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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

WEDNESDAY, THE 29TH DAY OF JULY 2026 / 7TH SRAVANA, 1948

MAT.APPEAL NO. 308 OF 2022

AGAINST THE JUDGMENT DATED 30.10.2021 IN OP NO.519 OF 2017
OF FAMILY COURT, KANNUR

APPELLANT/PETITIONER:

BY ADV SMT.C.LEENA

RESPONDENT/RESPONDENT:

BY ADV SRI.T.V.JAYAKUMAR NAMBOODIRI

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
22.07.2026, THE COURT ON 29.07.2026 DELIVERED THE FOLLOWING:



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SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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Mat.Appeal No.308 OF 2022

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Dated this the 29th day of July, 2026**JUDGMENT****P.Krishna Kumar, J.**

A petition for divorce filed by the husband under Section 13(1)(ia) of the Hindu Marriage Act, 1956 was dismissed by the Family Court. Aggrieved by the judgment, the husband has preferred this appeal.

2. For the sake of convenience, the parties shall hereinafter be referred to as they were arrayed in the petition. The petitioner and the respondent were married on 14.05.2015 in accordance with Hindu rites and ceremonies. At the time of the marriage, the petitioner was working in Dubai as an Electrical Engineer. A week after the marriage, the couple went to Dubai and commenced their matrimonial life in a rented residence, where the parents of the petitioner were also residing. On 14.06.2016, during the seventh month of her pregnancy, the respondent returned to Kerala, and on 26.08.2016, she gave birth to a female child.



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The petitioner alleges that, despite his repeated requests, the respondent did not return to Dubai. According to him, she informed him that she would return only if he arranged a two-bedroom flat for their residence and that she would not stay with his parents. The petitioner has further alleged various incidents to suggest that the conduct of the respondent amounted to extreme cruelty towards him.

3. The respondent resisted the petition by contending that she had never treated the petitioner with cruelty and that she had neither demanded a separate residence away from his parents nor insisted on a two-bedroom flat. She also denied the other allegations levelled by the petitioner to attribute matrimonial cruelty to her. According to the respondent, she was always ready and willing to resume the marital relationship, as there was no serious issue between the petitioner and herself except that the petitioner's mother had not been permitting him to maintain a cordial relationship with the respondent.

4. The evidence in this case consists of the testimonies of PW1 and RW1 and Exts.A1 to A3. Upon an analysis of the oral and documentary evidence, the trial court concluded that the facts and



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circumstances narrated by the respondent indicated that there was no serious dispute between the spouses and that the only grievance raised by the respondent related to the interference caused by her mother-in-law. Accordingly, the court dismissed the petition.

5. We have heard Smt. C. Leena, the learned counsel appearing for the appellant and Sri T.V. Jayakumar Namboodiri, the learned counsel appearing for the respondent.

6. In view of the rival contentions, the point that arises for consideration is whether the petitioner is entitled to a decree of divorce on the ground of matrimonial cruelty.

7. The petitioner alleges that the respondent was unwilling to resume their matrimonial life after the birth of the child. According to the petitioner, the respondent neither returned to Dubai nor was she willing to speak to him directly. Instead, all communications were routed through her brother, Sreeraj. The petitioner further alleges that Sreeraj conveyed that the respondent would return to Dubai only if two conditions were satisfied. First, she was unwilling to reside with the parents of the petitioner. Secondly, she required a spacious two-bedroom



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flat. The petitioner deposed about these facts while giving evidence as PW1. According to him, he did not accept those conditions, as doing so would amount to separating him from his parents. A serious rift also developed between the two families in connection with the naming ceremony of the child, as it had been fixed without consulting either the petitioner or his family. He further deposed that the respondent did not cooperate with him in arranging a visa for the child. Finally, on 04.11.2016, the petitioner contacted the respondent to ascertain whether she was willing to join him. However, the respondent was not inclined to speak to him, and instead, her brother informed him that she was unwilling to stay with the petitioner's parents. The evidence on record further shows that the petitioner thereafter instituted O.P. No. 290/2017 seeking restitution of conjugal rights. He also filed an application seeking production of the child before the court and permission to spend a few hours with the child.

8. According to the petitioner, when the matter was referred for counselling, the respondent reiterated the aforesaid demands. Following the mediation, the petitioner came to know that the respondent and her parents had conducted the *Choroon* ceremony of the child at the Guruvayur Temple without informing him.



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Ultimately, when the petitioner realised that the matrimonial discord had reached such an extent that it could not be resolved, he decided not to pursue the petition for restitution of conjugal rights and, accordingly, withdrew the same, it is stated.

9. While being examined as PW1, the petitioner produced two mobile phones and a CD allegedly containing the conversations between himself and the respondent's brother, Sreeraj, as well as between the respondent and the petitioner's father on 28.10.2016 (Exts. A2 series and A3).

10. During cross-examination, the respondent admitted that one of the CDs contained the recorded telephone conversations between herself and the petitioner's father. She stated that :

“അച്ഛനുമായി നടത്തിയ സംഭാഷണത്തിൽ 'ഇവിടെ താമസിക്കുമ്പോൾ 'അമ്മ എന്തെങ്കിലും പറഞ്ഞിരുന്നോ നിന്നെ' എന്ന ചോദ്യത്തിന് "ഇല്ല, ഇല്ല, ഇല്ല", എന്ന് ഉത്തരം പറഞ്ഞിട്ടുണ്ട്. "അച്ഛൻ എന്തെങ്കിലും പറഞ്ഞിരുന്നോ " എന്ന ചോദ്യപ്പോൾ 'ഇല്ല, ഇല്ല, ഇല്ല' എന്ന് ഉത്തരം പറഞ്ഞിട്ടുണ്ട്. 'നിമിഷ' എന്തെങ്കിലും പറഞ്ഞോ ' എന്ന ചോദ്യപ്പോൾ 'ഇല്ല' എന്നു പറഞ്ഞിട്ടുണ്ട്. "പിന്നെയെന്താ നീ അവിടെയെത്തിയിട്ട് പ്രശ്നം വന്നത് " എന്ന ചോദ്യപ്പോൾ "അതിന് ഇവിടെ പ്രശ്നമൊന്നും ഉണ്ടായിട്ടില്ലല്ലോ " എന്ന് ഉത്തരം പറഞ്ഞിട്ടുണ്ട്. "വിസ കഴിയാൻ പോവുകയാണ്, നീ വരാൻ ഉദ്ദേശിക്കുന്നില്ലേ " എന്ന ചോദ്യത്തിന് . കുട്ടിക്ക് തുക്കം കുറവാണ്. മൂന്നു മാസം നല്ല ശ്രദ്ധ വേണം . അതുകൊണ്ട് ഇപ്പോൾ വരാൻ പറ്റില്ല എന്ന് ഞാൻ പറഞ്ഞു . പിന്നെ നിനക്ക് ഇന്റർനെറ്റ് , കമ്പ്യൂട്ടർ , ഫോൺ എല്ലാം മേടിച്ച് തന്നില്ലേ എന്ന ചോദ്യത്തിന് , ആ .. തന്നിന് എന്ന് ഉത്തരം പറഞ്ഞിട്ടുണ്ട് . "നിന്റെ അച്ഛൻ അമ്മയെ വിളിച്ച് എന്തെല്ലാമോ പറഞ്ഞു" എന്നു പറഞ്ഞപ്പോൾ ഞാൻ ഒന്നും പറഞ്ഞിരുന്നില്ല.”

It is relevant to note that the respondent raised a specific



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contention in her written objection that the petitioner and his mother had misbehaved with her and ill-treated her. She further stated that it was only because of the mental cruelty inflicted upon her by the petitioner and his mother that she decided to live separately. The admitted telephonic conversation between the respondent and the petitioner's father indicates that the above allegation is devoid of any factual basis. Though an attempt was made during the re-examination of RW1 to explain that she had made those statements during the telephonic conversation only with a view to avoiding a divorce, the said explanation is too feeble to merit acceptance.

11. It is the consistent case of the petitioner that the respondent neither answered his phone calls nor responded to his messages and had blocked his number. According to him, it was in those circumstances that he was compelled to communicate with her brother, who informed him that the respondent would return only if the petitioner complied with the aforesaid conditions. The telephonic conversation between the petitioner and his brother-in-law was also produced before the court. During her cross-examination, the respondent (RW1) did not dispute the genuineness of the said conversation. She stated as follows:



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“ഹർജിക്കാരനെ വിസ്തരിക്കുന്നത് ഞാൻ കേട്ടിരുന്നു. ഹർജിക്കാരൻ രണ്ടു മൊബൈൽ ഫോണും അതിലെ വോയിസ് റിക്കാർഡ് ചെയ്ത C .D . യും ഹാജരാക്കിയ കാര്യം മനസ്സിലാക്കിയിട്ടുണ്ട്. ആ സിഡിയുടെ ഒരു കോപ്പി എനിക്കു തന്നിരുന്നു. ആ സി.ഡി. ഞാൻ പ്ലേ ചെയ്തു കേട്ടു. അത് എന്റെ സഹോദരൻ ഹർജിക്കാരനോടു സംസാരിച്ചത് ഞാൻ ഹർജിക്കാരന്റെ അച്ഛനോടു സംസാരിച്ചതും ആയിരുന്നില്ലേ (Q) ഞാൻ അച്ഛനോടു സംസാരിച്ചത് എന്റെ ശബ്ദം തന്നെയാണ് (Answer) സഹോദരൻ ഹർജിക്കാരനോടു സംസാരിച്ചത് എനിക്ക് അത്ര വ്യക്തമല്ല . അത് ഞാൻ സഹോദരൻ കേൾപ്പിച്ചു കൊടുത്തിട്ടില്ല . സഹോദരനോടു ഇതേക്കുറിച്ച് ചോദിച്ചിരുന്നു . ചോദിച്ചപ്പോൾ ; മൂന്നു വർഷമായി , ഫോൺ കോൾ എന്താണെന്ന് അത്ര ഓർത്തിരിക്കുന്നില്ല എന്നാണ് പറഞ്ഞത് . സഹോദരൻ ഫോണിൽ സംസാരിച്ചിരുന്നു എന്നു പറഞ്ഞിരുന്നു . പക്ഷേ എന്താണ് സംസാരിച്ചതെന്ന് ശരിക്കും ഓർക്കുന്നില്ല എന്നും അതുകൊണ്ട് അത് ഇതാണോ എന്നറിയില്ല . സഹോദരൻ ഹർജിക്കാരനുമായി സംസാരിച്ച സി.ഡി.യിലെ ഉള്ളടക്കം ഇല്ലാത്തതാണെന്ന വാദം നിങ്ങൾക്കുണ്ടോ (Q) അതേക്കുറിച്ച് എനിക്ക് അറിയില്ല (Ans).”

From the above stand taken by the respondent, we find no difficulty in accepting the oral evidence of PW1 regarding his telephonic conversation with her brother. It is apparent that the respondent has been evasive in answering questions relating to the contents of the recorded conversation. PW1 withstood the test of cross-examination very well. We find no reason to disbelieve his version. It is relevant to note that the petitioner had taken steps to summon Sreeraj, the respondent's brother, to prove the aforesaid telephonic conversations. It was submitted during the hearing that, despite service of summons, Sreeraj did not appear before the court. Therefore, the petitioner's contention that the respondent did not answer his calls and that he was consequently compelled to contact her brother, who informed him that she would return to Dubai only upon the fulfilment of the twin conditions,



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appears to be probable.

12. A demand for a separate residence away from the husband's family, without sufficient reason, by itself constitutes an act of cruelty. Although the respondent pleaded that she had been ill-treated by the petitioner and his mother, her admission regarding the telephonic conversation with the petitioner's father renders that contention improbable. Thus, the demand for a separate residence was without any valid reason or justification.

13. Further, the evidence of PW1 clearly establishes that the respondent deserted the petitioner without any justifiable cause. In the petition, desertion is not set up as a ground for divorce. However, in **Deepak Bose v. Shrabonee Bose** (2022 SCC OnLine All 1967), the Allahabad High Court held that prolonged desertion and separation of a spouse would also constitute mental cruelty within the meaning of Section 13(1)(ib) of the Hindu Marriage Act. It is not in dispute that the parties have been living separately for at least the last nine years. None of the above aspects was taken note of by the trial court, and it consequently arrived at an erroneous conclusion, which is liable to be set aside.



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14. From the foregoing discussion, it is evident that the petitioner is entitled to have his marriage with the respondent dissolved by a decree of divorce on the ground of matrimonial cruelty.

In the result, the appeal is allowed and the impugned judgment is set aside. The marriage between the appellant and the respondent will stand dissolved by a decree of divorce. No costs.

Sd/-

SATHISH NINAN**JUDGE**

Sd/-

P. KRISHNA KUMAR**JUDGE**

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