



2025:KER:72515

MAT.APPEAL NO. 138 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

THURSDAY, THE 25TH DAY OF SEPTEMBER 2025 / 3RD ASWINA, 1947

MAT.APPEAL NO. 138 OF 2023

AGAINST THE JUDGMENT IN OP NO.818 OF 2019 OF FAMILY COURT,

PALA

APPELLANT/PETITIONER:

DHANYA VIJAYAN, D/O C.K. VIJAYAN, AGED 37 YEARS,
ARUKAKKAL HOUSE, KURICHITHANAM P.O., KURICHITHANAM
VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN 686
634 REP. BY POWER OF ATTORNEY HOLDER, SARASU N.N. AGED
63 YEARS, W/O C.K VIJAYAN ARUKAKKAL HOUSE,
KURICHITHANAM P.O., KURICHITHANAM VILLAGE, MEENACHIL
TALUK KOTTAYAM DISTRICT, PIN - 686634

BY ADVS.
SHRI.RAJESH SIVARAMANKUTTY
SHRI.K.V.ANTONY
SMT.VIJINA K.
SRI.ARUL MURALIDHARAN

RESPONDENT/RESPONDENT:

RAJESHKUMAR K.R.
S/O RAVINDRAN, AGED 45 YEARS, KANIYANTHARA HOUSE,
EZHINJILLAM, PERUMTHURUTHY P.O., KAVUM BHAGOM VILLAGE,
THIRUVALLA, PATHANAMTHITTA DISTRICT, PIN - 689107

BY ADVS.



2025:KER:72515

MAT.APPEAL NO. 138 OF 2023

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SRI.P.YADHU KUMAR
SHRI.P.BABU KUMAR
SMT.SWETHA K.S.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
25.09.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



C.R.

JUDGMENTDEVAN RAMACHANDRAN (J)

That the concept of "matrimonial cruelty" defies an unvarying definition; or a rigid, uniform or exhaustive ambit, is well recognised judicially, with several judgments having affirmed it. Inextricably woven into this, is the "victim's perspective", bringing primary focus on the complained - of conduct on the aggrieved spouse, in contra - distinction to the motive or intent of the other. In this perspective, Courts ought to ask if a reasonable person in the Victim's shoe - in a manner of speaking - could be expected to tolerate the behavior.

2. A wood cut of the facts first.

3. The appellant assails the findings and holdings of the learned Family Court, Pala, in O.P.No.818/2019, dismissing her plea for divorce from the respondent.



4. Sri.Rajesh Sivaramankutty - appearing for the appellant, submitted that the learned Family Court has committed the cardinal error of trying to assess the life and reactions of the petitioner, in a generalised manner, expecting exactitude; but without fathoming that human lives are complex and reactions to similar situations or stimuli cannot be evaluated on stereotypes within a standardized ambit.

5. The learned Counsel showed us that, it is the specific case of his client that, soon after the marriage between the parties on 14.09.2011, there began strife between them, perhaps, as there would be in any matrimonial life; but that it was exacerbated as years went by. He added that his client, being a woman, endured most of the abuse and trauma; and arguing that this is the case with many women, who suffer under the fond hope that things will



get better. He explained that this is more so in the case of his client because a child was born to her on 15.09.2013; she, therefore, without having any option but to continue with the matrimony, in spite of continuous and persistent agony inflicted, trapped in a loveless relationship, which he asserted is an indescribable but excruciating experience. The learned Counsel contended that, however, the learned Family Court took three instances alone out of the fasciculus of the allegations impelled by his client and then insensitively analyzed them, as if it were being done with mathematical precision, to hold that they are not true; thus to consequently, deny divorce to her.

6. The learned Counsel for the respondent - Sri.P.Yadhu Kumar, however, countered the arguments of Sri.Rajesh Sivaramankutty saying



that it is the singular complaint of his client that the appellant is acting under the command and control of her mother, who was also cited as a witness in the case. He maintained that, had it not been for the influence of the mother, the appellant would not have sought divorce; and that this is manifest from the fact that she is highlighting very trivial issues between the couple, which is a "common place" in any matrimonial union, since two independent minds can have differences. He thus prayed that this appeal be dismissed.

7. Before we move forward, we must record that we had given an option to the parties to try and obtain a settlement, so that it would not be necessary for us to decide the matter on merits. This was recorded by us in our order dated 22.09.2025; but today, the learned Counsel for the respondent submitted that his client is



not ready for any compromise.

8. Obviously we will have to dispose of this matter on merits.

9. The evidence on record in this case comprises of the testimony of the appellant as PW1, along with her mother as PW2; and she has marked Ext.A1 - which is the Certificate of Marriage on her side. As far as the respondent is concerned, he examined himself as RW1, but did not offer any document to be marked in evidence.

10. Going by the pleadings of the appellant, she submits that the marriage was solemnized on 14.09.2011; and that the parties lived as husband and wife for about a month and a half in the matrimonial home, thereafter, to leave for their respective places of work abroad - namely Soudi Arabia and Sharjah respectively. She says that she used to join her husband at



Sharjah for her monthly leave; and that she became pregnant, to deliver her child on 15.09.2013. She says that, however, during her pregnancy, when she was seven months into the term, the respondent compelled her to resign her job, thus forcing her to return home, where she remained until she gave birth. She admits that, thereafter, the parties lived together in the home of the respondent for some time; but that, since they could not survive without proper employment, she returned to Soudi Arabia to look out for a better job, which she finally obtained in Oman. She says that the respondent joined her in Oman; but that, throughout this period, she was being continuously attacked - both verbally and physically thus traumatized by the respondent, forcing her to return to Kerala on about 11.11.2019, taking leave. She says that even though she tried to salvage her marriage by



putting up with the harassment of the respondent, it did not bear fruit; and therefore, that she was forced to flee from her matrimonial home on 28.11.2019, thereafter, to return to her employment in Oman; in the interregnum of which, she filed this application for divorce.

11. The testimony of PW1, namely the appellant, is more or less aligning with her pleadings; and we notice that she has been very strenuously cross examined also. However, no contradictions have been brought out in her evidence and she has maintained consistency in what she has alleged against the respondent without any deviation. Her deposition is the graphic reflection of what she experienced in her life and the trauma which she had to endure; which, of course, is a very personal one, incapable of being evaluated within any standard



that Courts can devise.

12. As far as RW1, namely the respondent, is concerned, he denied every allegation against him.

13. In the midst of this was the testimony of PW2 - the mother of the appellant - who deposed in support of what her daughter said; making it clear that she did not want her to live with her husband any further.

14. As recorded above, there is hardly any documentary evidence in this case, with only Ext.A1 Marriage Certificate having been produced by the appellant, which is beyond contest.

15. It is indubitable, in the afore scenario, that all which a Court can and has to do is to weigh the worth of the testimonies of the parties given against each other; and conclude, adverting to preponderance of probabilities.



16. The learned Family Court took the testimony of PW1 and deconstructed it into three specific instances during different periods of time; and then held that none of them have been proved for want of direct evidence.

17. The pleadings and depositions of the appellant, as PW1 narrate persistent and continuous harassment across a period of time; and she, as part of it, mentioned certain specific instances. From any manner of reading it, one cannot confine the experience of the appellant solely to those two or three instances; but has to be alive to the fact that her specific case is that she was constantly abused and ill-treated. Of course, this is subject to proof.

18. As seen above, the evidence of PW1 remains unshaken; which is then fortified by the evidence of her mother as PW2. The learned



Family Court, however, has entered a finding that the insinuation of the respondent, that the appellant is acting as per the dictates of her mother, stands proved. We cannot fathom how such a drastic observation or opinion could have been made or entered into by the learned Family Court; and it is rather distressing that while doing so, the learned Court has discarded and disregarded the factum of the appellant being an independent woman, highly qualified and working as a specialized nurse in a foreign country. To even suggest that a person of that nature would simply be swayed by what her mother tells her, particularly in matters relating to her matrimony, would be to oversimplify human behavior, with the fold of unfortunate notions of patriarchal bias.

19. Merely because the appellant continued with the matrimony in spite of the alleged



unceasing abuse and harassment - as she puts it, one can never countenance the view that she has condoned it, because cruelty can never be condoned.

20. Every experience of a woman in matrimony or in her personal life, is deeply personal; and the response one may have to them, would be wholly distinct and different from any other. No standards can be fixed or applied - some women may endure and suffer, while others may react to it.

21. In this case, we find that the appellant had actually gone through both these alternatives, enduring for the first few years and then initiating action for her deliverance in the year 2019.

22. Interestingly, the learned Family Court, as mentioned earlier, deconstructed the case of the appellant into three instances as



below, to find each of them to be not proved:

a) For the first, it dealt with the allegation of the appellant of physical and mental cruelty by her husband and his parents in November, 2019, forcing her to flee from the matrimonial home, with the help of her parents to observe that her testimony as PW1 do not indicate that there was any "rescue operation or harassment" (sic). In our considered view, this unfortunately trivialises what the appellant went through and how she took refuge with her parents to leave her matrimonial home. The learned court ought to have adverted to the totality of the circumstances and to have appreciated the pressure that she might had been in; and therefore, its finding, that there is no evidence of "rescue operation"(sic), can never obtain judicial imprimatur. Further, the learned Court, in holding that there was no harassment



to the appellant prior to 29.11.2019, relies upon the deposition of PW2, to the effect that her child had fallen ill the day after, when the respondent had visited her house to take care of him. One can scarcely understand how the learned Family Court, based on this, entered a finding that there was no harassment to the appellant. The reaction of a father to the news of illness of his son is wholly distinct from his behaviour as a husband to his wife; and for this reason, we can neither give approval to such conclusion, nor endorse it.

b). The learned Family Court, then takes the second instance to be the cruelty that the petitioner alleges when she was in Sharjah. To finding that these allegations are untrue, the learned Court relies on the surmise that Sharjah has strict laws and that if the appellant had made a complaint, the respondent could have



easily been taken to justice. In other words, it blames the appellant for not having invoked legal remedies available in the said country against the respondent, to hold that what she has alleged must be untrue. Again, the learned Court has wholly missed that a woman, particularly living in a foreign country, would be loathe to move the local law enforcement, since she would then have to fend for herself, away from her home country, particularly being in charge of a child. The learned Family Court then concludes that, if there had been any such harassment, the appellant would not have taken a family visa for the respondent also to be taken to Oman. Here again, as we have said above, the manner of the working of the mind of a person cannot be wedged to a straitjacket; and it is possible that the appellant - as she testified was hoping against hope that the husband would



mend his ways, if he is to accompany her to Oman where she was to work. We cannot find such to be contrary to reason or not plausible; and hence cannot find justification in the opinion of the learned Family Court in this regard either.

c). Finally, the learned Family Court takes the third instance to be the allegation of cruelty cited by the appellant while in Oman. It noticed that the parties, along with the child, went to Oman on 09.04.2017; and disbelieved the imputation of the appellant, that the respondent did not take care of the family, opining that this was because she did not assist the respondent to obtain an employment Visa in Oman, thus being unable to work. It took out one line from the testimony of PW1, when she was asked whether she took any effort to get an Employment Visa for her husband, to which, her answer was to the negative, to recriminate her that it is



because of her, that he had to remain without employment. It then proceeded to dismiss the allegations against the respondent, that he did not take care of the family, as being untrue.

21. After finding as afore on the three culled out instances, the learned Family Court affirmatively concludes, as noticed above, that the appellant is acting under the "instigation" of her mother, namely PW2.

22. It does not require any expatiation that no reasonable mind, much less a judicially trained one, can offer approval to such sweeping opinion.

23. At the risk of repetition, we must remind ourselves, as also the learned Family Courts, that human conduct, comportment and behaviour can scarcely be analysed, divorced from the varied and distinct emotional and the psychological reactions obtained to specific



situations and stimulus - which is never similar and differs from the person to person. To hold that every individual will react only in the same manner to the same situational context would be innocent of actual human reflex and response. The omnibus traverse the respondent offered as RW2, require to be analysed within the purlieus of the allegations against him since, it is rather easy for anyone to do so - rendering to be the word of one against the other. In a case where there is hardly any evidence except the testimony of the parties, the same ought have to been analysed and evaluated in the background of normal human behaviour, without any generalisation or stereotyping; but unfortunately, the learned Family Court has, perhaps unwittingly, fallen to the trap of both these.

24. In summation, we are without doubt



that the appellant has apodictically established that she has been trapped in a loveless relationship, subjected to cruelty and mental torture. This is exacerbated by the admitted fact that the parties are living separately from 28.11.2019.

In such circumstances, we allow this Appeal with costs, and decree O.P.No.818 of 2019, on the files of the learned Family Court, Pala; thus granting divorce to the appellant from the respondent from this date finding that the latter has treated the former with cruelty, within the ambit of Section 13(1)(i-a) of the Hindu Marriage Act.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

Sd/-

M.B. SNEHALATHA
JUDGE