



2018:KER:38934

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQU
&
THE HONOURABLE MR. JUSTICE P.SOMARAJAN

WEDNESDAY, THE 1ST DAY OF AUGUST 2018 / 10TH SRAVANA, 1940

Mat.Appeal.No. 360 of 2013

AGAINST THE JUDGMENT DATED 06-03-2013 IN OPNO.134/2006 of FAMILY COURT, KANNUR

APPELLANT/PETITIONER

V.V.PRABHAKARAN
S/O. KUNHIRAMAN NAMBIAR,
CHALIL, "LAKSHMIPRABHA",
ELAYAVOOR AMSOM DESOM,
P.O. MUNDAYAD, KANNUR - 670 597.

BY SRI. V.V.PRABHAKARAN
(PARTY-IN-PERSON)

RESPONDENT/RESPONDENT:

T.CHANDRAMATHI
D/O.LATE T.K.G. NAMBIAR,
THEENDAKKARA HOUSE,
KANNAPURAM AMSOM DESOM,
P.O. MOTTAMMAL, KANNUR - 670 331.

BY ADV. SRI.K.RAJESH SUKUMARAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 20.6.2018,
THE COURT ON 01-08-2018, DELIVERED THE FOLLOWING:



**A.M.SHAFIQU &
P. SOMARAJAN, JJ.**

Mat. Appeal No. 360 of 2013

Dated this the 1st day of August, 2018

J U D G M E N T

P. Somarajan, J.

Against the order dated 06.03.2013 in O.P.No.134/2006 of the Family Court, Kannur, the husband came up with this appeal aggrieved by the order refusing to grant divorce of the marriage.

2. The marriage was solemnized as early as on 13.05.1973. There are four issues in the wedlock. Since 1995, they are residing separately and the petition for divorce was filed in the year 2006 alleging cruelty. The Family Court on consideration of evidence and on hearing the parties found that there is no sufficient ground for granting divorce and consequently the application was dismissed, against which this appeal is preferred.

3. The original petition was submitted by the petitioner after a long cohabitation with his wife, the respondent herein, more specifically after the expiry of more than 22 years. This would *prima facie* cast a duty on the court to examine the



Mat. Appeal No. 360 of 2013 2

ground alleged for divorce with its all details so as to find out the existence of elements of cruelty and whether it is sufficient to bring the relationship to an end. The petitioner had given oral evidence as PW1. PW2 to PW14 were examined in support of his case besides the marking of Exhibits A1 to A38. All these persons were examined along with the relevant documents in order to show the misbehaviour of the respondent towards her husband, the petitioner herein, and that he was subjected to continuous mental cruelty challenging his dignity among his friends, relatives, subordinate officers and higher officials. There is no much dispute that the husband/petitioner is living separately from the respondent/wife right from the year 1995. The wife is aged 60 and the petitioner is aged 70 years. There are four issues in the wedlock. They were living as husband and wife for a long period of more than 22 years. It is an admitted case of the respondent that she had preferred a complaint against her husband alleging offence under Section 498A IPC, that too in the year 2003, and a crime was registered as Crime No.379/2003 of Kannapuram Police Station. Subsequently the case was, according to the respondent,



settled out of court and herself and her children had given evidence hostile to the prosecution. This would be a factor requires serious consideration as to why they have turned hostile to the criminal case initiated at their instance and whether it was a pressurizing tactics played on the petitioner who was aged more than 70 years. The intention to subject the petitioner with mental cruelty is well evident.

4. Admittedly the petitioner who is the father of PW7, was not invited for the marriage of PW7, though PW7 is the only daughter born in the wedlock. The reason advanced by the respondent that by that time he had filed a divorce O.P. against the respondent and hence cannot find any fault with her, is seemed to be so strange. The marriage of PW7 was conducted without inviting her father, the petitioner herein. Whether the relationship in between the father and mother became strained is not at all a ground for excluding the father from attending the marriage of his only daughter.

5. Exhibit A29 letter written by the respondent on 30.09.2003 is self explanatory with respect to the cruelty meted out by the petitioner from his wife. The filthy language used against her mother-in-law and the various wild



Mat. Appeal No. 360 of 2013 4

allegations made against him would *prima facie* show the way in which he was treated by his wife, the respondent herein. Scandalous allegations were raised against him in Exhibit A30 complaint submitted to the superior officer of the petitioner. The nature of scandalous allegations raised in Exhibit A30 which was submitted to the senior officer of the petitioner would amply show the cruelty and misbehaviour showered on the petitioner by his wife, the respondent. Exhibit A28 apology letter would be an admission of what she had done against her husband, the petitioner herein. Exhibits A24 and A25 would also show the misbehaviour and cruelty unleashed against the petitioner by the respondent.

6. The various letters and complaints written by the respondent against her husband before the authorities wherein the husband was working, ridiculing him among the officials, friends and relatives is well evident from the oral evidence tendered by PW2 to PW14 and Exhibits A1 to A38. Ridiculing the husband among his close friends, relatives and also before the officials wherein he was working and challenging his dignity amounts to cruelty in all means. Filing of a complaint against her husband alleging offence under



Mat. Appeal No. 360 of 2013 5

Section 498A IPC and registration of a crime against him and the admission made by her that she herself and her children turned hostile to the prosecution resulting in acquittal of the petitioner would *prima facie* show the way in which he was subjected to cruelty challenging his dignity. The pain and suffering meted out by the petitioner on registration of a crime against him by the concerned police can very well discern from the fact that it was registered while he was at the age of 70 years. He was not permitted to participate in the marriage of his one and the only daughter, PW7. He has been ridiculed before his officials, friends and relatives is well evident from the various complaints and letters issued at various occasions. The extent of cruelty is well evident from the nature of wild allegations levelled against him in those complaints and letters. As discussed earlier, ridiculing the husband before his friends, officials and relatives and challenging his dignity by his wife amounts to mental cruelty having far reaching effects. This cannot be condoned on a later point of time as it will remain in the mind of the petitioner as an incurable injury. The way in which he was treated and ridiculed is further evident from the fact that a publication was made regarding



Mat. Appeal No. 360 of 2013 6

the marriage of her daughter under Exhibit A10 notice which is yet another attempt to degrade the dignity of her father who was excluded from attending the marriage of his one and the only daughter. The reasons advanced by the Lower Court even by quoting a Sanskrit sloka alleged to have been borrowed from the petitioner that "wife should be minister in purpose, slave in duty, Lakshmi in appearance, Earth in patience, Mother in love and prostitute in bed" would itself show the manner in which the Lower Court misappreciated the evidence involved in the case. Submission of a compromise signed by the parties, exhibited as A32, regarding the crime registered against the petitioner will not condone the earlier act of the respondent causing registration of a criminal case under the guise of an alleged offence under Section 498A IPC against her husband who was at the age of 70 years. The cruelty meted out by the petitioner is of that nature sufficient to bring their relationship as husband and wife in an irretrievable halt and hence the petitioner is entitled to the grant of a decree of divorce of the marriage with the respondent. Hence, the judgment of the Lower Court is hereby set aside. A decree of divorce of marriage of the



2018:KER:38934

Mat. Appeal No. 360 of 2013 7

petitioner with the respondent with effect from the date of
decree is hereby granted.

Appeal is allowed accordingly, no costs.

sd/-
A.M.SHAFFIQUE (JUDGE)

sd/-
P. SOMARAJAN (JUDGE)

DMR/-