



2025:KER:30982

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

MAT.APPEAL NO. 1146 OF 2014

AGAINST THE JUDGMENT DATED 23.07.2014 IN OP NO.2 OF
2013 OF FAMILY COURT, CHAVARA

APPELLANTS/PETITIONERS:

- 1 BINDHU
 AGED 42 YEARS, D/O.OMANA,
 R/A.'KARTHIKA',KOLLAM WARD,
 PANMANA VILLAGE, KARUNAGAPALLY TALUK,
 KOLLAM DISTRICT
- 2 DURGADAS
 AGED 19 YEARS, S/O.RAJENDRAN,
 R/A.'KARTHIKA',KOLLAM WARD,
 PANMANA VILLAGE, KARUNAGAPALLY TALUK,
 KOLLAM DISTRICT
- 3 GOURI
 AGED 11 YEARS, D/O.RAJENDRAN,
 R/A.'KARTHIKA',KOLLAM WARD,
 PANMANA VILLAGE, KARUNAGAPALLY TALUK,
 KOLLAM DISTRICT(MINOR THIRD RESPONDENT REP BY
 THE FIRST RESPONDENT BEING THE GUARDIAN AND NEXT
 FRIEND)



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BY ADV SRI.JOHNSON GOMEZ

RESPONDENT/RESPONDENT:

**RAJENDRAN
S/O.KARUNAKARAN PUTHEN PURAYIL FROM REVATHIYIL,
NADAVARATHU CHERRY,
CHAVARA THEKKUMBHAGOM VILLAGE,
KARUNAGAPPALLY, NOW R/A PUTHEN PURAYIL,
KULANGARA BHAGOM, CHAVARA P O,
PIN-NO 691583, KOLLAM**

BY ADV SMT.MINI GANGADHARAN

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
19.03.2025, ALONG WITH MAT.APPEAL NO.1159/2014, THE COURT
ON 10.04.2025 DELIVERED THE FOLLOWING:**



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

MAT.APPEAL NO. 1159 OF 2014

**AGAINST THE JUDGMENT DATED 23.07.2014 IN OP(HMA) NO.1
OF 2013 OF FAMILY COURT, CHAVARA**

APPELLANT/PETITIONER:

**BINDHU, AGED 42 YEARS, DAUGHTER OF OMANA,
'KARTHIKA', KOLAMWARD, PANMANA VILLAGE,
KARUNAGAPPALLY TALUK, KOLLAM DISTRICT**

BY ADV SRI.JOHNSON GOMEZ

RESPONDENT/RESPONDENT:

**RAJENDRAN, S/O.KARUNAKARAN PUTHEN PURAYIL FROM
REVATHIYIL NADAVARATHU CHERRY, CHAVARA
THEKKUMBHAGOM VILLAGE, KARUNAGAPPALLY, NOW
RESIDING AT PUTHEN PURAYIL, KULANGARA BHAGOM,
CHAVARA P.O, PIN NO 691 583, KOLLAM**

BY ADV SMT.MINI GANGADHARAN

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
19.03.2025, ALONG WITH MAT.APPEAL No.1146/2014, THE COURT
ON 10.04.2025 DELIVERED THE FOLLOWING:**



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J U D G M E N T
[Mat.Appeal Nos.1146/2014, 1159/2014]

Shoba Annamma Eapen, J.

The wife is the appellant in both the appeals. Mat.Appeal No.1146 of 2014 and Mat.Appeal No.1159 of 2014 arise from the common judgment in O.P.No.2 of 2013 and O.P.(HMA) No.1 of 2013 on the files of the Family Court, Chavara for recovery of her gold ornaments and cash, and for divorce.

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

3. The marriage between the parties was solemnised on 23.03.1992. Two children were born in their wedlock on 10.09.1994 and 08.02.2003 respectively. According to the wife, at the time of marriage she was given 35 sovereigns of gold ornaments and a sum of ₹2.5 lakhs as patrimony. She claimed that a gold chain weighing 4 sovereigns and one ring



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weighing 1 sovereign was given to the husband and one bangle weighing 1 sovereign was given to the husband's mother, totaling to 6 sovereigns. She alleged that the gold ornaments and patrimony were misappropriated by the husband. She was subjected to cruelty demanding more dowry by the husband and his mother. She alleged that the patrimony of ₹2.5 Lakhs was misappropriated by the husband for the purpose of renovating the building. She further alleged that out of 10 cents of property belonging to the wife, she was forced to convey 5 cents of property to the husband as a pre-condition for conjugal relationship. She contended that the husband was a drunkard, and became violent when intoxicated and demanded for more dowry. He used to bring his friends to the house and the wife was forced to serve food to them. Thereafter, the husband was sent to gulf by spending ₹50,000/- by the wife's father. Later the husband returned from gulf after



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losing his job. On 20.05.2006, the wife and the children were forcibly thrown out of the matrimonial home and the husband failed to take them back home. Thus the wife filed petitions for divorce, for return of gold ornaments and money and for past and future maintenance.

4. According to the husband, no dowry was demanded by him from the wife's family. He also denied the entrustment of her assets. He alleged that the wife was having only 20 sovereigns of gold ornaments at the time of marriage and that the gold ornaments were in her own custody. He further contended that since the wife's brother was in need of money, the husband had parted with ₹15,000/-, and that is how 5 cents of property was conveyed in his name. He also contended that he renovated the old building in the property by availing loans from the bank. He contended that he did not misappropriate her gold ornaments or



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money. He submitted that he is still ready and willing to maintain the wife and his children.

5. The Family Court, after appreciation of entire evidence, dismissed O.P.(HMA) No.1 of 2013 and partly allowed O.P.No.2 of 2013 by allowing the wife to recover only 26 sovereigns of gold ornaments and also directed the husband to pay monthly maintenance of ₹1,000/- to the wife and ₹1,500/- each to the minor children. Aggrieved by the same, the wife has come up with the appeals.

6. We have heard the learned Counsels on both sides.

7. The evidence in this case consists of Exts.A1 to A5 and Ext.B1 to B10. PW1 – the wife, CPW1 – the husband and CPW2 – Chandradas - Building contractor were also examined.

8. First, we shall consider the appeal against the dismissal of the petition for divorce. The



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marriage between the parties was solemnised on 23.03.1992 and two children were born in their wedlock in the year 1994 and 2003 respectively. The wife has made allegations of cruelty against the husband including ill-treatment and manhandling. It was alleged that the husband was a drunkard and he used to bring his unethical friends to the matrimonial home and also forced his wife to serve food to them. It was also alleged that the husband was a spendthrift and he had misappropriated her gold ornaments and patrimony of ₹2.5 Lakhs. Due to the disruption in the marital life, the relationship got estranged and they were living separately since 26.05.2006. Except the oral evidence of PW1, no attempt was made by the wife to examine any witness or to adduce any evidence to prove the cruelty against the husband. However, she had testified that she had been manhandled after intoxication of liquor as well as she was abused and



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assaulted in front of his friends. No love and affection was shown by the husband towards the wife. She deposed that her life could be in danger if they continue to stay together. For a wife, it would be very difficult, mentally and physically to move on with a husband who is a drunkard, and also does not show any care, love and affection towards the wife. The husband had denied all the allegations levelled against him. The fact that since 2008, they are living separately is not disputed.

9. Cruelty is a course of conduct by the offending spouse which makes it impossible for the complaining spouse to live with him. The parties enter the marital relationship with many expectations. If something goes wrong against the expectations, it would be difficult for the other spouse to continue with the marital relationship, and it amounts to cruelty in matrimonial life. In **[2007 (1) KHC 9491**



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(SC)] Mayadevi v. Jagadish Prasad, it has been held that physical violence is not essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may constitute cruelty. The wife had deposed that she had been continuously put to immeasurable mental agony and torture by the husband. It is true that the wife has not examined anybody to prove the allegation of cruelty by the husband.

10. The circumstances in each family life will be different. It may not be possible for everyone to lead evidence of cruelty by the husband. The finding of the Family Court in the original petition is that, it was only an ordinary tear and wear of the family and there had been no serious issues between the spouse, which does not appear to be correct. If there was no serious issue the wife would have certainly joined the husband. In the present case, there is irretrievable



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break down also. The parties were living separately from 2008 onwards. They do not have a case that there was cohabitation after 2008. Refusal to live with the spouse also amounts to cruelty. In **Rakesh Raman v. Kavitha** [2023 SCC OnLine SC 497], it has been held that though in a given case, cruelty as a fault may not be attributable to one party alone and hence, despite irretrievable breakdown of marriage, keeping the parties together amounts to cruelty on both sides. Similarly, in **Shilpa Sailesh v. Varun Sreenivasan** [2023 SCC OnLine SC 544], it has been held that where there is an 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** [Civil Appeal No.5454 of 2023] [2023 LiveLaw (SC) 727], it has been held that keeping the parties together despite irretrievable breakdown of marriage amounts to cruelty on both sides.



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11. Considering the above facts, we find that for more than 15 years they are living separately and there is no chance of reunion. The emotional bond has weakened and the marital bond has become strained. In such circumstances, if a decree of divorce is not granted, the parties would be forced to endure unnecessary suffering, misery and emotional distress. Therefore, 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. Hence, we are inclined to allow O.P.(HMA) No.1 of 2013 regarding the dissolution of marriage.

12. Next we shall consider the claim for return of gold ornaments and patrimony. According to the wife, she was given 35 sovereigns of gold ornaments and her husband was given a gold chain weighing 4 sovereigns and one ring weighing 1 sovereign was given



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to the husband and one bangle weighing 1 sovereign was given to the husband's mother, totaling to 6 sovereigns. She claimed that ₹2.5 lakhs was given to the husband in November 2001 for renovation of the building and ₹50,000/- was given by her parents to him in connection with his travel abroad for job. According to the wife, she has claimed return of 41 sovereigns of gold ornaments. She claimed that she was having 18 bangles of one sovereign each, two chains of 6 and 4 sovereigns, a necklace weighing 2 sovereign, a pair of stud of 1 sovereign, two rings weighing $1\frac{1}{2}$ sovereigns each. She further claimed a gold chain weighing 4 sovereigns and one ring weighing 1 sovereign was given to the husband and one bangle weighing 1 sovereign was given to the husband's mother. She also claimed that the gold ornaments were purchased from one Swaminathan Jewellery. According to her, ten sovereigns were sold in June 1992 and 25



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sovereigns were taken by the husband in September 1994. In order to substantiate her claim, she relied on Ext.A1 series photographs and also her own deposition.

13. According to the husband, he contended that she had only 20 sovereigns of gold ornaments and that were in her own custody. He also denies the claim that he was given a ring and a chain and his mother was given a bangle. He also contended that the renovation of the building was done by availing loan from the bank. Admittedly no bills, estimate or receipt for the purchase of the gold ornaments were produced by the wife.

14. On a perusal of Ext.A1 series photographs, it is seen that the wife was wearing substantial quantity of gold ornaments. However, it is not discernible from the photos produced whether she was wearing 35 sovereigns of gold ornaments. On a perusal of Ext.B4,



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it is seen that the husband had pledged gold ornaments on 06.05.2003. The husband, in the cross examination, has admitted that her gold ornaments were pledged by him. From the documents produced, it is clear that he was in the habit of pledging gold ornaments. Hence it is only probable that the husband might have utilised her gold ornaments and misappropriated the same for his own needs. The claim of the wife that the gold ornaments were misappropriated by the husband, has to be believed.

15. Having considered the facts of this case and a perusal of Ext.A1 series of photographs, we are of the view that the wife might have been wearing atleast 25 sovereigns of gold ornaments. The case of the wife that 6 sovereigns were given to the husband and his mother, though denied by the husband, the evidence adduced by the wife appears to be more reliable. Hence, we hold that the wife is entitled for return of



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31 sovereigns of gold ornaments.

16. No proper evidence has been adduced by the wife to substantiate the claim for payment of ₹2.5 lakhs alleged to have been spent for renovation of the building and ₹50,000/- towards the expenses for the husband to go to Gulf. Hence we are not inclined to grant the claim for recovery of the said amount. The wife has also claimed right over the property assigned in favour of the husband. However, no such claim has been made in the present petition. It is for the wife to raise claim, if any, in appropriate proceedings.

17. As regards the claim for maintenance, the wife had claimed ₹1,500/- each to her and her minor children. She claimed that the husband is earning ₹10,000/- per month and he is also having business from which he would be getting ₹10,000/- per month. She claimed past and future maintenance. The husband contended that he had been sending maintenance amounts



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to the children @ ₹1,000/- each while he was in the gulf. He also claimed that he was ready to maintain his wife and children if they are ready to reside with him. On a perusal of the evidence adduced, the wife had deposed that the wife was residing in her own building and was maintained by her father. The husband did not adduce any contra evidence to prove that the wife was having sufficient income to maintain herself. The Family Court, after consideration of the evidence on board, has awarded maintenance @ ₹1,000/- per month to the wife and ₹1,500/- each per month to her minor children from 12.03.2007 onwards. The Family Court also awarded a consolidated amount of ₹10,000/- to the wife and ₹30,000/- to the minor children towards past maintenance with 6% interest per annum. The said order passed by the Family Court appears to be just and reasonable. We do not find any reason to interfere with the same.



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Accordingly, Mat. Appeal No.1159 of 2014 is allowed, dissolving the marriage between the appellant and respondent solemnized on 23.03.1992.

Mat.Appeal No.1146 of 2014 is partly allowed, by modifying the impugned judgment and decree of the Family Court, to the extent of directing the husband to return to the wife thirty one (31) sovereigns of gold ornaments or its present market value within one month from today, in default of which, the wife will be entitled to realize the same from the husband's assets, both movables and immovables. In all other respects the impugned judgment shall stand. No costs.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE

RK