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M.J. Nugent Vs. N.E. Nugent

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Court : Allahabad

Decided On : Apr-20-1934

Reported in : AIR1934All782

Appellant : M.J. Nugent

Respondent : N.E. Nugent

Judgement :
ORDER

Young, J.

1. In this petition the wife asks the Court to dissolve her marriage with the respondent on the ground of adultery and cruelty. The husband asks that his marriage with his wife should be dissolved on the ground of his wife's adultery. The wife filed a petition in this Court. The husband filed his in Jhansi. The husband's petition has been transferred to this Court, in order that both petitions might be heard together. The parties are Anglo-Indian domiciled in India, and they have throughout their married life lived in the United Provinces. This Court has therefore jurisdiction to hear and decide both the petitions. The wife, through her counsel, has admitted adultery and invites the Court to exercise its discretion in her favour.

2. The marriage took place in February 1925, and there are three children born of the marriage. Within a year of marriage the husband, who is a doctor in the Indian

Medical Department, was transferred from Allahabad to Ranikhet. He appears from the very commencement of his married life to have been unable to resist the temptation of other women. Mrs. Nugent, when her husband was in Ranikhet, received from her husband's brother a letter asking her to come to Ranikhet. It was brought out in the cross-examination of Mrs. Nugent that the reason for this was that the brother thought her presence in Ranikhet necessary owing to the behaviour of her husband with another woman. A letter has been produced in this Court to the husband by the woman who at Ranikhet engaged his attention. Although the husband denies adultery with this girl, the terms of the letter make it clear beyond any possible doubt that adultery had been committed. No unmarried girl could possibly write such a letter to a man without having had very intimate relations with him. The wife says - and I believe her - that the husband confessed adultery with this girl, and that she forgave him. The marriage under the circumstances was unhappy. The husband complains that his wife was irritable; but he appears to have given her every reason to be irritable. On one occasion at Ranikhet in 1926, there was a quarrel between the husband and the wife in connexion with this woman. Mrs. Nugent says that her husband hit her and she fainted and was taken to the Orderly's room at the hospital. The husband in the course of his profession was transferred from place to place, and eventually in 1930 he was back again at Ranikhet. Mrs. Nugent had suspicions of his relationship with another woman at this time, and Dr. Nugent got angry and told his wife to leave the house. He gave her a letter at this time, which is in these terms:

I have told Mrs. Nugent to leave my house, and I am willing to support her and the two children with Rs. 150 monthly, and from this day the children will be hers for ever and she is leaving my house being three months pregnant by me (her husband). P.S. And if my wile does not look after my children, I shall shoot her like a dog. Mrs. Nugent's character is good morally. I cannot prove that she has misbehaved herself in any way during the five years that she has been married to me.

3. This document is important in that the husband himself confesses that upto this date that is, November 1930, he had no complaint to make about his wife's

conduct. Further it shows that the husband wished his wife to leave him. Mrs. Nugent subsequently came back to her husband. Dr. Nugent, however had made it perfectly clear that he no longer loved his wife and that he had no use for her. About the same time at Ranikhet the husband and wife had quarrelled at a dance. On reaching home the husband took a revolver from a drawer and threatened to shoot his wife. Dr. Nagent admits this. The revolve? was handed over to the Military Police. In 1931, Mrs. Nugent met a man called Harris. She admits candidly that she want away for three days with Harris and committed adultery with him. The husband condoned this adultery and they lived together again afterwards. In 1933 the husband was transferred to Jhansi. He did not wish his wife to come there. He had met there another young woman. He admits that he fell in love with her, and indeed asked her to marry him, the girl knowing that Dr. Nugent was a married man. Mrs. Nugent wrote and asked her husband to arrange for her to come to Jhansi. Dr. Nugent did not wish his wife to come to Jhansi. Mrs. Nugent however went there, and arranged for married quarters, but; the husband refused to sleep with her and on Inquiry confessed that he had fallen in love with another woman. In July 1933, the husband told his wife to leave him. At this time he wrote what have been termed 'four chits.' The first one says: 'My wife has done me no wrong and I am forcing her to leave me.' Second : 'I am quite agreeable to put my wife out of my life altogether and I do not want to see her again.' Third : 'I have no more love or care for my wife.' Fourth : 'I love Miss Phyllis Lamont and I am unhappy because any wife is living with me. I was asked by my wife to give this to her in writing because the above is what I said to her.' Mrs. Nugent seeing the position was hopeless left her husband and went to her mother. She tried however again to go back to her husband. Between this date and February 1934, she went on two occasions to try and get him to come back to her. On those occasions she discovered in her husband's quarter bundles of letters from Miss Lamont to him. The husband denies adultery with Miss Lamont; but the terms of the letters, which are many and voluminous, make it clear that an adulterous connexion had been formed with this girl. The husband admitted that he was in love with her. He further admitted that he had gone to Rawalpindi from Jhansi with her, being three nights in the train. There was ample opportunity on this occasion for adultery. The wife has also produced a letter written to Dr. Nugent by his own mother at this time.

The mother in terms accuses him of adultery with Miss Lamont and says that it is idle for him to deny it as she knows too well the nature of her son and his relationship with women in the past.

4. There can be no doubt that Dr. Nugent has been guilty of adultery with more than one woman. There can further be no doubt that at this date, that is, August and September 1933, he had behaved abominably to his wife and that he wished their relationship to cease and his wife to live apart from him. He said in the box on being questioned as to his proposal of marriage to Miss Lamont that he hoped that his wife might commit adultery with a man that he knew and that he might then obtain a divorce so that he could marry Miss Lamont. In October 1933, the wife met the co-respondent Doutre. She admits that she committed adultery with him sometime towards the end of October. From a letter exhibited by the husband, it is clear that this adultery took place before the 25th October. I am satisfied however that it did not take place before the 10th or 11th of that month. The evidence in this case, including the letters which have been produced, satisfied me beyond doubt that Dr. Nugent has had adulterous-connexion with at least two women. The first adultery at Ranikhet in 1926, having been condoned, I cannot take it into consideration. The adultery however at Jhansi in 1933, entitles the wife to a decree nisi if it had not been for her admitted adultery with Doutre in October of that year. Cruelty also has been proved. The revolver incident and the husband's general conduct towards his wife is enough.

5. I am asked to exercise my discretion in the matter of the wife's petition and to excuse her adultery and grant a decree. There is nothing in the Divorce Act, as regards the exercise of the discretion of the Court, and in this matter I must follow the practice in the English Courts. There is no doubt that the discretion of the Court in these matters ought to be used with care. The main consideration is the interest of the community at large. There is one ground however on which the discretion of the Court is invariably exercised, and that is where the wilful neglect or, misconduct of the respondent husband 'caused or conduced to his wife's adultery. Further there must be complete candour and disclosure on the part of the petitioner who wishes the Court to exercise, its discretion in his or her favour. I am satisfied that Mrs. Nugent in this case had made a complete disclosure. Her

counsel opened the case by admitting two adulterous connexions on her part. The first adultery committed by her having been condoned by the husband, I am entitled to exercise my discretion on this ground as regards this adultery. In any event, the adultery with Harris was undoubtedly brought on by the habits and conduct of Dr. Nugent. In my opinion, I must also use my discretion in favour of Mrs. Nugent with regard to the adultery with Doutre. On the documents and the evidence, the husband had determined to get rid of his wife. He wished to marry Miss Lamont. He hoped that the wife would commit adultery in order to enable him to marry Miss Lamont. The wife knew of his connexion with Miss Lamont from the letters which She had discovered and her husband's own confession. She did not commit adultery with Doutre until it was dear that her relations with her husband were at an end. Dr. Nugent's continuous attentions to other women and his general behaviour undoubtedly conduced to the adultery by the wife with Doutre. It has been argued on the part of the husband that Mrs. Nugent was no better than her husband. On the other hand, there is no doubt that evil communications corrupt good manners. Mrs. Nugent in spite of the behaviour of her husband had for five years from 1925 to 1930, maintained her good character. She had seen the way her husband behaved with other woman, she found that he had eventually completely abandoned her and that he wished to have his freedom, and it is not a matter for wonder that eventually she was tempted by another man. On these grounds therefore I exercise the discretion which is vested in me, and grant the wife a decree nisi with costs. She will also have the custody of the three children.

6. On the question of costs it has been argued by counsel for the husband that the co-respondent to the husband's petition, Doutre should hear some portion of the costs. Doutre is not represented, but was present in Court. He says that he has already paid Rs. 150 to counsel for Mrs. Nugent. An order pendente lite has already been made for the husband to pay to the wife Rs. 350 for her costs. It appears to me that Doutre should not go scotfree. I think justice will be met by an order that the husband should pay Rs. 250 and Doutre should pay Rs. 100 for the wife's costs. Rs. 250 has been paid by the husband to counsel for his wife.

7. I think the wife also is entitled to alimony, under all the circumstances of this case. The husband's salary is Rs. 340 per month and he has free quarters. In the

document quoted above he was willing to pay his wife Rs. 150 a month in 1930. The education of the children costs Rs. 65 a month. The husband must be responsible for the Rs. 65 a month and pay it direct to the proprietor of the school where the children are. He will further pay the sum of Rs. 85 per month to his wife as alimony. The husband's petition is dismissed. The order therefore is that there will be a decree nisi with costs in favour of the wife.

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