



2026:KER:50611

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

MONDAY, THE 13TH DAY OF JULY 2026/22ND ASHADHA, 1948

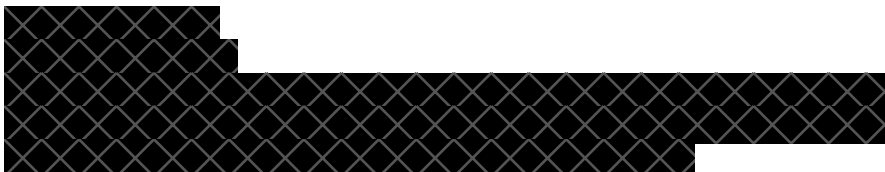
MAT. APPEAL NO.1095 OF 2024
AGAINST THE JUDGMENT DATED 29.04.2024 IN O.P.NO.384 OF 2020
OF FAMILY COURT, MUVATTUPUZHA

APPELLANT(S) /RESPONDENTS:

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BY ADV.SRI.S.SREEDEV
BY ADV.SRI.ENOCH DAVID SIMON JOEL
BY ADV.SRI.RONY JOSE
BY ADV.SRI.LEO LUKOSE
BY ADV.SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY
BY ADV.SRI.DERICK MATHAI SAJI
BY ADV.SRI.KARAN SCARIA ABRAHAM
BY ADV.SRI.ITTOOP JOY THATTIL

RESPONDENT(S) /PETITIONER:



Mat. Appeal No.1095 of 2024

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BY ADV.SMT.T.S.MAYA (THIYADIL)
BY ADV.SMT.K.A.SUNITHA
BY ADV.SRI.K.RAJEEV (THIYADIL)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
03.07.2026, THE COURT ON 13.07.2026 DELIVERED THE FOLLOWING:



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“C.R.”

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

This Mat. Appeal impugns the judgment dated 29.04.2024 of the Family Court, Muvattupuzha in [REDACTED].

2. The brief facts necessary for disposal of this appeal are as follows:

The appellants herein are respondents 1 and 2 viz., husband and father-in-law respectively, and the respondent herein was the petitioner/wife in [REDACTED] on the files of Family Court, Muvattupuzha. The original petition was filed by the respondent herein seeking return of 80 sovereigns of gold ornaments or its market value along with Rs.5,00,000/- with 6% interest from the date of filing of the original petition; Rs.12,00,000/- spent towards marriage and engagement expenses and Rs.50,00,000/- as compensation from the appellants. The 1st appellant and the respondent were married in accordance with Hindu religious rites on 30.06.2019. It is the case of the respondent that the marriage was fixed through the Kerala matrimony, and on the marriage being fixed, the 2nd appellant had demanded Rs.5,00,000/- towards



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marriage expenses. Accordingly, the said amount was handed over by the father of the respondent to the 2nd appellant on the date of engagement. It is also contended that at the time of marriage, the respondent was wearing 90 sovereigns of gold ornaments and she was presented with a brand new I-20 Magna car. The respondent had also contended that out of the 90 sovereigns of gold ornaments, the 1st appellant had appropriated 60 sovereigns of gold ornaments in the month of July itself under the guise of keeping the same in the safe custody of his locker maintained with the State Bank of India, Koothattukulam branch. She was permitted to keep some gold ornaments in the house itself on her insistence. The respondent contends that after obtaining Rs.5,00,000/- and gold ornaments, the appellants and their family harassed her demanding more cash from her house and insulted her stating that she was blind. The respondent thereupon had demanded to return her gold ornaments pledged by the appellants and the same was not returned. On 24.08.2019, the respondent returned to her house from her coaching class and later the 2nd appellant and his wife had brought the car to her parental home. The respondent thus claims return of gold ornaments and claimed marital expenses and compensation of Rs.50,00,000/-.

3. The 1st appellant filed a written statement denying that the 2nd appellant had demanded Rs.5,00,000/- and stated that no amount was given to him on the date of engagement. The 1st appellant also disputed the quantum of gold ornaments worn by the respondent and the receipt of

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a brand new I-20 Magna car. According to the 1st appellant, in the register maintained in the SNDP Branch, it was recorded as the respondent was given 80 sovereigns of gold ornaments and a car. The 1st appellant categorically denied the entrustment of gold ornaments of the respondent with him and his family, and contended that the respondent had exchanged one gold chain weighing 10 sovereigns without the consent of the 1st appellant. According to the 1st appellant, he had transferred cash to the account of the respondent for her education expenses even after she left the matrimonial home. Even though the respondent had returned to her parental home in August 2019, during November 2019, the 1st appellant as well as the respondent had gone to Midnapur University for collecting the Degree certificate of the respondent. He also denied the contention raised by the respondent that the gold ornaments of the respondent were sold by him.

4. Before the Family Court, both sides let in evidence. PW1 to PW4 were examined on behalf of the respondent and Exts.A1 to A30, Exts.X1 to X3 and Ext.X4 series were marked. The appellants examined three witnesses as RW1 to RW3 and marked Exts.B1 to B9.

5. On the basis of the pleadings and the evidence on record, the Family Court found that the respondent herein was entitled to get Rs.5,00,000/- given in connection with the marriage with 6% interest from the date of filing of the original petition and 80 sovereigns of gold



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ornaments or its market value as on the date of its payment from the appellants and that she was entitled to realise Rs.6,89,350/- spent by her for the engagement and marriage with 6% interest from the date of the original petition from the appellants. The prayer of the respondent for alimony and compensation was however rejected.

6. In the appeal before us, we have heard Sri.S.Sreedev, the learned counsel for the appellants and Smt.T.S.Maya, the learned counsel for the respondent.

7. Before we proceed to analyse the evidence in this case, we deem it apposite to notice the principles that must guide us in the exercise of our appellate jurisdiction in matrimonial matters. As is trite, in matrimonial matters, the proof of a relevant fact is tested on the touchstone of 'preponderance of probabilities' and not one of 'beyond reasonable doubt'. While there may be degrees of probabilities, and a higher degree of probability may be required to be established in cases where the allegations if proved have serious consequences affecting, *inter alia*, the reputation of a person, the threshold must nevertheless always fall short of 'beyond reasonable doubt'. Phipson on Evidence formulates the standard as "if the evidence is such that the court can say - we think it more probable than not - the burden is discharged, but if the probabilities are equal, it is not". Similarly, Section 3 of the Indian Evidence Act that defines the expression 'proved' suggests that proof of a



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fact depends upon the probability of its existence and the finding of the court must be based on (i) the test of a prudent person who acts under the supposition that a fact exists and (ii) in the context and circumstances of a particular case. It has to be borne in mind that there is always an unmistakable subjective element in the evaluation of degrees of probability and the quantum of proof, and forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. **[State of U.P v. Krishna Gopal and another - [(1988) 4 SCC 302]].**

8. While applying the test of preponderance of probabilities to the pleadings and evidence on record, the court must proceed on the understanding that a prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities, he finds that the preponderance is in favour of the existence of the particular fact. The first step in that process is to fix the probabilities, the second to weigh them. The *impossible* is weeded out at the first stage, the *improbable* at the second **[Dr. N.G. Dastane v. Mrs. S. Dastane - [AIR 1975 SC 1534]]**. In other words, the court must first look to the pleadings and the evidence adduced by the parties to first see whether there is anything therein that can lead the court to draw an inference as regards the existence of a fact. It is only if there are different inferences that can be drawn from the evidence on record that the next stage of determining the more probable



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of such inferences arises. More importantly, inferences from the evidence and circumstances must be carefully distinguished from conjectures or speculation. Since the mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole, there must be evidence - direct or circumstantial - to deduce necessary inferences in proof of the facts in issue. If there are no positive proved facts - oral, documentary or circumstantial - from which the inferences can be drawn, the method of inference would fail and what would remain is mere speculation or conjecture. Therefore, when drawing an inference of proof that a fact in issue is held to be established, there must be some material facts or circumstances on record from which such an inference can be drawn **[Maya Gopinathan v. Anoop S.B and another - [(2024) 16 SCC 45]]**.

9. Keeping the above principles in mind, while considering claims by a wife for the return of gold or money that she had taken along with her to the matrimonial home at the time of her marriage, the court needs to look for proved facts - oral, documentary or circumstantial - from which an inference as regards entrustment of such gold or money to the husband or his relatives, and a misappropriation thereof by them, can be drawn. It is only when there exists such proved facts wherefrom an inference of entrustment can be drawn, that the initial burden of proof cast on the claimant gets discharged and the burden then shifts to the husband or his relatives to show that they had either returned the gold or



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money so entrusted with them to the claimant or utilised such gold or money at her instance or for her exclusive benefit. In the absence of any proved facts emerging from the evidence on record, the court cannot and must not embark upon a speculative exercise of drawing an inference based on its own perspective of what might have happened. We might, in this connection, observe that we have come across many instances where the courts below place reliance on observations made in judgments of this Court, without appreciating the true meaning and purport thereof, to find an entrustment of gold or money in the absence of any proved facts that would lead to such an inference. For instance, the observations of a Division Bench of this Court in **Bexy Michael v. A.J. Michael - [(2010) 4 KHC 376 (DB)]** that state that it would be unreasonable for a court to insist on documentary evidence regarding ornaments and money that has changed hands at the time of marriage and that, while standards of a prudent man are paramount in the appreciation of evidence under Section 3 of the Evidence Act, ground realities and general practices/customs cannot be ignored, have been relied upon to virtually abandon a search for available evidence on record, and rely only on the judge's singular perception of a general practice or custom to find an 'entrustment'. Such findings cannot be justified as being grounded on the trained intuitions of a judge because they would qualify merely as conjectures or speculations. In our view, even in such circumstances where the court bases its finding on general practices or customs, there must be evidence on record regarding the existence of such a practice or



custom. This is especially so since, under the Bharatiya Sakshya Adhiniyam, 2023, 'custom' is treated as a question of fact unless it is so recognised that the court can take judicial notice of it. In a society where change is the only constant, courts have to be sensitive to the changing needs of society and the realities of the day while appreciating the evidence on record, especially in matrimonial matters. For instance, past precedents that assume the existence of a general practice that a woman at the time of her marriage and entry into her matrimonial home would hand over her gold ornaments/Stridhan to her husband/mother-in-law for safekeeping may not be reflective of the present reality where many a well educated and financially independent bride retains control over all her material possessions even after entering the matrimonial home. The changed status of women in modern society, the extent of their emancipation and empowerment, the feminine perspective that they bring to an understanding of social customs and practices have all to be taken into account by an adjudicating court, *inter alia* by insisting on evidence being led in on these aspects by the parties to the matrimonial dispute. It is only then that the court can be seen as discharging its adjudicatory role with the discipline that is required of it under the law.

10. When we apply the aforesaid principles to the evidence on record in the instant case, we find that the case of the respondent/wife, while seeking a return of Rs.5,00,000/- from the appellants herein was that she had handed over the said amount to the 2nd appellant on the day



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of engagement. The evidence relied on to prove the said contention was given by her while deposing as PW1 and was sought to be supported by the evidence of PW2, her father and PW3, who was the brother-in-law of PW2. In her deposition as PW1, she stated that when the marriage proposal was mooted, the 2nd appellant had demanded Rs.5,00,000/-, and accordingly, her father had given Rs.5,00,000/- to the 2nd appellant on the engagement day as her family's share towards the costs of the function. This statement was corroborated by PW2, who deposed that on 12.04.2019, that is, on the engagement day, he had given Rs.5,00,000/- to the 2nd appellant towards the share of the respondent. In cross examination, PW2 categorically stated that the handing over of the said amount was witnessed by PW3, who was his brother-in-law. The source of the said amount, which was handed over, was explained by PW2 as being part of the consideration which he received by selling his flat at Chennai. According to him, the amount of Rs.5,00,000/- was taken from his account in Bank of India, Mylapur branch. While in cross-examination, it was suggested that the handing over of the money was not recorded in the SNDP register which had otherwise recorded the details with regard to the gold ornaments given to the respondent, PW2 stated that it was the 2nd appellant who instructed that the details regarding cash transaction should not be communicated to any other person. The details regarding the payment of Rs.5,00,000/-, however, were spoken to by PW3, who deposed that he was present when PW2 handed over the amount to the 2nd appellant. Nothing was brought out in cross examination to disbelieve



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or discredit the said evidence of PW3. It was, therefore, notwithstanding the evidence given by RW2 that he had not demanded Rs.5,00,000/- from the parents of the respondent nor received the said amount, that the court below found, based on the oral testimony adduced before it and Exts.A24 to A26 documents that the fact of Rs.5,00,000/- being given by PW2 to the 2nd appellant was proved, and consequently directed the return of the said amount to the respondent. We find no reason to interfere with the said finding of the court below in relation to the aforesaid amount of Rs.5,00,000/-.

11. As regards the claim for return of 90 sovereigns of gold, the evidence in this regard is the oral evidence of PW1 and PW2. PW1 had pleaded in the original petition as well as in the proof affidavit that she was given 90 sovereigns of gold ornaments at the time of marriage. According to PW2, he had purchased a total of 80 sovereigns of gold at the time of engagement and marriage. He adds that in addition to the above, PW1 had received gold as gift and she had given a gold chain to the 1st appellant and bangles to the mother and sister of the 1st appellant. The respondent had also produced Exts.A12 to A13(b) to prove the purchase of gold ornaments. Apart from that, she had also produced Ext.A23, the extract of marriage register issued by SNDP Yogam, Peringala. RW1/the 1st appellant herein also produced Ext.B3 extract of marriage register issued by SNDP Yogam, Koothattukulam, wherein, it is entered that the bride was wearing 80 sovereigns of gold ornaments. The



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said register was signed by the bride and the groom as well as the 2nd appellant - father of the groom, wherein, it is recorded that the quantum of gold given to the bride at the time of marriage is 80 sovereigns. On the basis of the said evidence on record, the Family Court came to the conclusion that the quantum of gold ornaments, which was in the possession of the 1st appellant, was 80 sovereigns. We find no reason to interfere with the said finding. However, the question to be considered is whether there was any evidence regarding entrustment of the gold ornaments to the 1st appellant and his family so as to raise a claim for return of the gold ornaments. PW1 has pleaded that out of the 90 sovereigns of gold ornaments, 60 sovereigns of gold ornaments were appropriated by the 1st appellant stating that the said ornaments were to be kept in the bank locker at the SBI, Koothattukulam branch. She had kept apart some gold ornaments for her personal use and the 1st appellant had permitted to keep those ornaments in the house. The respondent had pleaded that the balance gold was forcibly taken from her and she had sought for returning the gold ornaments which were pledged. It is also pleaded in paragraph 11 of her original petition that, on enquiries, she came to understand that her gold ornaments were sold and she had returned to her parental home on 24.08.2019. PW1 had reiterated the said pleadings in her proof affidavit.

12. In the cross examination, it was suggested that the respondent had returned to her home on 15.08.2019 along with the gifts, personal



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belongings, clothes etc., which she denied. There was a further suggestion in cross examination that the 1st appellant had not misappropriated the gold ornaments to which she replied that the gold is still with them. As for the pleading by PW1 that the gold ornaments were entrusted to RW2, the 2nd appellant, there is a categorical denial by the 1st appellant, wherein he has stated that after the marriage, the entire gold ornaments of PW1 was with her and her parents. In the written statement as well as in the proof affidavit filed, the 1st appellant has denied entrustment of gold to him or his parents. But for the oral evidence of both sides, there is nothing in the evidence to come to a conclusion that the gold ornaments were entrusted to the 1st appellant or his family. As a matter of fact, it is also seen from the evidence of PW1 that in mid July of 2019, the 1st appellant and the respondent had gone to Kayamkulam Arabian Jewellery and had exchanged a 10 sovereign gold chain. As regards the entrustment of 60 sovereigns of gold ornaments, there is no evidence at all. PW1 has a case that the 1st appellant had pledged her gold ornaments and she had also sought for return of the gold ornaments that were pledged. To this effect, PW1 had let in evidence through PW4, who is the manager of SBI, Koothattukulam branch. Exts.X4 series were marked through him. It can be seen from Ext.X4 series that the 1st appellant had pledged 242.9 grams of gold [8 bangles and 3 show chain] on 17.07.2019 and that the said gold loan was fully discharged on 16.07.2020. As per the evidence of PW4, the sum of Rs.5,00,000/- which was raised through pledging of the gold ornaments,



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was transferred to the account of the 1st appellant, and on the date of closure of the said loan account on 16.07.2020, a sum of Rs.5,48,250/- was transferred from the account of the 1st appellant. It is also stated that the gold was returned to the 1st appellant. However, the 1st appellant/RW1 contended that the gold ornaments that were pledged were that of his sister and according to him, he had pledged the said gold ornaments on 17.07.2018, and that in 2020, he had closed the gold loan from the SBI, Koothattukulam branch.

13. To a suggestion in cross-examination that the gold ornaments which were pledged were that of the respondent, RW1 stated that the respondent had taken her gold and money with her when she went to her parental home in August 2019. RW3 was examined on behalf of 1st appellant to prove that the gold ornaments which were pledged belonged to the wife of RW3/sister of the 1st appellant. RW3, on the other hand, did not provide any specifics regarding the date on which the gold was handed over to the 1st appellant. According to him, the 1st appellant is in the habit of pledging gold ornaments, and on each instance, he had given the gold ornaments of his wife. He admits that he had handed over 30 sovereigns of gold ornaments to the 1st appellant and the same was returned after about one year and that the said gold ornaments were now with them.



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14. On a consideration of the evidence, it can be seen that the gold ornaments were pledged on 17.07.2019, that is, about two weeks after the marriage of the 1st appellant with the respondent. Even according to RW1, he had pledged gold ornaments of his sister on 17.07.2018. Therefore, the contention of RW1 that the gold ornaments which were pledged, belonged to his sister cannot be believed. In all probability, the ornaments that were pledged were the ornaments of the respondent and it tallies with her statement that she had been asking the respondent to return the said gold ornaments. Thus, there is only evidence regarding entrustment and misappropriation of 242.9 grams of gold ornaments. Therefore, we find that the respondent is entitled to get 242.9 grams of gold. The finding of the Family Court that she is entitled to receive 80 sovereigns of gold, is without any basis and is liable to be interfered with to the extent stated above. We do so and limit the respondent's entitlement to the return of 242.9 grams of gold.

15. The other claim was for the expenses incurred by the respondent in connection with her engagement and marriage. PW1 had produced Exts.A3 to A10 bills to prove the expenses incurred by her family in connection with the engagement and the marriage. These bills were in the name of her father, who was examined as PW2. PW2 has corroborated the statement of PW1 that they have incurred a sum of Rs.12,00,000/- towards marriage expenses. In the cross examination of PW1, it was suggested that the 1st appellant had also incurred expenses



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for the marriage and also that Exts.A6 and A7 bills are not connected with the wedding but she has categorically denied the same. Based on the documentary evidence, the Family Court concluded that the respondent and family had spent a sum of Rs.6,89,350/- towards the expenses for the engagement and marriage of PW1. The Family Court thereafter found that since divorce was granted to the respondent on the ground of cruelty, the 1st appellant was liable to pay the aforesaid sum of Rs.6,89,350/- to the respondent towards marriage expenses. We find the said finding to be legally unsustainable. This is not a case where the marriage was declared as null or void. On the other hand, there was a marital relationship that was terminated legally. Marriage expenses are common to both parties and the option is on each of the parties to decide how and what should be the level of extravaganza for a marriage ceremony. It has also come out in evidence that the marriage was conducted in a posh manner. As the option to decide the celebrations in connection with a marriage is with the parties themselves, there is no reason to award any amount under the said head to either of the parties since even the 1st appellant and his family would have spent considerable money towards marriage expenses. That apart, it is admitted by PW2 that there were about 1000 guests for the wedding of which the guests from the side of appellants were only 150. Saddling the appellants with the liability to refund the marriage expenses incurred by the respondent's family is therefore unjustified.



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In the result, this Mat. Appeal is partly allowed, by setting aside the impugned judgment and decree of the Family Court, Muvattupuzha and holding that the appellants shall return the sum of Rs.5,00,000/- with 6% interest from the date of filing of the original petition and 30 sovereigns of gold or its market value as on the date of its payment to the respondent. If the said payments are not effected by the appellants, it will be open to the respondent to realise the same from the appellants or their assets.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
PREETA A.K.
JUDGE**

prp/



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APPENDIX OF MAT. APPEAL NO.1095 OF 2024

APPELLANTS ANNEXURES: NIL.

RESPONDENT'S ANNEXURES:

ANNEXURE R1 (a)	COPY OF ENCUMBRANCE CERTIFICATE DATED 17-10-2024, TAKEN BY THE RESPONDENT.
ANNEXURE R1 (b)	THE COPY OF ATTACHMENT SCHEDULE IN O.P.384/2020 OF FAMILY COURT MOOVATTUPUZHA.

//TRUE COPY//

P.S. TO JUDGE