

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

Mat.Appeal.No. 589 of 2007 ()

AGAINST THE ORDER/JUDGMENT IN OP 138/2006 of FAMILY COURT, KASARAGOD
DATED 12-04-2007

APPELLANT/PETITIONER:

BABU, AGED 49 YEARS, S/O. MANDE,
RESIDING AT PERINJE, KUMDAJE VILLAGE, P.O.MAVVAR
KASARAGOD TALUK, VIA MULLERIA.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT(S) /RESPONDENT:

YESHODHA, AGED 44 YEARS, D/O. NARAMPADY,
RESIDING AT CHAPADY, EDNEER VILLAGE AND POST
KASARAGOD TALUK.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
27-01-2015, THE COURT ON 02-02-2015 DELIVERED THE FOLLOWING:

acd

V.K.MOHANAN & P.D.RAJAN, JJ

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Mat Appeal No.589 of 2007

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Dated 2nd February, 2015

JUDGMENT

P.D.RAJAN,J

Appellant is the petitioner and his wife is the respondent in O.P.No.38 of 2006 of the Family Court, Kasargode. The above petition was filed under Section 13(1)(ia) and (ib) of Hindu Marriage Act, which was dismissed by the Family Court, by judgment dated 12.04.2007. Aggrieved by that, the husband preferred this appeal.

2. The case of the appellant in the Family Court was that he married the respondent 27 years back as per Hindu customary rites. In the wed lock, three children were born to them and they have already attained majority. In the year 1996, petitioner questioned the chastity of his wife and she left the matrimonial home with her children. After that, she filed a maintenance petition, M.C.26 of 1997 against the husband, in which the husband paid Rs.37,200/- by selling his property. Besides this, she also filed a case for bigamy against the husband, which was also dismissed by the Magistrate Court.

3. Petitioner contended that his wife deserted him for

more than ten years. Petitioner is a TB patient and he had suffered imprisonment from 04.10.2003 to 07.04.2006. He contended that filing a false complaint against him alleging bigamy and leaving the matrimonial home without any ground amounts to cruelty and desertion.

4. The respondent wife resisted the above contention in the trial court and contended that she lived with him for 17 years, when he started ill treatment, she left the house with her children in the year 1996. Subsequently, the petitioner married another lady and she could not join the petitioner in such a situation. There was no desertion from her side. On the other hand, petitioner deserted her and the children. There is no desertion and cruelty on that ground.

5. Both parties adduced evidence in the trial court. Their evidence consists of the oral testimony of PW1 and RW1 and Exts.A1 and A1(a) to (d), Ext.A2 and Ext.A2(a) to c). Trial court after sifting and weighing the evidence on record, dismissed the petition.

6. The learned counsel appearing for the petitioner contended that the evidence was not properly appreciated by the Family Court, while considering the above OP. There was

false allegation raised against the husband and it was proved by him with convincing evidence. Filing a false complaint against the appellant amounts to cruelty. The respondent knew about the ailment of the appellant. After realising the ailment, she deserted him without sufficient reason. When cruelty and desertion is properly proved, appellant is entitled to get a decree in his favour.

7. Considering the averment, we are of the opinion that there cannot be any comprehensive definition in the concept of cruelty within the meaning of Section 13 of the Hindu Marriage Act, 1955. Cruelty can be either physical or mental, which depends upon the facts of each case. If the conduct of the other party cause danger to the life, limb or health, body or any mental condition which may create a reasonable apprehension in the mind of such person of such danger. Here, the allegation of the wife, who was examined as RW1 is that the husband ill treated her physically. When such ill treatment was continued, she was under the apprehension that the ill treatment would endanger her life. Then she left the matrimonial house with her three daughters. But the appellant, who was examined as PW1 in the Family Court

deposed that she left the house without any reason and filed a complaint alleging bigamy in the Magistrate Court which was dismissed by the court. This false allegation amounts to cruelty. The case of RW1 was that she left the house on the reason that he is living with another lady. Both parties allege various facts which were not substantiated with evidence.

8. The mental cruelty must be of such a nature that the parties cannot be reasonably be expected to live together. The situation must be that the wronged party cannot continue to live with the other party. The concept of cruelty varies from individual to individual and also depends upon social and economic status to which such person belongs. There was no allegation of mental torture from the side of the husband but she alleges that physical torture from the side of PW1 was harsh. In such a situation, she left the matrimonial home. Even though, cruelty is alleged against the respondent by the appellant, no materials are produced before court to substantiate the above contention. The Family Court observed that the marital relationship between the appellant and respondent has come to an end, but the grounds alleged in the petition are not proved. When appellant failed to prove the

alleged cruelty and desertion, he is not entitled for a decree as claimed. Family Court considered the pleadings and evidence and dismissed the petition. We find no illegality in the above order.

8. In the result, judgment and decree passed by the Family Court, Kasargod in O.P.No.138 of 2006 is confirmed. There is no merit in the appeal and the appeal is dismissed accordingly. No order as to cost.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

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