

Mrs. Alice King Vs. Mr. King

Mrs. Alice King Vs. Mr. King

SooperKanoon Citation : sooperkanoon.com/484411

Court : Allahabad

Decided On : Jul-23-1924

Reported in : 83Ind.Cas.167

Judge : Cecil Henry Walsh, A.C.J. and ;Dalal, J.

Appellant : Mrs. Alice King

Respondent : Mr. King

Judgement :

1. This is an appeal by a petitioner in divorce. It is, in fact, a very unusual case, we do not remember any case of the same kind coming up to this Court. The wife is the petitioner, and she originally alleged adultery and cruelty of various kinds and also desertion, casting her net very wide in the petition. The learned Judge, in a careful trial, has come to the conclusion that the acts of adultery mainly relied upon before him are not established, and we are bound to say that we agree. However, suspicious they may appear to the wife herself knowing the character of her, husband, they fall short of proof which can be accepted in a Court of law as establishing a serious matrimonial offence or as establishing the offence in this particular case even if It were assumed that the man was a man of loose character. He has apparently not found the cruelty to be established. He seems to think the petitioner was guilty of exaggeration, and there was undoubtedly an absence of independent evidence of cruelty. But he did grant her a decree for judicial separation with an allowance of Rs. 100 for alimony on the ground of

desertion. The wife is very poor, and probably has never been able to pre-prepare her case, and to obtain such evidence as might have been obtainable in the course of a careful preparation in order to establish her allegations, a matter about which one can feel no surprise. Like most people in her position she has had a struggle to get on depending very largely on the friendship and help of a lady, Mrs. Freeman with whom she lives. She now comes to this Court (and this is the unusual feature of the case) asking us to hold, that her case is made out and the learned Judge was wrong in refusing to grant a decree for dissolution of marriage on the ground of adultery.

2. We took the unusual course of asking the woman to come into the box because in the learned Judge's judgment he refers to a statement by her of an admission by the husband of adultery with Mrs. Appleton, adultery which she herself had alleged in her petition, with a circumstantial story of the years in which it had taken place, and the Statement that two children were born from the connection. It struck us as curious that the Judge should have mentioned this admission, which is certainly evidence against the man who makes it, and have paid no further attention to it in the course of his judgment. We, therefore, allowed the petitioner to be sworn for the purpose of examining her more in detail on the subject of this admission. The result of her evidence is that the case takes an entirely different complexion from that which it wore when the learned Judge was dealing with it. She gave abundant evidence of cruelty in great detail, and no body who realises the temptations and difficulties in this country and specially in the hot climate, and knows that the man is neglecting his wife and running after other women, and is leading a somewhat rough outdoor life, and is also inclined to drink, can be surprised at the evidence, she has given of his rough treatment of her in the house. As a rule a man of that type is either a domesticated decent husband or he is a rough passionate animal, who having tired of his wife specially if she is pregnant has nothing good to say either to or of her and is apt to treat her with cruelty and violence, specially when in drink, in order to keep her quiet. If he is prepared to be unfaithful he;probably thinks it best to frighten and to threaten her to keep her quiet. We think it very probable that this man, who is a very big man, and unfaithful, and according to the woman's evidence in the Court below given to drink, knocked her about whenever he felt disposed to do so. The story she has

told us to-day we accept. She appears to be an honest woman. She says that he had left her for a period of 1 year and 10 months and returned alone to the Colah Coal Fields, where ' these two had previously lived and where they both had known a Mrs. Appleton, who was not believed to be a 'woman of upright character. He kept this woman in his house and apparently having had enough of Mrs. Appleton wrote to his wife, who was then living with her mother in Agra, asking her to take him back, just the: sort of thing a selfish brute would do when he got tired of Mrs. Appleton. It appears that at this stage Mrs. Appleton was expecting a child from Mrs. King's husband. He came back to Agra and told Mrs. King, and we have no reason to doubt the truth of this statement, that Mrs. Appleton had lived with him and, two children had been born, one of whom had died and the other was born a month or two after he had returned to Agra of which no secret was 'made in a letter which Mrs. King had received in Agra. She forgave him and he as expected, behaved well for a time, the result of which was that she became pregnant. He seems to have broken out again and done just what a. man of the character which she gives him would be likely to do when his wife was pregnant, ran' after other women and treated her with gross brutality. Threats of force used towards a woman in that condition are sufficient to constitute legal cruelty, and we have no doubt that what she said was true, that if she attempted to approach him for his fresh frivolities and neglect he became violent, threatened her and used the whip. We accept the evidence and find that he was guilty of cruelty after she took him; back and became pregnant by him in 1921. The effect of that at any rate according to some decisions, which we are entitled to follow, is to revive the. previous adultery, even if it was not revived by the levity of the respondent's conduct with women at Agra after he came back. We, therefore allow the appeal, find the husband guilty of adultery with Mrs. Appleton before 1921, that it was condoned by the wife, and revived by his subsequent cruelty before her confinement with the last child and we grant a decree nisi for dissolution of the marriage, give her the custody of the two children now living We maintain the order for alimony and costs made by the District Judge of Agra, and give the wife the costs of this appeal for what it may be worth to her though we are afraid it will not be much.

