

Abbas Ali Vs. Mt. Rabia Bibi

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Court : Allahabad

Decided On : Sep-27-1950

Reported in : AIR1952All145

Judge : V. Bhargava, J.

Acts : [Dissolution of Muslim Marriages Act, 1939](#) - Sections 2; Muslim Law

Appeal No. : Second Appeal No. 1231 of 1947

Appellant : Abbas Ali

Respondent : Mt. Rabia Bibi

Advocate for Def. : Gopalji Mehrotra, Adv.

Advocate for Pet/Ap. : Ishaq Ahmad, Adv.

Disposition : Appeal dismissed

Judgement :

V. Bhargava, J.

1. This second appeal arises out of a suit for dissolution of marriage brought by the plaintiff-respondent against the defendant-appellant.

2. The respondent, Smt. Rabia Bibi who is the wife of Abbas Ali appellant, brought this suit claiming divorce on grounds of cruelty and the false charge of adultery brought against her by the appellant. The lower appellate Court has held that the respondent failed to prove physical ill treatment. The Court further held that though the appellant had brought a charge of adultery against the respondent, it had been withdrawn unconditionally by the appellant and, therefore, it could also be no ground for granting a decree for divorce. The lower appellate Court, however, held in favour of the respondent that legal cruelty was established. The finding of the lower Court is that the conduct of the husband had made the life of the wife miserable even though this conduct did not amount to physical ill-treatment and it has, on this ground upheld the decree for dissolution of marriage in favour of the respondent.

3. The lower Court's finding that legal cruelty is established is based on proof of two facts. One fact found by the lower appellate Court is that the appellant had brought a false criminal complaint against the respondent in Court for offences punishable under Sections 494 and 497, Penal Code. The second ground was that, during the prosecution of that complaint the appellant had warrants of arrest issued against the respondent seventeen times. On these two circumstances, the lower appellate Court came to the conclusion that the fate of the respondent must be miserable, so that she was entitled to a decree for dissolution of marriage under Sub-clause (a) of Clause (viii) of Section 2, Dissolution of Muslim Marriages Act, (Act VIII [8] of 1939).

4. In this second appeal, the main argument of the learned counsel for the appellant was that since there had been an unconditional withdrawal by the appellant of imputation of immorality against the respondent, the bringing of the complaint by the appellant against the respondent and the proceedings which were taken in that connection cannot be taken into account at all for purposes of holding that the respondent had been treated by the appellant with cruelty. It is true that, under the Muslim Law, once an imputation of immorality against the wife is withdrawn by the husband, the effect of imputation is completely washed out. In fact, it must, in such cases, be construed as if no such imputation of immorality had ever been made. This fact, however, would not affect the position where the

imputation of immorality was followed up by a criminal complaint in Court and the point under consideration is the effect of the complaint and not the imputation. The act of bringing a criminal complaint in Court against a wife and dragging her into Court as an accused can be considered as a circumstance constituting legal cruelty irrespective of the nature of the criminal complaint. The criminal complaint, in this particular case, happened to be based on a charge of adultery. In other cases, it could be based on other imputations which might be no ground at all for granting a divorce. In all such cases, the fact of bringing a criminal complaint and dragging the wife into Court as an accused can still be considered for the purpose of holding whether the life of the wife has been made miserable by the husband or not. In this particular case, in addition to this circumstance of bringing a criminal complaint, there was the farther circumstance that, in prosecution of that complaint, the appellant had warrants of arrest issued against the respondent seventeen times. These factors could be taken into consideration by the lower appellate Court. It was for the lower appellate Court to arrive at a finding of fact whether the life of the wife had been made miserable by the husband or not and as I have said above, the evidence and the circumstances taken into account by the lower appellate Court are all admissible. The finding of fact arrived at by the lower appellate Court in this case that there was legal cruelty on the part of the appellant is, therefore, not vitiated by any error in law.

5. There is no ground for interference. The appeal is dismissed with costs. Leave to appeal is refused.

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