

JUDGMENT

Sreedevi, J.

1. This appeal is filed against the decree and judgment in H.M.O.P. No. 85 of 1985 on the file of the Sub Court, Ernakulam.

2. The appellant's case is this: The appellant is the petitioner before the lower Court. His first wife passed away on 31-5-1978. He has three children in that wed-lock. Subsequently, he married the respondent on 2-2-1979. According to him, the relationship between him and the respondent got strained within a week, as the respondent did not like him showing any love and affection to his children. He therefore converted his residential building into a girls' hostel and his daughters were put up there. His son was admitted to a boarding school. He and the respondent shifted their residence and even after the said adjustment, the respondent did not change her attitude. According to him, the couple lived together till 15-7-1984, while the respondent would contend that she lived with him peacefully till 17th May, 1985. The appellant sued for a decree of divorce on the ground of cruelty. She denies the allegation of cruelty. According to her, it was the husband who had treated her with cruelty. The Court below dismissed the petition. Hence this appeal.

3. According to the appellant, the Court below went wrong in finding that there is no cruelty on the part of the respondent, that it has not correctly appreciated the evidence and documents, Exts, A7, and A9, that it failed to consider Exts. A10 to A14 and A16 and that it failed to draw the proper inference from Exts. B1 to B3 series, which showed the improper conduct on the part of the respondent.

4. To prove cruelty on her part, the appellant relied on Exts. A1 to A17. He as PW 1 has deposed that as he had three children he wanted to marry the respondent with the intention of looking after the children. But she wanted to get away from the children, and hence he had to put up his children in the hostel. He has also deposed that the wife used to scratch his face and pick up quarrels with him as also with the children, and thereby she had hurt his feelings. It is an admitted fact that there was an attempt on the part of the respondent to commit suicide. Ext. A1 is a suicide note written by her to the Sub Inspector of Police, wherein she has written that for her death nobody in the house is responsible. Ext. A3 is a letter written by her to the appellant, wherein she had expressed her intention to dissolve the marriage. This letter also goes to show that she has no love and affection towards her husband. She has contended that the appellant developed illicit intimacy with a lady by name Komalavally, who was the matron of the ladies hostel put up by him. To prove that he had illicit intimacy with Komalavally, no evidence had been let in. At the time when the respondent was examined, she had admitted that she had filed several civil and criminal complaints against him. She had also filed complaints before the Electricity Board, where he was working. The appellant had deposed that once she made an attempt to commit suicide by dousing in kerosene oil and setting fire. She also picked up quarrels with him and attempted to commit suicide. So she cannot be said to be a woman who has love and affection towards her husband. All these amounts to cruelty as it, causes mental agony and torture to the appellant. Filing cases one after another against the husband and children defined amounts to cruelty.

5. On going through the evidence of the appellant and also of the witnesses, PWs 3, 4 and 5, we find that the wife had treated the husband with cruelty. PW 2 is the brother-in-law of the appellant. He had deposed that when the relationship between the appellant and the respondent got strained, he along with the appellant's brother-Balakrishnan Nair intervened in the matter but the parties could not settle their differences. PW 4 was examined to prove that the

respondent had attempted to commit suicide. He had deposed that when he was returning after the film show, he had seen the appellant along with one Rajan going in search of the respondent at about 12.30 in the night and the respondent was found sitting by the side of a pond. PW 5 also has deposed that at about 12.00 in the night on 19th September, 1980, the appellant was going in search of his wife. PW 6 has deposed that on 11th July, 1984 when she went to the hostel put up by the appellant, she had seen the respondent attempting to commit suicide by dousing in kerosene oil. She has stated that she was saved by the appellant and his children. The appellant produced 11 documents to prove his case. Those documents are admitted by the respondent. Hence they were marked as Exts. A18 to A28.

6. It is an admitted fact that the respondent filed a criminal complaint before the Judicial First Class Magistrate, Muvattupuzha for criminal trespass against the appellant and two others as is seen in Ext. A18. She has also registered a crime case against the appellant. The appellant was forced to move anticipatory bail in CrI. M.P. 794 of 1990, which was allowed by the Additional Sessions Judge, Ernakulam. Ext. A20 is the copy of the order granting anticipatory bail. She had filed a civil suit against him for realisation of money as O.P. (Ind.) 8 of 1991. Ext. A21 is the copy of plaint in that case. In that case she had applied for attachment before judgment of the building belonging to the appellant. Ext. A 23 is the notice issued to the appellant to show cause why he should not furnish security for Rs. 5,00,000/-. She has filed another suit, O.S. No. 232 of 1985 before the Munsiff's Court, Muvattupuzha against the appellant and his daughter and obtained Ext. A24 decree for injunction. That decree was put under execution, but the E.P. was dismissed by the Court, finding that the proceedings under Order XXI, Rule 32, C.P.C., which are quasi-criminal in nature, breach for injunction must be strictly proved and punishment should not be awarded on mere suspicion. The Court also held that the decree-holder failed to prove the alleged breach of injunction, Ext. A24, is the order in that case. At the instance of the respondent, C.C. No. 371 of 1991 was launched by the Sub Inspector of Police, Kothamangalam against the appellant and his children under Section 498-A read with Section 34, I.P.C. Ext. A25 is the order whereby the appellant was acquitted. She has also filed another suit, O.S. No. 46 of 1986, against the appellant and one Komalavally, with whom she has alleged that the appellant had illicit connection. Ext. A26 is the copy of judgment dismissing the said suit. She filed another suit, O.S. No. 34 of 1986 against the appellant for realisation of money. That was also dismissed. Ext. A27 is the copy of judgment in that case. Against the said decree and judgment, the respondent filed A. S. No. 68 of 1990, which was also dismissed, against which she has preferred S.A. No. 430 of 1991 and that was also dismissed by Ext. A28. All these go to show that the respondent with intent to harass him had filed false civil and criminal cases one after another. The Court below held, that for an act to amount to cruelty, there must be such treatment by the parties which causes suffering in body or mind which is harmful or injurious to life.

7. But the Supreme Court in *Dastane v. Dastane*, AIR 1975 SC 1534, held, that --

"harm or injury to health, reputation, the working career or the like would be an important consideration to know whether the respondent's conduct amounts to cruelty".

8. After the Hindu Marriage (Amendment) Act, 1976, the petitioner need only establish that the respondent had treated him with cruelty. He need not show that cruelty must be such as to cause reasonable apprehension that it would be harmful or injurious to the appellant. Cruelty should be of the type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony.

In Ext. A22 affidavit filed by the respondent she had admitted that in between the husband and wife six civil cases and four criminal cases are pending. On going through the evidence adduced in this case, we are satisfied that the appellant has proved that the appellant and the respondent cannot live together without mental agony. Thereafter, the appellant is entitled to get a decree of divorce as prayed for. The Court below went wrong in appreciating the evidence adduced in the case regarding cruelty. Hence the decree and judgment of the Court below are set aside and the appeal is allowed. A decree is granted dissolving the marriage between the appellant and the respondent.

The M.F.A. is accordingly allowed.