
(1994) 09 KL CK 0036

High Court Of Kerala

Case No: M.F.A. No. 415 of 1993

Mohanan

APPELLANT

Vs

Thankamani

RESPONDENT

Date of Decision: Sept. 9, 1994

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13

Citation: (1995) 1 DMC 327 : (1995) 1 ILR (Ker) 83

Hon'ble Judges: V.V. Kamat, J; M.M. Pareed Pillay, J

Bench: Division Bench

Advocate: K. Ramakumar and N.J. Johnson, for the Appellant; Grashious Kuriakose, for the Respondent

Final Decision: Allowed

Judgement

M.M. Pareed Pillay, J.

Husband's petition for divorce on the ground of cruelty was dismissed by the Sub Judge, Thalassery. He married the respondent on 14-12-1983. The allegation in the petition is that on 11-10-1990 while the appellant-petitioner was away at his house respondent committed the dastardly crime of throwing the minor children into a deep well. The children died. It is also alleged in the petition that after the commission of the crime respondent went on a tour and on her return she was arrested and charged sheeted by the police for murder of her children. The Sessions Judge convicted the respondent and sentenced her to undergo imprisonment for life. The conviction and sentence were after the judgment in the original petition.

1. Contention of the appellant is that the learned Sub Judge went wholly wrong in not appreciating the evidence in its correct perspective and merely held that the case set up by the appellant has not been established. Appellant examined as P.W. 1 spoke about the case set up in the petition. P.W. 2 is a neighbour. His evidence fully supports the testimony of P.W. 1. P. W. 3 is P.W. 1's elder brother's wife. She

testified that the respondent used to beat her children causing bleeding injuries and that she never heeded to her protestation. P.W.3's evidence also shows that the respondent treated her husband (appellant) cruelty. As P.W.1's evidence has been corroborated by the testimony of P.Ws.2 and 3 the learned Sub Judge ought not have discarded the overwhelming evidence in favour of the appellant. Respondent examined as R.W. 1 admitted that she was charge sheeted under Sections 302 and 309 of the Indian Penal Code. Her evidence that she was falsely implicated in the crime cannot hold good in view of the conviction and sentence entered against her by the Sessions Judge. There is unassailable evidence in the case that the respondent's attitude to the appellant was nothing but cruel. There is unassailable evidence that cruel treatment was meted out to the appellant by the respondent. Murder of two minor children amounted to cruelty of the worst sort. Even a single act of violence which is of grievous and inexcusable in nature satisfies the test of cruelty. The allegation that the respondent had killed her children is not a matter to be trifled with, in the petition itself the allegation that the respondent had killed her children is specifically stated. Conviction by the Sessions Judge against the respondent u/s 302 of the Indian Penal Code is not a matter in dispute. Pendency of the appeal is not a mitigating factor. Eventual acquittal in the criminal case would not be sufficient to assuage the embittered feelings of the father (appellant). The single act of violence against the children establishes the cruel conduct of the respondent. Even if it is assumed that the respondent had not treated the appellant with cruelty the crime perpetrated against the children would certainly amount to cruelty to him also.

2. Assuming that there is no evidence of cruelty against the appellant, the act of throwing the minor children into the well amounted to infliction of mental cruelty on the appellant. Her act of cruelty to the children is greater in magnitude unparalleled with any other category of cruelty. It is too much to hold that the inhuman act of violence against the children would not cause any mental pain to their father. Mental cruelty is a well recognised ground for divorce. Contention that there is lack of evidence with regard to physical violence against the appellant cannot be advanced as an argument in support of respondent's contention that so far as the husband was concerned cruel harassment to him has not been established.

3. In [Gurcharan Singh Vs. Sukhdev Kaur](#), the Court held that in a case where the wife left her husband's house leaving a two months old child and went to her parent's place and when approached not only refused to return to the husband's house to live with him but also refused to keep the child as a result of which the child died, the attitude of the wife amounted to cruelty entitling the husband to a decree of divorce on the ground of cruelty. Contention that cruelty to the children would not be sufficient to establish a ground for divorce is not tenable. Cruelty to the children would certainly affect the normal marital relationship between the spouses. Cruelty perpetrated by the respondent against the children would amount to cruelty to the husband as well entitling him to a decree of divorce.

4. For the foregoing reasons we hold that the appellant is entitled to a decree for divorce as prayed for in the petition. The impugned judgment is set aside. Appellant is granted a decree of divorce. The Original Petition stands allowed.

M.F.A. is allowed. No costs.