IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

MAT.APPEAL NO. 608 OF 2015

JUDGMENT DATED 28.02.2015 IN OPHMA NO.1141 OF 2011 OF FAMILY COURT, THIRUVALLA

APPELLANT/PETITIONER:

ANITHA B.V., AGED 35 YEARS
D/O.V.K.BHASKARAN, VETTAMALAYIL VEEDU, ERAVIPEROOR P.O., THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT.

BY ADV SRI.S.SUBHASH CHAND

RESPONDENT/RESPONDENT:

SAI RAJ, AGED 41 YEARS, S/O. O.V.NARAYANAN,
VELLIOYANIKALIL SRI SADANAM,PURAYIDATHUMKAVU, KURUNGAZHA P.O., KOIPURAM VILLAGE,THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT, 689548.

BY ADV SRI.V.SETHUNATH

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON 14.03.2025, THE COURT ON 04.04.2025 DELIVERED THE FOLLOWING:

JUDGMENT

SHOBA ANNAMMA EAPEN, J.

The wife has come up in appeal challenging the impugned judgment and decree dated 28.02.2015 of the Family Court, Thiruvalla, whereby the original petition, OP(HMA) No.1141 of 2011, filed by the wife for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, was dismissed. The respondent is the husband.

2. For sake of convenience, the parties are referred to as, “husband” and “wife”.

3. The marriage between the parties was solemnized on 27.01.2010. Both the parties are teachers by profession. Even in the initial stages of their marital life, the couple experienced discord and dissatisfaction with each other. The wife alleges that the husband deliberately avoided sexual relationships with her. She also alleged that the husband, who was obese, suffered from hypertension and diabetes and was taking heavy doses of insulin and these health issues were concealed from her at the time of their marriage. According to her, the husband’s

impotence and his physical characteristics rendered him unable to engage in a normal relationship and instead, he pursued unnatural sexual activities. She further stated that in October 2010, she returned to her parental home due to the alleged torture by the husband. Although she tried to contact him over the phone, he deliberately ignored her calls. In December 2010, she returned to the matrimonial home on her mother's advice, and after 10 pm of that day, she received a call from the husband asking her to return to her parental house. The wife alleged that since then, they have been living separately and the marital relationship between them has irretrievably broken down. Thus, she had filed the petition for divorce.

4. According to the husband, he treated the wife with love and care and after their marriage, they had a normal and consensual sexual relationship, which was mutually enjoyed. He strongly denied the allegation of unnatural sex and the allegation of impotence. He contended that the wife was suffering from hypertension and skin disease, which was concealed from him at the time of marriage; and she was taken to the doctor several times and treatment was administered using his own money. According to him, whenever the wife expressed her

desire for sex, it was enjoyed by him. All the allegations to the contrary were denied by the husband. According to him, the wife had a quarrelsome nature and was constantly picking up fights with his family. He contended that in December, 2010, he asked the wife to return to her parental home as he had to attend some official matter, but she refused to leave the matrimonial home until 12 o'clock. He alleged that she then left with three youngsters who arrived on a motorcycle. The husband and the wife, who were working in different destinations, used to meet every Saturday in the husband's house. Even though the husband demanded the wife to come and live with him, she was not amenable to the same. The husband contended that he has every right to claim restitution of his conjugal rights and the wife is not entitled for a divorce. The Family Court, on an elaborate consideration of the issues, dismissed the petition for divorce, finding that the wife failed to prove her case. Hence, the wife is before us.

5. We have heard the learned counsel appearing on either side.

6. The main ground on which the wife seeks for divorce is

cruelty. The allegations of the wife are that the husband showed no interest in normal sexual relationships and, instead, preferred unnatural sexual acts, and he was impotent. It was the further case of the wife that the husband ill-treated and harassed her. The husband, on the other hand, contended that he never had any unnatural sex with the wife, and he also refuted the allegation of impotency. Though the wife alleged cruelty inflicted on her by the husband, no clear evidence has been adduced to prove the same. It is true that in order to prove the allegation of cruelty, it may not be able to substantiate it with evidence. Cruelty can be either physical, emotional, psychological or verbal. Different people experience cruelty in different forms. Insistence on unnatural sex, continued compulsion for oral sex, sex through anus causing pain and physical injury to make the wife to concede to such unnatural sex will certainly amount to cruelty as held by this Court in **Bini T. John** v. **Saji Kuruvila** [1997 (1) KLT 526]. But, the burden to prove the same is on the spouse. Here, the case of the wife is vague and ambiguous and she failed to adduce any clear evidence to prove the allegation of cruelty. The husband produced Ext.B5 potency report which reveals no evidence of his

inability to perform sexual acts. Consequently, the wife's claim that the husband is impotent is contradicted by Ext.B5. As held by the Family Court, the evidence on record is not sufficient to prove the cruelty alleged by the wife.

7. It is a fact that from 2010 onwards, the parties are living separately. Both of them are school teachers and there is no case that there was cohabitation after 2010. The husband produced Ext.B4, a CD recording of an alleged conversation between the parties, which took place while they were living apart. The wife was unaware that the husband was recording their conversation at that time. The husband-wife relationship is sacred, built on trust and mutual confidence. Recording conversations, without the other spouse's knowledge is a breach of that trust, constituting a form of emotional cruelty; it was thus held by this Court in **Sujeeth Thomson** v. **M.P.Devassy** [2003 KHC 382]. As an educated individual, the husband ought not to have recorded their conversation and produced the same before the court without the knowledge of the wife, which certainly amounts to cruelty.

8. It is clear from the evidence adduced that the

matrimonial bond between the parties have come to an end and the husband-wife relationship has ceased to exist and they are living separately for the past 15 years. We feel that it is time for them to part ways and move on with their lives. In **Shilpa Sailesh v. Varun Sreenivasan** [2023 SCC OnLine SC 544], it has been held that where there is irretrievable breakdown of marriage, then, dissolution of marriage is the only solution. In a recent decision of the apex court in **Rajib Kumar vs. Sushmita Saha** [2023 LiveLaw (SC) 727], it has been held that keeping the parties together despite irretrievable breakdown of marriage amounts to cruelty on both sides.

9. It is an admitted fact that due to strained relationships, the parties are living separately from 2010 onwards and there was no cohabitation since then. Despite being married for over 15 years, the parties lived together for less than a year. The emotional bond had become dry, and the warmth of their matrimonial relationship went increasingly missing and the marriage between the parties was dead. Neither of the parties filed any petition for restitution of conjugal rights. In such circumstances, if a decree of divorce is not granted, the parties would be forced to endure unnecessary suffering,

misery and emotional distress. The husband and wife have been living apart for an extended period.

10. On the above discussions, while concurring with the Family Court in its finding on the particular nature of cruelty alleged, we are of the opinion that on the other findings *supra*, a decree for divorce is liable to be granted.

Accordingly, the appeal is allowed and the impugned judgment and decree of the Family Court are set aside. The marriage between the parties will stand dissolved by a decree of divorce. No costs.

Sd/-

SATHISH NINAN

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-