

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 18TH DAY OF MARCH 2024 / 28TH PHALGUNA, 1945

MAT.APPEAL NO. 513 OF 2023

OP NO.843 OF 2020 OF FAMILY COURT, MALAPPURAM

APPELLANT/1ST RESPONDENT

NIVYA P.R

AGED 26 YEARS

PRAKKATTMATTATH HOUSE, PUNCHAKKODE, THENKARA POST,
MANNARKKAD TALUK, PALAKKAD DISTRICT, PIN - 678582

BY ADV V.A.Johnson (Varikkappallil)

RESPONDENTS/PETITIONER AND 2ND RESPONDENT

- 1 VIPIN K, AGED 33 YEARS
KANHIRAKUTTIYIL HOUSE, CHERUKARA POST, PERINTHALMANNA
TALUK, MALAPPURAM DISTRICT, PIN - 679322
- 2 SUDEV
AGED 30 YEARS, S/O VASUDEVAN, AMBADI HOUSE, PAINKANNUR
POST, VALANCHERY, KUTTIPPURAM, TIRUR TALUK,
MALAPPURAM, PIN - 679571

BY ADV AHAMED FAZIL E.C.

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
12.3.2024, THE COURT ON 18.03.2024 DELIVERED THE FOLLOWING:

ANU SIVARAMAN & C.PRATHEEP KUMAR, JJ.

Mat.Appeal No.513 of 2023

Dated : 18th March, 2024

JUDGMENT

C.Pratheep Kumar, J.

1. This is an appeal filed by the 1st respondent/wife in O.P.843/2020 on the file of the Family Court, Malappuram, against the judgment dated 13.7.2022 allowing the O.P granting divorce to the 1st respondent. Admittedly, the appellant and 1st respondent are husband and wife. They got married on 14.9.2015 as per the customary rites prevailing among the Hindu community. A child was born in that wedlock on 27.8.2016. The 1st respondent filed the O.P. seeking divorce under Section 13(1)(i) and (ia) of the Hindu Marriage Act, (in short 'the Act'), mainly on the ground of adultery and cruelty. At the time of evidence, the appellant remained *ex parte*. Though the 2nd respondent appeared and filed counter, he has not adduced any evidence. It was in the above context that the learned Family Court judge decreed the O.P under Section 13(1)(i) and (ia) of the Act.
2. According to the appellant, she was not aware of the pendency of the case at the beginning. When she came to know about the case and contacted the 1st respondent, he informed her that he was willing to continue with the marriage and believing his words she did not appear before the Court. Thereafter she found that she was set *ex parte* and a decree for divorce was

granted.

3. The main allegation is that the appellant had sexual intercourse with the 2nd respondent herein and it was on that ground the Family Court found that the ground of adultery was proved. According to the appellant, the 2nd respondent committed rape on her and in that respect, a criminal case is pending against him.
4. Considering the fact that divorce was granted mainly on the ground of adultery and it is also revealed that a crime was registered against the 2nd respondent for allegedly committing rape on the appellant, we are of the considered view that one more opportunity should be given to the appellant to contest the case on merits, for which the impugned decree is liable to be set aside.
5. In the result, the impugned decree and judgment of the Family Court is set aside. The matter is remanded back to the Family Court for disposal of the case as per law. Considering the fact that this is a case of 2020, the learned Family Court Judge is directed to dispose of the case at the earliest, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

Sd/-

Anu Sivaraman, Judge

Sd/-

C.Pratheep Kumar, Judge

Mrcs/13.3.2024