



2024:KER:91898

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

TUESDAY, THE 26TH DAY OF NOVEMBER 2024 / 5TH AGRAHAYANA, 1946

MAT.APPEAL NO. 706 OF 2024

AGAINST THE ORDER/JUDGMENT DATED 26.06.2024 IN OPGW NO.164 OF
2022 OF FAMILY COURT, MAVELIKKARA

APPELLANT/PETITIONER:

XXXXX

BY ADVS.
JAGAN ABRAHAM M.GEORGE
JAISON ANTONY

RESPONDENT:

XXXXX

BY ADVS.
GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
S.SREEKUMAR (SR.)(S-571)

OTHER PRESENT:

SRI GEORGE VARGHESE (PERUMPALLIKUTTIYIL)

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
26.11.2024, ALONG WITH Mat.Appeal.720/2024, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:



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THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

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1946

MAT.APPEAL NO. 720 OF 2024

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NO.623 OF 2022 OF FAMILY COURT, MAVELIKKARA

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BY ADVS.
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JAISON ANTONY

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**‘C.R.’****JUDGMENT****Devan Ramachandran, J.**

Hearing these cases, we realize how much rigid gender roles and patriarchy have trickled down into societies and guides our thoughts and actions, even in ways we do not understand, at times. We unfortunately continue to follow and perpetuate such unconsciously, which surely warrants continuous education and close introspection.

2. In the heteronormative context, being feminine is construed as synonymous to being modest and even submissive; or, rather, that is how this term is more than often interpreted. Consciously or subconsciously, societies impose restrictions on women’s autonomy and scrutinize their choices; and they are supposed to adhere to certain standards, including in their sartorial choices and appearances. Such unwritten norms perpetuate casual sexism and strengthen the glass ceiling for women, with control being considered exclusive to men.

3. Unfortunately, through time, unwritten dress codes impact women throughout their lives. The sexualization and policing of women’s clothes, even from early school days, become active barriers to self-actualization and a full life.



4. For those who ask, “why the afore exordium?”, we show them the misogynistic nature of the allegations involved in these cases; and the manner in which the learned Family Court has dealt with them, entering its conclusions virtually perpetuating - unwittingly or otherwise - the above-mentioned notions of gender roles and patriarchy.

5. The appellant is the former wife of the respondent; and they were divorced, through a valid decree dated 06.01.2024, on their application with mutual consent. It is needless for us to record that the parties had several serious and grave matrimonial disputes between them, with each trading severe charges against each other. While the husband alleges that the wife is habituated to loose morals; the wife calls him a narcissist and even a sexual pervert.

6. However, the above are not relevant to our consideration in these Appeals.

7. Even before the initiation of the divorce proceedings between the parties, the chasm between them became too wide; and this led to severe disputes qua the custody of their children - who are now aged ten and eight respectively. The parties initiated several proceedings against each other, including OP(G&W)No.623/2022 - filed by the father of the



children/husband, seeking custody; and OP(G&W)No.164/2022 by the mother, also seeking the same reliefs. The appellant - wife also appears to have filed M.C.No.237/2021, again before the learned Family Court, Thiruvalla, seeking maintenance.

8. It transpires that all the above matters were jointly tried; and the impugned judgment and decree delivered by the said Court on 26.06.2024.

9. What is relevant to our consideration in this Appeal is only the question of custody of the children and nothing else; and we, therefore, proceed to assess and evaluate the impugned judgment solely from that angle.

10. A glance through the judgment in question rendered it ineluctable that the learned Family Court found the mother of the children to be unworthy of their charge, virtually concluding that she is a person of loose morals, as alleged by the husband - used to wearing "revealing dresses"; posting her pictures in certain "dating apps"; spending time with her friends, particularly "male friends"; being prone to using vituperatives against her husband and hence exhibiting uncivil behaviour; and finally, having engaged the services of a "hacker" to hack into the computer system of her husband.



11. We see from the judgment that, for concluding as afore, the learned Court has relied upon the evidence on record, particularly Exts.A6, A7, A8, A9 and A10.

12. As far as the documents are concerned, Ext.A7 is the E-Mail sent by the appellant - mother, to the alleged "hacker" to break into the computer system of the respondent - husband; while, A6, A8 and A9 are the transcripts, or photographs, of the chats between the parties in a mobile application called "WhatsApp". Coming to A10, it is the screenshot of an alleged "Dating App", by name 'Bumble', in which the appellant - wife is said to have posted her pictures; while, Ext.A11 are the photographs of a celebration, which the appellant is said to have conducted with her friends, rejoicing on obtaining divorce from the respondent.

13. The learned Court has held that Ext.A7 E-Mail of the appellant establishes that she is even capable of illegal action because, she has invited a "hacker" to break into the computer system of her husband; while, Exts.A8 and A9 'WhatsApp' messages proves that she has used uncivil language against him, thus making her unworthy of being a 'lady'. The learned Court then assessed Ext.A10 - which is the screenshot of the alleged "Dating App" by name 'Bumble'- in which the appellant is alleged



to have posted her pictures - from the angle of unnecessary sexism, concluding that this proves that she was looking for male company, particularly because she was wearing “very revealing dress” in it. It then proceeded to consider Ext.A11 photographs, in which the appellant is stated to be celebrating her divorce, and found against her pejoratively that a woman of virtue would never celebrate such, but ought to be sad.

14. It is with some amount of profound distress that we have recorded the findings of the learned Judge afore, because it reflects exactly what we have said in the prefatory paragraphs of this judgment - perhaps unwittingly and subconsciously and not deliberately.

15. However, apart from the findings being vulnerable to being thought of as misogynistic, many of them do not subscribe to the actual facts, as we can see from the evidence, which we will presently discuss.

16. The evidence undoubtedly indicates the rather stormy matrimonial relationship between the parties. The appellant - wife, as RW1, has testified that she was locked up by her husband for over nine months and subjected to great amount of cruelty; and therefore, that, in a moment of desperation, she contacted a person to hack into her husband's computer system to



ascertain what he planned against her in future. This is how she explained Ext.A7 E-Mail communication, but conceding that such endeavour did not bear fruit and that no hacking was done or made possible.

17. Coming to Ext.A6, which is the transcript of the chat between the parties in "what'sapp", the attempt of the respondent was to show that the appellant was not willing to take care of the children; but when one reads every chat in it closely, there is no such indication, except that there was some bargain being impelled by her, as also an attempt at give and take. We fail to understand how this could ever be construed by the learned Family Court to be a factor to hold the wife not worthy of the charge of the children.

18. The situation with respect to Annexure A10 and A9 transcripts of the chats between the parties is far more amusing, if not baffling. This is because, even when the learned Family Court has found that the appellant has used vituperatives and indecent unparliamentary language, all which we can find is that she has at one solitary instance, referred to him as "dog" (कुत्ता) and demanded of him that he give her divorce. The learned Family Court did not visualize or realize the extreme strain in the relationship, which may have persuaded the appellant to use that



word in a fit of rage and being frustrated of not being able to obtain divorce; but again, it is disturbing how it could conclude that the appellant is habituated to such language even in her normal life. There is absolutely no evidence to this effect and any such conclusion can only be, therefore, found by us to be unwarranted and unnecessary.

19. The afore being said, what bothers the conscience of this Court to a considerable extent is the manner in which the learned Family Court dealt with Exts.A10 and A11 screenshots and photographs respectively. The former, namely Ext.A10, is the screenshot of an alleged "Dating App" by name 'bumble', in which the the petitioner is stated to have posted her pictures; and the learned Court has concluded - we must say without any basis and incredulously - that she is a person of loose morals, particularly because she is wearing "revealing dresses". Apart from the fact that the photographs show the appellant to be dressed in a very modest manner, covering herself fully and substantially, we fail to understand how the learned Family Court could have held that the site called 'bumble' is a "Dating App", and to adumbrate that she was looking for male friends. Such conclusions are unfortunately sexist in tenor, and laced by archaic notions of patriarchy, especially when no one has a right



to judge women by the manner in which she dresses, or by the choices of her manner of life.

20. Though we cannot find the findings of the learned Family Court to be true even factually, we deem it necessary to remind that clothing is a form of self expression being part of an individual's identity, or an expression of general aesthetics. It is unpardonable and impermissible in any civilized society to judge a woman solely on the basis of her dress, or to thus conclude upon her virtue or her modesty, which surely can only be construed as being clothed by rigid notions of patriarchy. The sartorial preferences that a women makes, is that of her own choice, which cannot be subjected to moral policing or assessment, particularly by Courts; and in this regard, We must be circumspect that personal opinions do not even unwillingly enter judgments being conscious that we are all governed by one of the finest Constitutions of the world, which grants equal rights to all, without reference to gender. It is rather unfortunate that we have to make this observation and remind ourselves so, on a day we are celebrating the 75th anniversary of our great Constitution.

21. To make matters worse, the learned Court also failed to advert to the specific allegation of the appellant, while



she gave testimony as RW1, that Ext.A10 screenshot is one that has been created by the respondent posting her pictures in the so called "Dating App" called 'bumble', and that she had no requirement or reason to do so because, she has a fair share of friends, with whom she was forced to alienate earlier on account of his interventions. This testimony which remains unimpeached, does not seem to have been even adverted by the learned Family Court in the impugned judgment; and for this reason also, we must say that the findings are wholly disproportionate and unnecessary.

22. The further holdings of the learned Family Court, that a woman must always feel sad on obtaining divorce from her husband, exposes misogynistic prejudice and reinforces a very skewed gender stereotype, that a woman ought to be subdued, servile and submissive. We cannot, in any manner - even in wildest latitude - offer approval to any such gender statement; and this is more so in this case, because it is the appellant who filed for divorce and obtained it, surely making for her feel elated, thus to celebrate with a close group of friends. It is rather unfortunate that the husband should have taken these photographs and put it as part of the evidence to establish that his wife was happy with the divorce; and therefore, that she is a



person who does not subscribe to the patriarchal notions of femininity or gender rules. We denounce these impressions and expressions as being wholly contrary to our constitutional conscience, particularly in the 21st century, when every woman marches on, with her head high, with her goals set and her resolve strong to attain it against all odds. The notion, that a women should be happy only with marriage and should feel sad on being divorced is, in our view, so ineffable that it requires no further expatiation.

23. Curiously, in the impugned judgment, the learned Family Court, apart from the afore reasons stated by it, finds one more to hold that the appellant is not worthy of custody of the children. It says that, even though she was asked to bring them before it on 16.04.2024 and thereafter on 18.04.2024, she did so only on 24.04.2024; and that too, after obtaining knowledge that it had taken coercive steps against her. It does not then record any opinion based on this, but proceeds to conclude that *"on a careful consideration of the evidence available, this Court is convinced that it is in the best interest of the wards to appoint the petitioner (father) as their guardian and to give them in the custody of the petitioner (father) (sic)"*. This observation of the Court, of course, does not emanate the evidence in record, with



neither of the parties impelling any such case or defending it. But, the appellant, as RW1, during cross-examination, has explained why she could not produce the children on 16.04.2024 or 18.04.2024, saying that she was under the legitimate impression that the parties were to meet at the passport office, Ernakulam, because the passports of the children were in the custody of the said officer; and therefore, that there was no deliberate violation. We wonder why the learned Court did not see this or assess it, before concluding in a rather insinuating tone, that the appellant is prone to act in violation of court orders.

24. Before we conclude, we are also aware that the respondent - husband has a specific case that the appellant wife was an accused in a Crime and this has also been noticed by the learned Family Court, referring to Ext.A4 FIR, to hold against her. However, it must be borne in mind - which unfortunately the learned Family Court did not do - that this FIR was lodged by the respondent himself against the appellant, and registered as Crime No.302/2023 of Chengannur Police Station, alleging that she had swindled him of Rs.1,00,000/-, by removing it from his account unauthorisedly. He tried to impute charges against her under Sections 415, 420, 465, 468 and Section 471 of IPC; but what the learned Family Court did not see was that the police had



subsequently filed Exhibit P15 - "Refer Report", against which he filed no objections. Further, it is also pertinent that the FIR was registered as early as on 07.03.2023; while the parties agreed to a mutual consent divorce before the learned Family Court on 07.12.2023, which was allowed on 06.04.2024.

25. The afore being recorded, we must say that our opinion is also guided by our impressions gathered during our interactions with the children. On 16.08.2024, they were first produced before us by the appellant. We talked to them in the presence of the parties; and they told us unequivocally that they want to be with their mother permanently, though wanting the company of their father during holidays. We had recorded the details of such interactions in our order of the said day, which is *ut infra*:

"The children were present before us today and we interacted with them. They said that they want to be with their mother permanently though they was the company of the father during holidays. However, they expressed their desire to go with their father today but to return to their mother's home by sunday.

Therefore, as an interim measure, the children are permitted to be with the father from now till 5 p.m on sunday, when the father will return them to the mother and it is agreed that this will be done at the Railway Station, Chengannur."(sic)



26. The children, thereafter, had appeared before us at least on two occasions; and, in the meanwhile, the parties had agreed to certain interim arrangements *qua* them, pending lis, for them to be with their father. We are without doubt that both the children are remarkably bright and articulate, with full command of what they want in life and of what they want from their parents; with them rendering it luculent that they want to be permanently with their mother, but do not mind visiting or meeting their father at any time on any day. The children surely have love for both their parents, but their desires and aspirations are important, especially because they are old enough to take stock in life. It is our resolve and obligation to ensure that their lives and psyche are not scared in any manner, to impede their progress as worthy citizens in future.

27. In summation, it is apodictic that we cannot find favour with the impugned judgment and decree and that it deserves to be set aside, denouncing all above mentioned findings against the appellant. We are enjoined to do so because courts cannot be suspected to be guilty of even borderline misogyny or sexism; and our constitutional mandate is that we decide matters as per its conscience and within its overriding *umbra*.



28. Consequently, we dismiss OP(G&W)623 of 2022 and allow OP(G&W) 164 of 2022; thus declaring the appellant mother to be the guardian of the minor children, by names Juwan Johin and Elysha Johin.

When we conclude as afore, we asked the learned Senior counsel for the respondent, Sri.S.Sreekumar, whether his client requires visitation and interim custody rights over the children, to which his answer was that he has no such instructions and that he does not seek it at the moment. Therefore, we leave it there; though we allow the respondent father to talk to the children on any day through phone either voice call or video call between 6 & 8 P.M (IST), subject to their convenience and their school and curricular timings, which will be facilitated by the appellant. We also leave liberty to the respondent - father to move the learned Family Court for visitation or interim custody rights that he may require in future.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

Sd/-

M.B. SNEHALATHA
JUDGE

**APPENDIX OF MAT.APPEAL 720/2024****PETITIONER ANNEXURES**

- Annexure A1** COPY OF THE O.P.NO.1211/2022
- Annexure A2** COPY OF THE O.P.NO.165/2022
- Annexure A3** COPY OF THE O.P.NO.2149/2023
- Annexure A4** COPY OF THE AGREEMENT DATED 01-06-2024,
ISSUED BY TANGENTUP LABS
- Annexure A5** COPY OF THE CERTIFICATE DATED 10-06-24
ISSUED BY NSK INTERNATIONAL SCHOOL-
GUEST FACULTY.
- Annexure A6** COPY OF THE ATTENDANCE CERTIFICATE BY
NSK INTERNATIONAL SCHOOL CERTIFICATE
DATED 10-07-2024 IN FAVOUR OF XXXX
- Annexure A6(a)** COPY OF THE ATTENDANCE CERTIFICATE BY
NSK INTERNATIONAL SCHOOL DATED 10-07-
2024 IN FAVOUR OF XXXX
- Annexure 7** COPY OF THE ASSESSMENT REPORT CARD FOR
THE YEAR 2023-2024 ISSUED BY NSK
INTERNATIONAL SCHOOL IN FAVOUR OF XXXX.
- Annexure A7(a)** COPY OF THE ASSESSMENT REPORT CARD FOR
THE YEAR 2023-2024 ISSUED BY NSK
INTERNATIONAL SCHOOL IN FAVOUR OF XXXX
- Annexure A8** COPY OF THE CERTIFICATE DATED
11-07-2024 ISSUED BY APOSTOLIC LIVING
FAITH CHURCH, CHENGANNOOR.
- Annexure A9** COPY OF THE RECEIPT DATED 01-06-2023
ISSUED BY RAGAMALIKA MUSIC ACADEMY,
CHENGANNOOR OF XXXX.
- Annexure A9(a)** COPY OF THE RECEIPT DATED 17-12-2023
ISSUED BY RAGAMALIKA MUSIC ACADEMY,



CHENGANNOOR OF XXXX

- Annexure A9(b) COPY OF THE RECEIPT DATED 18-03-2024
ISSUED BY RAGAMALIKA MUSIC ACADEMY,
CHENGANNOOR OF XXXX.**
- Annexure A9(c) COPY OF THE RECEIPT DATED 20-06-2024
ISSUED BY RAGAMALIKA MUSIC ACADEMY,
CHENGANNOOR OF XXXX**
- Annexure A9(d) COPY OF THE RECEIPT DATED 23-11-2024
ISSUED BY RAGAMALIKA MUSIC ACADEMY,
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- Annexure A10 COPY OF THE RECEIPT FOR THE YEAR
2022-23 ISSUED BY PARASAKTHI SCHOOL OF
DANCE AND MUSIC, CHENGANNOOR OF XXXX.**
- Annexure 10(a) COPY OF THE RECEIPT FOR THE YEAR
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DANCE AND MUSIC, CHENGANNOOR OF XXXX.**
- Annexure A11 COPY OF THE CERTIFICATE OF MERIT ISSUED
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SKATING ASSOCIATION OF 2023 OF XXXX**
- Annexure A12 COPY OF THE CERTIFICATE OF MERIT ISSUED
BY NSK INTERNATIONAL SCHOOL, BEING
FIRST POSITION IN ANNUAL ATHLETIC MEET
FOR THE YEAR 2022-23 OF XXXX.**
- Annexure A13 COPY OF CERTIFICATE OF MERIT ISSUED BY
NSK INTERNATIONAL SCHOOL FOR ACQUIRING
FIRST PRICE IN FOLK DANCE OF XXXX**
- Annexure A13(a) COPY OF THE CERTIFICATE FOR THE YEAR
2023-24 ISSUED BY NSK INTERNATIONAL
SCHOOL FOR SECURING THIRD PRICE IN
RELAY RACE OF XXXX.**
- Annexure A13(b) COPY OF THE PHOTOGRAPH DATED 19-07-2024
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FOLK DANCE.**
- Annexure A14 COPY OF THE MERIT CERTIFICATE DATED**



**31-10-1995 OF MES INDIAN SCHOOL, QATAR,
WHEREIN THE APPELLANT WAS THE
INDIVIDUAL CHAMPION IN ANNUAL SPORTS.**

**Annexure A14(a) COPY OF THE MERIT CERTIFICATE OF MES
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2004-2005.**

**Annexure A14(b) COPY OF THE MERIT CERTIFICATE ISSUED IN
THE YEAR 2007 BY CUSAT IN FAVOUR OF THE
APPELLANT.**

**Annexure A15 COPY OF THE FINAL REPORT IN CRIME
NO.302/2023 OF CHENGANNOOR POLICE
STATION, CONTAINING THE REFER REPORT IN
RESPECT OF EXT.A4.**

**Annexure A16 COPY OF THE CERTIFICATE DATED
19-05-2021 OF THE DOCTOR WHICH IS
ALREADY PRODUCED IN EXT.B6 PEN DRIVE**

**Annexure A17 COPY OF THE WHATSAPP MESSAGES BETWEEN
APPELLANT AND THE RESPONDENT DATED
27-10-2022 LEADING TO EXT.A9.**

**Annexure A18 COPY OF THE WHATSAPP MESSAGES BETWEEN
APPELLANT AND THE RESPONDENT DATED
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DATED 09-04-2024.**
- Annexure 18(a) COPY OF THE WHATSAPP MESSAGES BETWEEN
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15-04-2024.**