, had denied all the allegations. Several of the contentions raised by her in the written statement, being relevant, are incorporated hereunder:-

The entire problems between the respondent and the petitioner originated after arrival of her father-in-law from Gulf country and on starting his stay together with them. The out of way relationship of the

father-in-law, a widower, with the maid servant had also added to the problems. The petitioner, who was staying with her at the downstairs, later on shifted his residence with the father and the maid servant to upstairs and joined hands with them to harass her. The father of the petitioner had gifted the maid servant with 20 cents of landed property, which is approximately worth ₹3,50,000/-. All the insults from the petitioner have been suffered by her to sustain her much valued marriage and the welfare of the children. The collusion between the father of the petitioner and the maid servant is the root cause for the legal proceedings initiated by the petitioner against her, with a view to evict herself and her children out of the house. The petitioner has no cause of action against her and he is not entitled to get the decree for dissolution of marriage.

4. Both the petitioner and the respondent, during their examination in the court, as PW1 and RW1, had deposed in precise terms the allegations raised by them against each other. But, the respondent when confronted with the veracity of the grave allegations

of immorality raised by her against the petitioner and his father had stated that she had not witnessed any of those alleged relationships. She had also gone to the extent of stating that she is not maintaining any such complaints against the petitioner at that point of time. She had also expressed her desire to have a reunion with the petitioner for the sake of welfare of the children. She had also examined two witnesses from her side as CPWs.2 and 3, who are her sister and brother-in-law. But, their examination turned out to be a futile exercise when they stated in the box that they have no direct knowledge about the family problems of the petitioner and the respondent. The respondent had also examined her sister and her husband as CPW4 and CPW5. But their examination was also not helpful in her venture to substantiate her defence. They were successful only in characterising CPW1 as a woman of good character. The evidence tendered by CPW4 was helpful to the respondent to the extent it endorsed the version of CPW1, that the petitioner is seeking divorce only for the purpose of evicting her from the matrimonial home, and that was once spoken by

the petitioner's father directly to him. The Circle Inspector of Police was also examined by the respondent as CPW6. But his testimony is limited with respect to his visit at the house of the petitioner once, pursuant to a complaint lodged by the respondent in the Police Station for getting custody of the children. It did not lend any support to the respondent in substantiating her defence.

5. The court below observed in the judgment based on the oral evidence tendered by PW1 that he had travelled beyond pleadings to state that the respondent was leading an immoral life by maintaining illicit connection with several persons. The court below discarded those allegations for two reasons of having spoken the same for the first time in the court, without support of any pleadings to that effect and the relief of divorce having not been sought on the ground of adultery.

6. In the opinion of the court below, the petitioner was unsuccessful in raising specific instances of cruelty, satisfactory and sufficient to form the basis for granting a decree of divorce. The court

below had observed, based on the evidence tendered by either parties, that their marital relationship was much strained and both the parties were equally responsible for that. The court below had also observed in the context of the counsel for the petitioner addressing, that the unsubstantiated allegations of immorality raised against the petitioner by the respondent amounts to cruelty, but found the petitioner as not entitled to obtain a decree for dissolution of marriage and thereby, declined the relief to him on the reasons extracted hereinbelow.

“..... There can be no dispute that the unsubstantiated allegations made by one party against the other would amount to mental cruelty. But, here in this case, as earlier pointed out, both sides have hurled allegations against each other. The allegation of the petitioner against the respondent that she is leading a wayward life and has got immoral relationship with several persons also remains unproved. Though there was no specific allegation in the petition with regard to the immoral activities of the respondent in the petition and there is no prayer for divorce on the ground of adultery, the petitioner has improved his version at the evidence stage and also in the arguments stage. The suggestions made to the respondent and her witnesses also would indicate that the case of the petitioner is that the respondent is leading an immoral life and so it is no longer possible for him to live together with him. So it is to be noted that the petitioner is also in the wrong by making such wild allegations against the respondent. It was also not proper on the part of the respondent in making very serious and wild allegations against the petitioner if she was really interested in reunion. Anyway through out her evidence as CPW1, she has projected her wish to live with the

petitioner by forgetting the past. I do not find any reason to doubt her intention. So in spite of the fact that some wild allegations have been made by the respondent against the petitioner, in view of the fact that the petitioner has done the same thing against the respondent, a decree of divorce cannot be granted simply based on the allegations made after the filing of the petition. On going through the evidence, I find that the petitioner has not been able to establish that he was treated with cruelty by the respondent."

7. Though the court below had correctly observed that the unsubstantiated allegations made by one party against the other have the impact of treating the latter with mental cruelty, it went wrong in observing that the petitioner in the case is not entitled to get a decree of divorce on the ground of adultery, as he failed to establish any serious allegations involving immorality of the respondent with several persons and to get the so-called adulterers impleaded in the petition.

8. The court below ought to have been remindful of the fact that, the original petition seeking for a decree of divorce was filed by the petitioner on the ground of cruelty and not on the ground of adultery. In the case on hand, the respondent has the credit of hurling baseless allegations of immorality against the petitioner and his father, not only with maid servants but also with students of the petitioner. But during

her examination as CPW1, she had gone to the extent of stating that the immoral activities alleged against the petitioner and his father have not been witnessed by her at any point of time. In the said circumstances, the contentions taken on that count in her written statement would only be viewed as concocted versions or versions based on mere hearsay information. Either be the case, raising of contentions without venturing to establish the same, would be of no impact at all so far as its relevancy and evidentiary value is concerned. The allegations can also be taken as false when viewed in the backdrop of the version of CPW1 that she in fact had not seen any of the immoral activities alleged by her against the petitioner and his father.

9. Despite raising wild allegations of immorality against the petitioner and his father, the respondent had made a shocking disclosure during the examination that, she did not venture to establish those allegations, but is withdrawing therefrom with a view to maintain the marital relationship for the sake of the children. In such circumstances, it is difficult to consider CPW1 as a witness having

credence. The conduct of the respondent withdrawing from the wild allegations raised at the time of evidence, can only be taken in the context as a drama played by her to make up the mind of the court to decline grant of a decree for dissolution of marriage in petitioner's favour. Admittedly of CPW1, she had not witnessed any of the alleged immoral activities of the petitioner or his father. She had also no case that the immoral activities have been brought to her notice by someone who had witnessed it. In such circumstances, there was every reason for the court below to doubt the capability of the respondent to establish the allegations and to view the desire projected during the examination, to have a reunion at the expense of the children, as not genuine. Her subsequent conduct is also indicative of that. It appears from the judgment under challenge that the court below was carried away by the respondent's disclosure of her desire to have a reunion and accordingly denied the relief to the petitioner. But, the fact remains that the parties are still at loggerheads keeping the factum of reunion a far reaching concept.

10. On an appraisal of the evidence tendered by the petitioner as PW1, we are constrained to take a view that the petitioner had established his case. The version of PW1 is also supported and corroborated by the version of his father as PW2. According to PW1, the respondent by expressing her desire to have a reunion with him had played a fraud upon him and the court. It is contended that though he had successfully pointed to the court below about the circumstances to indicate that the marital bondage with the respondent was irretrievably broken and not even a remote scope is left for reunion, the court below was carried away by the disclosure of desire by the respondent during her examination to have a reunion for the sake of the children. We are also taken to the events that have taken place subsequent to the passing of the impugned judgment to canvass that the marital relationship among the parties has been irretrievably broken and a patch up is impossible. The learned counsel had also apprised us about the proceedings following the filing of the Mat. Appeal, and after appearance of the respondent in this Court in response to the notice

issued against her.

11. According to Sri.M.Rajendran Nair, the learned counsel, after the appearance of the respondent in the appeal, the parties had been placed in an atmosphere convenient to them by this court to resolve their differences through the process of mediation, but the efforts did not yield the desired result. It is contended by the learned counsel that, thereafter the respondent remained aloof without attending the court either personally or through the counsel who laid vakalath for her and in the said circumstances that, the Mat. Appeal was proposed to be heard on merits.

12. Referring to the attendant circumstances, the learned counsel for the petitioner urged that those are indicative of the irretrievable breaking down of the marital bond among the parties. According to him, the proceedings of the case would also disclose that the respondent was not prompt and vigilant in prosecuting the appeal. It is urged by the counsel that, the circumstances in prevalence being so, every justification is there appealing to this court to grant a decree for

dissolution of marriage, after reversing the findings of the court below. The learned counsel expressed his anxiety before us, that this court had ventured to resolve the differences among the parties amicably and relegate the parties to their original status as spouses by directing them to participate in the process of mediation repeatedly, but those earnest efforts turned a futile exercise. The counsel also anxiously pointed to us that the respondent did not turn up either personally or through her counsel to prosecute the case, on several occasions when the case was posted. According to him, those circumstances unveil to this court that the desire expressed by her during the examination in court, to have a reunion was not a manifestation of her true intention. According to him, the court below ought to have evaluated the intention behind that disclosure in the context of the baseless allegations raised by the respondent affecting the moral side of the petitioner and his father. The learned counsel pleaded before us that the *mala fides* of the respondent behind revelation of the said desire could very well have been gathered, had the court below applied its mind to the attendant circumstances in

the real perspective.

13. The learned counsel had reiterated that, despite the expression of her strong desire to join the petitioner to lead a marital life, the respondent had not taken any initiative till date to have it materialised. According to him, the state of affairs being so, by upholding the judgment under challenge, the parties to the marriage would only be thrown to darkness.

14. It is made clear from the evidence on record that the respondent is still maintaining residence separately and away from the petitioner. Therefore the parties by their conduct have proved themselves to be unfit to continue the marital life. A confirmation of the decree under challenge would only be prejudicial to the parties and the rest of their life would be meaningless and miserable. The children would be the scapegoats. The version of PW1 is narrative of his bitter experiences with the respondent during the course of their living together as spouses. In the event of those remained uncontroverted by the respondent, there is no meaning for the court below to state that

'cruelty' as contemplated by the provisions of the Act was not established and thereby to deny a decree for dissolution of marriage. The fact that the respondent was unfaithful and disloyal to the petitioner as a wife and the frequent insults and humiliations extended by her with a view to disgrace him are nothing short of manifestations of cruel treatment against the petitioner. Raising of baseless allegations involving immorality against a partner in life, is also cruelty in its wide perspective. It is evident from the case records that the respondent has been so strange and inimical to the petitioner in her attitude towards him. She continued hurling allegations involving gravity in the affidavits filed later on to support the interlocutory applications. The respondent had also gone to the extent of characterising the petitioner as a culprit attempting to put an end to her life on several occasions. According to her, the petitioner was a regular visitor of an anti-social center in that locality and is living in illicit relationship with other ladies. She even went to the extent of suspecting the petitioner as a person having mental problems. The respondent had also condemned

the petitioner as a man maintaining illicit relationship with a lady named Surya. In the words of the respondent, the character of the petitioner's father is so worst that it cannot be stated in public. It is indicative from the serious allegations raised that the respondent has become a total stranger to the petitioner and by raising allegations of the said nature, she has created a situation highly unpleasant for the petitioner and in-laws, that it would be arrogant for them even to imagine about reunion. The dictum in **Vinod Kumar Subbaih v. Saraswathi Palaniappan** [2015 (2) KLT SN.102 : AIR 2015 SC 2504], cited by the learned counsel have significance and being apposite in the context is extracted here-in-below:-

“.....If a spouse abuses other as being born from a prostitute, this cannot be termed as “wear and tear” of family life. Summoning the police on false or flimsy grounds cannot also be similarly viewed. Making it impossible for any close relatives to visit or reside in the matrimonial home would also indubitably result in cruelty to the other spouse.....”

A reading of the pleadings incorporated in the original petition seeking divorce in the case on hand, would make it clear that wild allegations of immorality affecting the person and conduct of the petitioner have

been hurled by the respondent. But, an evaluation of the evidence on record in its entirety would reveal that the latter did not even make an attempt to substantiate those. In view of the settled position of law on the point, the pleadings raised without evidence being let in to substantiate, would only be imputations of insulting nature and it would only manifest the intention of the maker of those to cause mental harassments to the person against whom those are made. It can safely be drawn from the unestablished allegations that those are either false or concocted ones. Hurling of false or concocted allegations against a person could only be viewed as attitudes of cruelty by the maker to the opposite party. As rightly contended by the learned counsel, those crucial aspects though involved in the case on hand, have not been appraised and evaluated by the court below in its right perspective while appreciating the evidence on record and while declining the decree for dissolution of marriage. We see merit in the argument of the learned counsel that, if there was any truth behind the testimony of the respondent that she intends to join the petitioner in marital life, she

would not have hurled serious and vigorous allegations against the petitioner and his father.

15. Indisputably, the allegations raised by the respondent in her counter statement are serious ones and have the tendency to hurt, humiliate and tarnish the image of the petitioner among the public. The interesting aspect is her retraction from those allegations when confronted with during the cross-examination. What is discernible from the context is that the allegations were baseless, concocted and manipulated ones, intended by the respondent solely to deprive the petitioner from getting a decree for dissolution of marriage. According to the learned counsel, in the above circumstances, the court below ought to have appraised those only as instances of extreme nature intended by the maker to capture its mind and thereby to refrain from granting the decree to the petitioner.

16. As revealed from the allegations, the respondent had also addressed the Chief Minister of Kerala through a complaint marked in evidence as Ext.A5 alleging that the maid servant has stolen her

certificate, gold ornaments, mobile phone and costly articles with the full support of the petitioner. The complaint also incorporates a grave allegation that the petitioner along with his father had accommodated the maid servant in a house at Kunnukuzhi to facilitate their secret visits of her. A scrutiny of the evidence on record would make it clear that, not even an attempt was made by the respondent to adduce evidence to establish those allegations. Therefore, the allegations turned out to be baseless ones. But, it cannot be said to be without impact as far as the affected party is concerned. The court below ought to have found that, by raising allegations of that nature, the respondent had succeeded in assassinating the petitioner and his father, character-wise. The impact would be grave, when the affected party is a person holding a status in the society. In the case on hand, the petitioner, being a Professor by profession, is a man having status and high reputation in the society. But, the court below did not evaluate those as instances of cruelty. Ext.A6 is the copy of the FIR registered by the Museum Police Station, Thiruvananthapuram based on a complaint lodged by the

respondent against the maid servant, the petitioner and his father. It is yet another instance to evidence the respondent's extension of mental cruelty to the petitioner. The allegations were levelled in the said complaint to the extent that they joined their hands to commit the offences punishable under Sections 294(b), 341, 323, 379 r/w Section 34 of the Indian Penal code. Undoubtedly, by doing so, the respondent had placed the petitioner and his father in a highly embarrassing situation whereby they were constrained to approach the court seeking anticipatory bail. These instances are also indicative of the extension of mental cruelty by the respondent to the petitioner. But, the court below in its oversight, had failed to appreciate those in the right perspective.

17. Evidently, the petitioner as PW1 has sworn in the proof affidavit filed in lieu of his examination in chief, all aspects of his case in clear terms and in tune with the pleas as dealt with at the outset. PW2 has also sworn to in clear corroborative terms. The defence though ventured to impeach their credibility through in-depth and extensive cross-examination, did not succeed.

18. A perusal of the impugned judgment would disclose it to us that, the court below had perceived the seriousness involved in the allegations in its true spirit. But, that perception got captured on the disclosure made by the respondent during examination about her intention to have a re-union so as to continue the marital life for the sake of the children. The court below, in our view, has gone wrong in its appreciation of the evidence. The allegations could easily be raised by its maker and the normal trend of the public is to receive those into heart and to circulate those among others. The public as recipients would not in the normal course, venture to see the veracity of those. One cannot dispute the factum that the allegations affecting morality would caste a stigma on the person affected and he would not in the normal circumstances be called upon to explain or to counter those. There would not be any go-by for him during its prevalence, rather than to suffer both mentally and physically, and it is logically incorrect to view those as nothing short of cruelty. The affected party undoubtedly would be thrown out to face an embarrassing situation.

19. The essential ingredients for a marital bond to sustain and flourish are love, affection, sincerity, honesty and mutual trust. It is discernible from the discussion here-in-above that the respondent by her conduct had caused those ingredients to be lost and created a situation whereby those are difficult to be restored. As rightly pointed out by the learned counsel, the court below ought to have found on the basis of the allegations and the evidence let in by the petitioner that, there was not even a remote chance left for the parties to unite and maintain a smooth marital life. The narration given by the elder child of the petitioner that the respondent had taken herself and her younger sister to a hotel at Kovalam in accompaniment of a stranger was also not given due credit by the court below while appreciating the evidence. It is high time to notice from the attendant circumstances that the proposal for reunion by the respondent was not *bona fide*.

20. The court below had also observed in the impugned judgment, on the basis of Rule 7(3) of the Hindu Marriage (Kerala) Rules, 1963, that on an application being filed for getting a decree for

dissolution of marriage on the ground of cruelty, the petitioner must be vigilant to plead specifically the acts constituting cruelty. The court had observed on a total evaluation of the evidence let in by both parties to the case on hand that the relationship among them is totally strained for which both parties are equally responsible. The court below had further observed that the knot which ties the bondage of the parties in marriage is trust and mutual respect and those are lost beyond any scope for restoration. The court below has also opined that the respondent by her conduct of getting involved in more and more ventures to the dislike and dissatisfaction of the petitioner, has made herself to be a spouse untrustworthy and unacceptable to the petitioner. The court below had also observed in the judgment under challenge that in view of the diverse activities in which the respondent was involved, she did not find time to get involved in the family affairs and indifferences might have been sprout out therefrom. The court had also noticed impropriety in the conduct of the respondent while expressing her desire for a reunion, even after raising very serious and wild allegations

of immorality against the petitioner. Despite noticing all those, the court below was carried away by the version of the respondent during cross examination that she is desirous of resuming cohabitation for the sake of the children and accordingly, declined to grant the decree for dissolution of marriage to the petitioner. An extraction of the relevant portion of the impugned judgment would make the situation more clear:-

“So in spite of the fact that some wild allegations have been made by the respondent against the petitioner, in view of the fact that the petitioner has done the same thing against the respondent, a decree of divorce cannot be granted simply based on the allegations made after the filing of the petition. On going through the evidence, I find that the petitioner has not been able to establish that he was treated with cruelty by the respondent. So he is not entitled to get a decree of divorce.”

21. The Apex court in ***Malathi Ravi(Dr), M.D. v. Dr.B.V.Ravi, M.D.*** [2014 KHC 4437] held that subsequent events, established from the uncontroverted materials on record, can be taken into consideration in a case seeking dissolution of marriage. The learned counsel contended that the factual matrix in the case on hand and the one in the

decision cited supra are identical and the dictum, accordingly, can safely be applied. ***Malathi Ravi(Dr)*** (supra) is a case wherein the husband had approached the Family court seeking for dissolution of marriage on the ground of desertion. The wife had also approached the same court with an application under Section 9 of the Act seeking for restitution of conjugal rights. The learned Judge allowed the application filed by the wife seeking restitution of conjugal rights, but declined to grant the relief of dissolution of marriage sought by the husband on the ground of desertion. The aggrieved husband took the matter in appeal before the High Court. In the appeal, the High Court had reversed the judgment of the Family Court and granted the decree for dissolution of marriage on the ground of desertion. The judgment of the High Court was taken up in appeal. The Apex Court confirmed the same. The term 'cruelty' has been given a wide meaning by the Apex Court in the case in the following lines:-

“37.We have already referred to few authorities to indicate what the concept of mental cruelty means. Mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to

individual, from society to society and also depends on the status of the persons. What would be a mental cruelty in the life of two individuals belonging to particular strata of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The agonised feeling or for that matter a sense of disappointment can take place by certain acts causing a grievous dent at the mental level. The inference has to be drawn from the attending circumstances. As we have enumerated the incidents, we are disposed to think that the husband has reasons to feel that he has been humiliated, for allegations have been made against him which are not correct; his relatives have been dragged into the matrimonial controversy, the assertions in the written statement depict him as if he had tacitly conceded to have harboured notions of gender insensitivity or some kind of male chauvinism, his parents and he are ignored in the naming ceremony of the son, and he comes to learn from others that the wife had gone to Gulbarga to prosecute her studies. That apart, the communications, after the decree for restitution of conjugal rights, indicate the attitude of the wife as if she is playing a game of Chess. The launching of criminal prosecution can be perceived from the spectrum of conduct. The learned Magistrate has recorded the judgment of acquittal. The wife had preferred an appeal before the High Court after obtaining leave. After the State Government prefers an appeal in the Court of Session, she chooses to withdraw the appeal. But she intends, as the pleadings would show, that the case should reach the logical conclusion. This conduct manifestly shows the widening of the rift between the parties. It has only increased the bitterness. In such a situation, the husband is likely to lament in every breath and the vibrancy of life melts to give way to sad story of life.

38. From this kind of attitude and treatment it can be inferred that the husband has been treated with mental

cruelty and definitely he has faced ignominy being an Associate Professor in a Government Medical College. When one enjoys social status working in a Government Hospital, this humiliation affects the reputation. That apart, it can be well imagined the slight he might be facing. In fact, the chain of events might have compelled him to go through the whole gamut of emotions. It certainly must have hurt his self-respect and human sensibility. The sanguine concept of marriage presumably has become illusory and it would not be inapposite to say that the wife has shown anaemic emotional disposition to the husband. Therefore, the decree of divorce granted by the High Court deserves to be affirmed singularly on the ground of mental cruelty."

22. The dictum would satisfactorily and convincingly establish that, developments subsequent to the filing of the original petition, and during the course of the proceedings, are reasons sufficient to sustain grant of a decree for dissolution of marriage. The Apex Court has observed in the case that false allegations of cruelty by the wife against the husband would tantamount to acts of humiliation and insult against the husband. In the view of the Apex Court, the assertions made by the wife in the written statement to depict the husband as a man harbouring notions of gender insensitivity or some kind of male chauvinism are nothing but, circumstances indicative of cruel treatment of the wife

towards the husband. In the said case, the wife preferred an appeal, but later on withdrawn therefrom. The attendant circumstances, which have been adverted to by the Apex Court in the case on hand, in its opinion, are sufficient and satisfactory to widen the rift among the parties. What is derivative from the dictum supra was that the attitude and treatment of the nature by the wife are nothing short of mental cruelty. Accordingly, the finding of the High Court, was confirmed.

23. In the case at hand, the wife as respondent had been instrumental in raising serious allegations involving immorality against her husband and his father. Allegations of gravity affecting the conduct and character of the petitioner, having been raised in the written statement filed in the Original Petition and similar and more grievous allegations having been sworn to in the affidavits filed to support the Interlocutory Applications filed in successive stages of the same proceedings before the court below, the respondent had easily retracted from those during trial stating that she desires to continue the marital life with the petitioner.

24. The court below had every opportunity to see from the rival pleadings and the evidence let in by the parties to the litigation that they had been living separately for a considerable period of time. The court below had also opportunity to see on a proper evaluation of the evidence that the relationship between the parties have been so strained that a reunion is impossible, or in other words, the marital tie has been irretrievably broken. Materials available were also sufficient for the court below to conclude that the parties had not cohabited for a sufficient long time and therefore, they have not been left with any knot of love to bind them in marital relationship. Had there been any desire for reunion or resumption of cohabitation, allegations having serious amplitude affecting the conduct and character of the person of the petitioner would not have been raised by the respondent. The court below ought to have borne in mind that raising of serious allegations of the nature would only help to widen the rift among the parties. It is convincingly established on a reading of the judgment under challenge that the court below had given much stress to the version of the

respondent expressing concern of the children, rather than considering the original petition seeking divorce on merits by appraising the evidence on record.

25. The circumstances during pendency of this appeal also deserve mention contextually. It is pertinent to note that the appeal was filed before this Court in the year 2007. The case was admitted by this Court on 06.07.2007. After several adjournments of the case, an interim order was passed by this Court on 22.06.2010, and it reveals that a Division Bench of this Court had individual and join sessions of interactions with both parties to the appeal, in the presence of their respective counsel. On a particular instance, a Division Bench of this Court had occasion to opine that the parties are moving towards harmonious settlement. Accordingly time was granted till 07.07.2010, for the parties to have a rethinking for a satisfactory cordial arrangement. On 07.07.2010, the Bench in seisin of the matter had interaction with the spouses and their counsel and was impressed on its basis that a harmonious settlement would be possible. In the said

circumstances, time was extended till 20.07.2010. On 16.08.2010 based on the submission of the counsel representing the parties that the matter was not completely settled, it was adjourned to 31.08.2010. On 19.10.2010, as requested by the respective counsel, the case was posted to 28.10.2010, to explore the possibility of an amicable settlement finally and both parties were directed to be present personally. On 03.12.2010, despite elaborate discussions made by this Court with the spouses in the presence of their children and the counsel, the desired result was not arrived at and therefore, time was extended by adjourning the case to 17.12.2010. On 12.12.2014, the counsel for the appellant did not turn up and for want of representation, the case was dismissed for non-prosecution. On account of the relinquishment of vakalath by counsel representing both sides, on 09.07.2015, further time was granted. Though it is disclosed from the materials that the respondent had apprised the court of her desire to resume cohabitation with the petitioner, despite several opportunities and earnest efforts having been made by this Court aiming at reconciliation, nothing

fruitful was culminated. Despite the verbatim expression of desire for reunion during trial, the respondent did not pursue with efforts to make it fruitful and accordingly, made to us convincingly clear that the reunion though preached was not in fact intended by her. Therefore, by the aforesaid conduct, she made herself a litigant, not bona fide. By expressing her desire for a reunion, and thereafter, retracting therefrom, the respondent went to the extent of humiliating and insulting the petitioner even before a court of law. The said approach of the respondent is nothing but exercise of a foul play to mislead the court and thereby to obtain an order of dismissal of the case in her favour. It is evidenced on a reading of the impugned judgment that the court below was carried away by the testimony of the respondent that she is desirous of reunion and thus declined the relief of decree of divorce to the petitioner. There was ample evidence before the court below to conclude that the respondent had treated the petitioner with cruelty as envisaged by the Act. A

finding arrived at on the contrary and the consequential dismissal of the original petition on the reasoning adopted by the court below would not sustain. In view of the aforesaid discussions, it is only just and proper to reverse the judgment under challenge and we do so.

In the result, the Mat.Appeal is allowed and the impugned judgment and decree is set aside. The original petition before the Family Court is allowed and the petitioner is granted a decree for dissolution of marriage. No order as to costs.

Sd/-

C.K.ABDUL REHIM,
JUDGE
sd/-

VS

MARY JOSEPH,
JUDGE

-true copy-

P.S.TO JUDGE

