

Mohanraj Vs. Violet Chandra

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Court : Karnataka

Decided On : Jan-16-1992

Reported in : II(1992)DMC5; ILR1992KAR846; 1992(2)KarLJ269

Judge : Venkatachala and ;Vasanth Kumar, JJ.

Acts : [Special Marriage Act, 1954](#) - Sections 27 and 27(1)

Appeal No. : M.F.A. No. 132 of 1992

Appellant : Mohanraj

Respondent : Violet Chandra

Advocate for Pet/Ap. : B. Veerabhadrappe, Adv.

Disposition : Appeal dismissed

Judgement :

Venkatachala, J.

1. This Appeal is preferred under Section 39 of the [Special Marriage Act, 1954](#) (for short 'the Act'), against the order dated 13.9.1991 made by the Court of Civil Judge, K.G.F. (for short 'the Court below') dismissing the husband's petition for divorce filed against his wife under Section 27 of the Act. Husband is the appellant and wife is the respondent. They are Indian Christians whose marriage was

solemnised under the Indian Christian Marriage Act, 1872 (for short 'the Christian Marriage Act'), according to the Christian Rites in a Church at K.G.F. on 12.2.1982.

2. Husband filed the petition under Sub-section (1) of Section 27 of the Act in the Court below seeking a decree for divorce against his wife on the ground that she had deserted him for a continuous period of not less than two years immediately preceding the presentation of that petition -- a ground for divorce envisaged in Clause (b) of that sub-section. Maintainability of that petition for divorce under Sub-section (1) of Section 27 of the Act having been raised by the wife in her Objection Statement filed thereto, on the plea that her marriage with the appellant not being a marriage under the Act but a Christian marriage under the Christian Marriage Act, the Court below rejected that petition by upholding the plea of the wife by making an order in that regard. It is that order which is appealed against by the husband in the present appeal.

3 Sri B. Veerabhadrapa, learned Counsel for the appellant, sought to assail the order of the Court below, by which the petition for divorce filed under Sub-section (1) of Section 27 of the Act by the appellant-husband against the respondent-wife to dissolve their marriage solemnised under the Christian Marriage Act has been dismissed as not maintainable. According to the learned Counsel, notwithstanding the fact that the marriage of the appellant-husband and the respondent-wife had not been solemnised or deemed to have been solemnised under the Act, Sub-section (1) of Section 27 of the Act, because of the generality of the words found in its opening part, enables a husband or a wife to present a petition for divorce against other party even if their marriage had not been solemnised or deemed to have been solemnised under the Act. Further, according to him, when the opening part of Sub-section (1) of Section 27 of the Act does not state that the petition for divorce to be presented thereunder is respecting a marriage solemnised under the Act as has been stated in Sections 24 and 25 thereof providing for seeking a declaration of a marriage being void or voidable, there can be no valid reason to restrict its application only to a marriage solemnised or deemed to have been solemnised under the Act. Support for his submission was also sought to be derived from the observations made by a learned Judge of the Rajasthan High

Court in deciding the case of CHRISTOPHER v. MRS. ANNE NEELAKANTAN, which read:

'Before concluding this judgment, I may briefly dispose of a point which arose during the course of discussion in this Court as to whether the petitioner was entitled to make his application under the Act of 1954 or the Indian Divorce Act of 1869 (No. IV of 1869) (hereinafter referred to as the Act of 1869) applied to him.

The question assumes some importance because the ground of desertion which is a good ground for divorce under the Act of 1954, is not a valid ground for divorce in the case of a petition by the husband under Section 10 of the Act of 1869. I may point out, however, that the Act of 1954 has been given a very wide application by the Legislature and it extends to the whole of India except the State of Jammu and Kashmir and has also been given an extra territorial effect inasmuch as it applies to Indian citizens domiciled in India but who may be living outside.

It may also be posited out in this connection that the preamble of the Act shows that so far as divorce is concerned the Act is all embracing and would govern the dissolution of all marriages irrespective of the consideration whether the marriage is of the special form envisaged in the Act and whether it has been registered under the Act or not. In this view of the matter, I can see nothing in the Act of 1954 which would exclude the application thereof to the case of the petitioner, no matter that the provisions of the Act of 1869 in this respect are somewhat narrower.'

4. The short question, which, therefore, needs our consideration and Decision in this Appeal, would be the following:

Does Sub-section (1) of Section 27 of the Act enable the husband or the wife of a marriage other than that solemnised or deemed to have been solemnised under the Act, to present a petition thereunder seeking decree for divorce respecting such marriage?

As our Decision on the said question has to be founded on the words by which the opening part of Sub-section (1) of Section 27 of the Act are clothed, opening part of that sub-section calls to be excerpted:

'27, Divorce.- Subject to the provisions of this Act and the rules made thereunder, a petition for divorce may be presented to the District Court either by the husband or the wife on the ground that the respondent--'

(grounds are omitted not being necessary)

As could be seen from the above opening words of Sub-section (1) of Section 27, they permit the presentation of a petition for divorce either by the husband or the wife. But, such presentation of the petition for divorce is permitted subject to the other provisions of the Act and the Rules made thereunder, when that sub-section is further seen. Then, one of such provisions in the Act to which presentation of the petition is subjected being Section 29, its material portion calls to be excerpted:

'29. Restrictions on petition for divorce during first three years after marriage:- (1) No petition for divorce shall be presented to the District Court unless at the date of the presentation of the petition one year has passed since the date of entering the certificate of marriage in the marriage Certificate Book:

Provided.....(2).....'

5. When the above provision in Section 29 mandates that 'No petition for divorce.....shall be presented unless at the date of the presentation of petition one year has passed since the date of entering the certificate of marriage in the marriage Certificate Book', a petition for divorce under Sub-section (1) of Section 27 of the Act, as enabled thereunder, cannot be presented at all unless a Certificate of the marriage entered in the Marriage Certificate Book could show that the time within which a petition for divorce of such marriage cannot be presented, has elapsed. From this it follows that the petition for divorce under Sub-section (1) of Section 29 could lie only respecting a marriage, for which the 'Certificate of marriage' is entered in the 'Marriage Certificate Book'. But, 'Certificate of marriage' if has to be entered in the 'Marriage Certificate Book' as per Section 13 thereof, it must be a marriage solemnised under Section 12 of the Act. So also, 'Certificate of marriage', if has to be entered in the 'Marriage Certificate Book' under Section 16 of the Act to become a marriage deemed to

have been solemnised under the Act as per Section 18 thereof, it must be a marriage required to be registered under Section 15 of the Act. That being the legal position, the submission made on behalf of the appellant that having regard to the generality of the words with which the opening part of Sub-section (1) of Section 27 is clothed, that sub-section enables the filing of a petition for divorce of a marriage not solemnised or deemed to have been solemnised under the Act, cannot be sustained. As to other submission made on behalf of the appellant that the absence of words 'any marriage solemnised under the Act' in Sub-section (1) of Section 27 of the Act providing for presentation of a petition for divorce, when such words are present in Sub-section (1) of Section 24 providing for declaration of marriage as void; and in Section 25 providing for avoiding a marriage as voidable, enables the presentation of a petition for divorce of a marriage other than a marriage solemnised or deemed to have been solemnised under the Act, cannot also be sustained as the same ignores the scheme of the provisions envisaged under Sub-section (1) of Section 24, Section 25 and Sub-section (1) of Section 27 or Sub-section (1A) of Section 27, which require to be read along with Section 29. Under the scheme of the said provisions, Section 24 or Section 25 covers cases of void or voidable marriages, as the case may be, only if they are solemnised under the Act. But, under the scheme of provisions in Section 27 and 29, they cover cases of divorceable marriages both solemnised and deemed to have been solemnised under the Act.

6. As to why Section 27 of the Act unlike Sections 24 and 25 thereof does not contain the words 'any marriage solemnised under the Act' is stated by the Allahabad High Court in *AULVIN v. SINGH v. SMT. CHANDRAWATI*, : AIR1974 All278 thus;

'...The reason why Section 27 of the Act unlike Sections 24 and 25 thereof does not contain the words 'any marriage solemnised under this Act' is not that Section 27 was intended to apply to marriages performed under other enactments but because the benefit of it was made available even those whose marriage though not solemnised under the Act was registered under Section 15 and thus deemed to have been under the Act by operation of Section 18. If it had been contemplated that parties who have undergone marriage under any of the other enactments

mentioned above can sue for divorce under Section 27 of the Act of 1954, it was wholly redundant for the legislature to have enacted Section 15 and 18 of the Act as extracted above. Sections 15 and 18, to my mind, disclose an intention on the part of the legislature that unless a marriage solemnised in a form other than that prescribed by the Act of 1954 has been registered in accordance with Section 15 of the Act, the parties to such a marriage will not be governed by any of the provisions of the Act.'

The said reason being in accord with the view we have taken that the divorce petition to be filed under Section 27 also covers a case of divorceable marriages deemed to have been solemnised under the Act, we express our respectful agreement for the same. Coming to the observations of the Rajasthan High Court in *Cristopher Andrew Neelakantan's* (supra), with respect to the learned Judge who has made them, they cannot advance the submissions of learned Counsel for the appellant, as such observations are made de hors Section 29 of the Act and the scheme of the provisions of the Act relating to void, voidable and divorceable marriages covered by Chapter VI of the Act.

7. For the foregoing reasons, our Decision on the question under consideration is that though the opening part of Sub-section (1) of Section 27 of the Act is clothed with the words of generality as would indicate that a petition for divorce by a wife or a husband seeking divorce of their marriage could be filed, such marriage if has to be dissolved by a petition for divorce under Sub-section (1) of Section 27, must be a marriage either solemnised or deemed to have been solemnised under the Act.

8. As the marriage of the appellant with the respondent respecting which a petition for divorce was filed by the appellant is a marriage solemnised under the Christian Marriage Act and not a marriage either solemnised or deemed to have been solemnised under the Act, the petition for divorce filed by the appellant under Section 27 of the Act, is rightly held to be not maintainable by the Court below, by the order now under Appeal. Hence, the order under Appeal does not call for interference.

9. In the result, this Appeal fails and is dismissed without being admitted.

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