

**(2012) 07 KL CK 0329**

**High Court Of Kerala**

**Case No:** Matrimonial Appeal No. 741 of 2011

E.K. Sajunath

APPELLANT

Vs

Nithya J.

RESPONDENT

---

**Date of Decision:** July 17, 2012

**Acts Referred:**

- Special Marriage Act, 1954 - Section 27(1)(d)

**Hon'ble Judges:** M.L. Joseph Francis, J; K.T. Sankaran, J

**Bench:** Division Bench

**Advocate:** T.K. Sandeep, for the Appellant; Usha Ravindran, for the Respondent

---

### **Judgement**

Joseph Francis, J.

This appeal is filed by the petitioner/husband in O.P. No. 56 of 2009 on the file of the Family Court, Palakkad. The respondent/wife herein was the respondent in that Original Petition, which was filed by the husband for divorce u/s 27(1)(d) of the Special Marriage Act. The facts of the case are briefly as follows : The appellant and the respondent are husband and wife. The marriage between the appellant and the respondent was solemnized on 26.12.2004 at Aattukal Temple. The marriage was registered before the Marriage Officer, Shornur on 7.1.2006. After the marriage, the spouses were residing together as husband and wife. The appellant had married the respondent out of his love towards her. It is further stated by the appellant that later on, the respondent used to talk to one Sudeep over phone and when the appellant questioned the same, the respondent meted out cruelty on him. On one occasion, the police took the appellant from KTC Automobiles, where the appellant used to go for job and behaved in a very cruel manner and ill-treated him at the behest of the respondent. There were frequent frivolous complaints instituted against the appellant. Thereafter, the appellant filed M.O.P. No. 1067 of 2006 before the Family Court, Palakkad. Subsequently, there was a mediation with the interference of Ms. Saleekha, who was the MLA from Krishnapuram. A settlement was arrived at between the parties on 5.6.2006 and both of them started residing at

Manappullikavu in Palakkad. In spite of the settlement, there was no respite to the appellant and the respondent continued with her ill treatments by filing frivolous complaints before the police. The respondent filed objection denying the averments in the Original Petition.

2. In the Family Court, PW1 and RW1 were examined and Exts. A1 to A3 were marked. The Family Court, on considering the evidence on record, dismissed that Original Petition, on finding that the petitioner was not successful in establishing the alleged act of cruelty. Against that judgment, the petitioner/husband filed this appeal.

3. During the pendency of this appeal, the parties were referred to mediation and they have entered into a settlement, as per the terms and conditions mentioned below :

1. Both parties agree for divorce and the respondent has no objection in allowing the Mat. Appeal No. 741/2011 and granting a decree of divorce.

2. The respondent agrees that she has no objection to permit the appellant to come and visit the child. The appellant can visit her child whenever he wants.

3. The respondent agrees that she is ready to hand over the custody of the child during holidays. Both parties agree that the respondent will hand over the child to the appellant at St. Antony's Church, Shornur.

4. The respondent agrees that she will withdraw all the criminal cases against the appellant pending before Judicial First Class Magistrate Court, Ottappalam (S.T. No. 300/2011).

5. The appellant agrees that he will execute a settlement deed in favour of the child with regard to the landed property in his name having an extent of 37 cents, at Kadambazhipuram within 45 days.

6. Both parties should not make unnecessary phone calls and send unnecessary messages.

The main allegation of the appellant/husband against the respondent/wife is that she was having illicit relationship with one Sudeep. In the counter affidavit filed by the wife, she has not denied her illicit relationship with Sudeep. It has come out in evidence that in spite of the settlement arrived at due to the intervention of the MLA on 5.6.2006, the respondent/wife continued her ill-treatment towards the appellant by filing frivolous complaints before the police and the respondent/wife continued her illicit relationship with Sudeep. Therefore, there is ample evidence to prove that the respondent/wife treated the petitioner/husband with cruelty and as such, the appellant/ petitioner is entitled to get a decree of divorce.

Accordingly, this appeal is allowed. The judgment and decree in O.P. No. 56 of 2009 on the file of the Family Court, Palakkad is set aside and that Original Petition is

allowed and the marriage between the petitioner and the respondent is dissolved by a decree of divorce with effect from today and an executable decree is also passed in terms of condition Nos. 2, 3, 5 and 6 of the compromise. The compromise will form part of the decree. The parties are directed to suffer their respective costs in this appeal.