IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 12TH DAY OF JUNE 2025 / 22ND JYAISHTA, 1947

MAT.APPEAL NO. 1127 OF 2016

AGAINST THE JUDGMENT DATED 26.09.2016 IN OP(DIV) NO.1139 OF 2013 OF FAMILY COURT, PATHANAMTHITTA

APPELLANT/PETITIONER:

P.K.SREEKUMAR
AGED 55 YEARS, S/O. G.KUNJIRAMAN,
(PLATHARETHUVEEDU), SIVAKRIPAYIL,ERATHU MURI,
ERATHUY VILLAGE,ADOOR TALUK.

BY ADV SHRI.LEGY ABRAHAM

RESPONDENT/RESPONDENT:

K.PREETHA
D/O. KESAVANSASTHRI,MALAYILPARAMBILVEETTIL,
PULLADU PO., PULLADU, KOIPURAM VILLAGE,
THIRUVALLA TALUK – 689 645

BY ADV SRI.C.P.SAJI

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON 30.05.2025, THE COURT ON 12.06.2025 DELIVERED THE FOLLOWING:

SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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Mat.Appeal No.1127 of 2016

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Dated this the 12th day of June, 2025

JUDGMENT

P.Krishna Kumar, J.

A petition for divorce was filed by the husband before the Family Court, Pathanamthitta, under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955, against his wife, alleging matrimonial cruelty and desertion. The Family Court rejected the petition, finding that the husband failed to prove the grounds set up by him. The said order is challenged in this appeal.

2. The appellant married the respondent on 1.5.1996 as per the Hindu religious rites. They have a daughter in that wedlock. The appellant was a Development Officer in

Life Insurance Corporation, and the respondent was an Assistant Manager in the KSFE. According to the appellant, the respondent never loved, cared for, or respected him, and she had been evading her duties as a wife. She frequently left for her parental home, leaving the appellant alone in their matrimonial home. The respondent always treated him with disrespect and often attempted to tease and ridicule him in front of others, which caused him grave mental agony. The respondent showed no interest in maintaining a sexual relationship with the appellant after the birth of the child, and she intentionally avoided physical intimacy with him. On 5.5.2010, she expressed her unwillingness to share the bed with him. The appellant complained about the conduct of the respondent to her mother on 8.5.2010, but it was in vain. At last, on 10.05.2010, the respondent left her matrimonial home with their child while the appellant was absent. Even on 01.10.2013, when the appellant tried to contact the respondent through telephone, she asserted that

she was unwilling to resume her marital obligations. The marriage is irretrievably broken down, and finding that a reunion is not possible, the appellant decided to proceed with divorce, after three years, it is contended.

3. The respondent stated that she had always discharged her duties as a wife, respected the appellant, and denied the allegation of refusing sexual relations. The appellant is a quarrelsome, inebriate and irresponsible person who failed to cooperate even in providing medical care to their child. The appellant had misappropriated the entire wealth of the respondent and purchased a house in his name. He ill-treated the respondent, demanding more gold ornaments. The appellant consistently objected to the respondent visiting her parental home. The respondent was expelled from the matrimonial home by the appellant along with their child, it is contended.

4. After considering the evidence of PW1 and RW1 and Exts.A1 to A4 and B1 and B2, the Family Court found that the evidence on record is insufficient to find matrimonial cruelty or desertion from the part of the respondent.

5. We have heard the learned counsel appearing on both sides.

6. Upon considering the evidence on record, we have noted that the prime grievance of the appellant is in respect of the respondent's attitude and her defiant reaction to his demands. According to him, his wife used to belittle him in front of others, and she had never taken care of his affairs sincerely. He felt the loss of love and a lack of oneness in their relationship. The wife had been denying his conjugal rights throughout the years after the birth of their child. On some of the occasions, the wife expressed the same even verbally. At last, she left for her parental home together with the child, deserting her

husband. Even after a scorching cross-examination, the above version remains unshaken.

7. RW1, the respondent in her evidence, reiterated her contentions. According to her, she never refused sexual relations during the time they lived together, and on the contrary, she had always been harassed by the appellant. It was the appellant who expelled her from the matrimonial home, she stated. However, during cross-examination, she conceded that many of the allegations in her written objection were incorrect. She admitted that the statement in the counter that she was subjected to cruelty was incorrect. She also stated that the appellant did not take any of her gold ornaments, nor did he demand the same. Though she has stated in the proof affidavit that she was expelled from the matrimonial home in May 2012, during cross-examination, she said it happened in May 2010. Significantly, she did not state the month or the year in her written objection. She further stated that the appellant had been paying school

fees for the child, and he also met a substantial part of the medical expenses of the child. For the above reasons, we find it difficult to accept her oral evidence in preference to the appellant. Making such false claims, by themselves, amounts to cruelty. The evidence of the appellant clearly establishes that he was subjected to cruelty and desertion by the respondent. The family court omitted to consider the above aspects. The court relied on certain allegations made by the respondent in her proof affidavit which were not founded upon pleadings.

8. The learned counsel appearing for the respondent, relying on the decisions in **Latha Kunjamma v. Anil Kumar** (2008(2) KLT 545), **Shyam Sunder Kohli v. Sushma Kohli** (2004 KHC 1212), **Capt. Rohith C.G. v. Indira C.R.**(2023 KHC 4645), **Savitri Pandey v. Prem Chandra Pandey** (2002 KHC 265), **Ramanuj Kumar v. Priyanka** (MANU/SC/0540/2025) and in **Samar Ghosh v. Jaya Ghosh** [(2007) 4 SCC 511] contended that, when the husband treated the wife with cruelty and became

responsible for desertion, he should not be granted the relief of divorce on the ground of cruelty or desertion.

9. On analysing the evidence adduced by both sides, we find no reason to hold that the appellant treated the respondent with cruelty or that he is a party to the desertion. Indeed, the evidence adduced by him to substantiate his contentions is not corroborated by any independent witnesses. At the same time, the defence set up by the respondent contains embellishments and exaggerations. At any rate, we find no factual basis for holding that the appellant was also guilty of matrimonial cruelty. As observed above, the adverse findings of the trial court on this aspect lack factual foundation.

10. Apart from that, the evidence on record clearly suggests that the marital tie between the parties has been irretrievably broken down, and they have been living separately for the last 15 years. Even though the wife

claimed that she had not deserted the husband and was always ready and willing to resume their marital life, she never instituted a proceeding for restitution of the conjugal rights. In the course of hearing, our attention was also drawn to the petition instituted by the wife before the Family Court, Thiruvalla, as O.P.No.174/2025. The main reliefs in the said petition are for recovery of gold, money and marital expenses of the child. There is no relief for restitution.

11. 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 **Rajib Kumar vs. Sushmita Saha** [2023 LiveLaw (SC) 727], the Apex Court held that keeping the parties together despite an irretrievable breakdown of marriage amounts to cruelty on both sides. Such a long separation without any intention to resume cohabitation amounts to cruelty to the spouse. After

considering all the above aspects, we are of the view that the marriage between the parties could be dissolved on the said ground as well.

Resultantly, the appeal is allowed. The marriage between the parties will stand dissolved by a decree of divorce. No costs.

Sd/-
SATHISH NINAN
JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE

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