

2024 SCJ 373

THE SUPREME COURT OF MAURITIUS
(FAMILY DIVISION)

Record No: FD 1678/21 (P)

In the matter of:

Censored Name *** (h)**

Petitioner

v

Censored Name *** (w)**

Respondent

JUDGMENT

The husband petitioner, has in his divorce petition dated 12 July 2021, averred that he civilly married the respondent under the legal system of community of goods on 1 July 2014 and one child was born on 18 November 2016 from the said marriage.

The petitioner has averred that after the first year of marriage, he noticed a change in the behavior and attitude of the respondent who no longer shared any love, care and affection towards him. She behaved in an authoritative manner and would impose her ideas, ways and manners as regards their house and child without considering the petitioner's likings, choice and taste which frustrated him. He also averred that there were arguments between his parents and the respondent as a result of which his parents asked them to move to the first floor in order to avoid conflicts.

The petitioner stated that the respondent would harass him with questions that he was involved in an extra marital affair when he would return home late, when he was actually working for long and odd hours. He also stated that he had a close female friend who supported him in bad times and the respondent would argue with him about it. They stopped being intimate in the year 2017. There was a deterioration in their relationship in the year 2018 when he started working on a cruise ship. After his return from the cruise in the year 2019, the respondent would argue

pointlessly with him or would avoid him instead of spending quality time together. The respondent had even threatened to kill him in his sleep. He felt uncomfortable and embarrassed to live with the respondent in the same house owing to her bad attitude. The petitioner averred that they are presently living under the same roof, but in separate rooms. He stated that he put in all efforts to save his marriage and was paying for the child's and household expenses, but in vain.

The petitioner also averred that the respondent spent lots of time on her mobile phone and he even found some love messages of another man in which the respondent had no objection to spend quality time in a guest house.

The petitioner averred that the respondent also falsely complained to her family members that she was leading a miserable life with him and her brother had assaulted the petitioner. However, the petitioner did not give any statement to the police because of the family's reputation.

The petitioner averred that the respondent's behaviour as well as her acts and doings constituted '*une violation grave ou renouvelée des devoirs et obligations du mariage*'. He stated that there is no hope of reconciliation between them and the marriage had irretrievably broken down because of the respondent's behaviour, amounting to '*faute*'. He was praying for a provisional decree of divorce '*a vinculo matrimonii*' on the ground of the respondent's '*faute*', a '*droit d'hébergement*' and a right of visit in respect of the minor child.

The petitioner deposed under solemn affirmation and stated that the marriage was a happy one for the first year, after which there were disputes between his wife and his parents, mostly because they were sharing the same kitchen. They even left their house for one week to stay at the respondent's parents' house. During the covid period, they moved to the first floor of his parent's house. He realised that the respondent was at fault for the disputes that occurred. He explained that his wife was authoritative. She would go to her parent's place without informing him and would stay there from Friday to Monday and he was left alone.

The petitioner stated that he no longer had any feelings for the respondent and got distanced from her when he went to work on a cruise ship. He stated that they were last intimate in the year 2017 and denied the version of the respondent that it was up to the year 2020. He went on cruise ship in the year 2018 and he returned in the year 2019, before the covid period. He explained that the situation between them remained the same when he returned back home.

They were speaking with each other only for the child's sake. He denied the respondent's version that their relations worked up to the year 2021 and explained that they would act as a couple because of their child. He denied that he was authoritative and aggressive towards the respondent. He also denied that they went to live on the first floor because he had hit his mother with a chair. He stated that he used to return home late from work as he used to work overtime. In relation to the assault case involving his brother-in-law, he explained that the incident happened when they had consumed alcohol but he was not drunk. He stated that he drove back home on that night. He stated that the respondent's brother threatened him with a '*sabre*' and after the incident, he severed all relationships with his in-laws. The petitioner came across a message in respondent's mobile sent by a male person inviting her to a guesthouse. When he confronted the respondent to the said message, she contended that it was her friend who was teasing her.

He maintained that there was no '*communauté de vie*' between them, even though they were still living under the same roof, eating together and he was still contributing to the household and the child's expenses. He had no objection that the respondent be entrusted with the child's custody and agreed to pay for the child's expenses. However, he stated that the amount of Rs10,000 claimed by the respondent was exorbitant and that he could pay a sum of Rs 5,000 and would contribute for the child's education. He also had no objection that the respondent continues to live on the first floor and he would press on the prayers for '*droit d'hébergement*' and '*droit de visite*' in the event that they left the conjugal roof.

Under cross-examination, he denied that he had extra-marital affairs twice and averred that they were only work colleagues ('*copines*') and he had no intimacy with them. The petitioner stated that his wife would take care of his parents who were in her favour. He did not dispute the fact that they would live under the same roof, do their shopping together and would go out with their child during school holidays. He admitted that the respondent would take good care of their child and the household. He re-iterated that he was praying for divorce as he did not have any feelings for the respondent. He was aware that his wife was objecting to the divorce and she considered marriage as a sacred bond but he did not agree that he will have feelings anew for the respondent and maintained that there would be no reconciliation between them.

On the other hand, the respondent filed her notice of objection, in which she stated that the petitioner and herself lived more or less happily until the year 2021. She denied the petitioner's averments and stated that she was respectful towards the petitioner and she would ask for his

views before taking important decisions. She averred that the petitioner failed to give her love, affection and respect and behaved in a highly authoritative manner. He would often make important decisions without consulting her. The respondent stated that they moved to the first floor in the year 2020 as the petitioner had hit his mother with a chair and the latter got angry. Regarding the issue that she harassed the petitioner when he would return home late, the respondent averred that it was the petitioner who would become angry and aggressive towards her when she would question him. The respondent stated that when the petitioner returned to Mauritius after his employment from a cruise ship, they visited her parents. On that occasion, the petitioner, her brother and father consumed alcoholic drinks after which they became aggressive and violent towards each other. She stated that her brother did not assault the petitioner who was levelling false accusations against her with a view to obtain divorce.

She reiterated that their relationship deteriorated around the year 2021 and they ceased to have intimate relations around the year 2020. They would argue in relation to expenses as the petitioner would not contribute to the household expenses as well as because of the interference of the petitioner's mother. She also explained that she would spend a reasonable amount of time on social media and talked to her mother and sister on the phone.

She averred that the petitioner and herself still had '*communauté de vie*' as she cooked for the petitioner and performed house chores including washing and ironing the petitioner's clothes. They were still operating as a family unit inasmuch as they would eat together, contribute to the household chores and take care of their minor child. As such, the marriage was still subsisting and no divorce should be pronounced. She stated given that they still lived under the same roof, she has no objection to prayers 23(b), (c), (d), (e), (f) and (g) with regards to '*droit d'hébergement*' and '*droit de visite*'. However, she stated that the right of access should be reviewed in the event they lived in different accommodations.

She was also praying for an alimony of Rs10,000 as she had lost her job and was no longer working. She averred that the petitioner was currently working as a hotel staff in France and was earning Rs 50,000 monthly.

The respondent also deposed under solemn affirmation to the effect that the petitioner was a good husband and father, as he catered for them both financially and emotionally despite the fact that he had to go abroad for work. She would handle his administrative works in Mauritius,

for example applying for a recent birth certificate for him and re-registering his SIM card. She explained that their intimate life was in jeopardy and she was also aware that the petitioner had two extra marital affairs, for which she had forgiven him. She was not aware of the reason for the dispute that occurred at her father's place and stated that after the dispute, they returned home. She explained that she had to leave her previous job as she had to attend Court for the divorce case and also had to take care of their child. She is now working with her brother and earning Rs 500 per day and around Rs 4,000 to Rs 5,000 per month. She is therefore resisting the divorce petition.

Under cross-examination, she emphasised that her husband had never hit her or was aggressive towards her. She explained that they went to stay on the first floor of the petitioner's parent's house, as his husband had a discussion with his mother and he had pushed a chair which hit his mother. His mother was injured on her feet after which his parents asked him to move upstairs and she was not at fault. She also stated that her husband always supported her when they had disputes with her in-laws.

The respondent stated that the marriage was not working at present but the fault was to be attributed to her husband. She explained that it was her right to ask her husband's whereabouts as the latter was cheating her. She contended that the women with whom the petitioner had affairs were threatening her. She did not dispute the fact that their relationship deteriorated as they were no longer intimate but she casted the blame upon the petitioner for such a state of affairs. She did not want her child to stay partly with her and partly with the petitioner. Regarding the message that the petitioner saw on her mobile phone, she averred that she did receive the said message but did not reply to same. She confirmed that she did not have any extra marital affair with anyone and there was only the petitioner in her life.

She denied that she had asked for an alimony in the sum of Rs 10,000 in her notice of objection and agreed to the amount of Rs 5,000 suggested by the petitioner. She further stated that she firmly believed that the petitioner would come back to her as she and her child needed the petitioner.

Under re-examination, the respondent confirmed that she had not replied to the message of the man who had asked her to come to the guest house and she did not receive any other message afterwards. She again stated that she has forgiven the petitioner for his mistake and

she was resisting the prayer for divorce for her sake and that of her child. She was confident that the petitioner's feelings would rekindle towards her.

I have duly considered the evidence on record, the versions of the petitioner and that of the respondent and the submissions of learned Counsel appearing on both sides.

The main duties and obligations of spouses are provided under Article 212 of the Civil Code which stipulates that '*les époux se doivent mutuellement fidélité, secours et assistance*' and Article 215 of the Civil Code provides that '*les époux s'obligent mutuellement à une communauté de vie*'. The petitioner has denied having had extra marital affairs but candidly admitted in his petition at paragraph 19 that he had a close female friend who would support him all the time he was in trouble and in Court he admitted that he had '*copines*' at work. The petitioner has not impressed me favourably on this score. The respondent was adamant that her husband had extra marital affairs, however, she was willing to forgive him. The petitioner also tried to blame the respondent of being unfaithful to him when he mentioned the message which he found on her mobile phone where a person was inviting her to a guest house. The respondent forcefully denied having betrayed her husband and explained that she did not reply to the said message and she has always only loved her husband. I have duly considered her version on this score and she impressed me as a witness of truth.

It is apposite at this stage to cite the following extract in the case of **Ungnoo v Ungnoo** [2003 SCJ 162], where it was held that:

"Thus, it is not all allegations, even if supported, which would suffice for the grant of a divorce. The facts should be of an outrageous nature, touch the petitioner in his honour, dignity or sensitivity:

'N'importe qu'elle violation des devoirs du mariage n'est cependant pas suffisante pour justifier le divorce. Les faits reprochés au conjoint doivent présenter en outre un caractère outrageant, constituer une insulte à l'honneur, à la dignité ou aux sentiments de l'autre époux (Cf. J. Carbonnier, op. et loc. Cit. – C Aubry et C. Rau, op cit., p. 223; Jurisclasseur 2002, Divorce fasc. 80, Not. Répert. Fasc. 18, no. 11.)'

The petitioner stated that there were disputes between his wife and his parents, mostly because they were sharing the same kitchen and they had to move to the first floor of his parent's house. He realised that the respondent was at fault for the disputes that occurred. However, the

respondent explained in a convincing and truthful manner in Court that they went to live on the first floor not because of her poor relationship with his parents but following a quarrel between the petitioner and his mother. It is noteworthy that in Court, the petitioner admitted that his wife would take care of his parents who were in her favour. Additionally, the petitioner has depicted his wife as a doting mother and that she would take good care of their household.

On the other hand, the respondent laid emphasis upon the fact that she still cooked for the petitioner and performed household chores including washing and ironing the petitioner's clothes. They are still operating as a family unit inasmuch as they would eat together, contribute to the household chores and take care of their minor child. As such, the respondent firmly believed that the marriage was still subsisting and she clearly was hopeful that they will reconcile and that the petitioner's feelings for her will eventually rekindle. The respondent has all throughout her testimony maintained that the petitioner was a good husband and he took good care of their child. She was convinced that their marriage had not irretrievably broken down and did not wish to get divorced for her sake and that of her child.

On the basis of the averments in the petition and the notice of objection, together with the evidence adduced, I find that the petitioner has failed to establish any '*faute*' as such on the part of the respondent and that their marriage has irretrievably broken down. The evidence adduced in Court does not demonstrate that there has been '*violation grave ou renouvelée des devoirs et obligations du mariage*' on the part of the respondent. The institution of marriage needs to be protected and the petitioner's averments that he wished to get divorced because he no longer has feelings for the respondent is not a ground for divorce *per se*. I am not satisfied that the allegations levelled by the petitioner against the respondent were of '*an outrageous nature, touch the petitioner in his honour, dignity or sensitivity*' and were of such a nature that would warrant granting a divorce.

For the reasons given above, I find that the petitioner has failed to establish the averments in his petition and in any event, the balance of probabilities I am satisfied weigh in favour of the respondent's version.

The petition is therefore dismissed.

**R. D. Dabee
Judge**

29 August 2024

For Petitioner : Mr. ***, Attorney at Law
Mrs. *****, of Counsel**

For Respondent: Mrs. ***, Attorney at Law
Mrs. *****, of Counsel**