

Daniel John Vs. Smt. Rajmaya

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Court : Madhya Pradesh

Decided On : Dec-11-1985

Reported in : AIR1986MP245

Judge : S.K. Seth, ;P.C. Pathak and ;S. Awasthy, JJ.

Acts : [Divorce Act, 1869](#) - Sections 10, 14 and 17

Appeal No. : M.C.C. No. 255 of 1985

Appellant : Daniel John

Respondent : Smt. Rajmaya

Judgement :

P.C. Pathak, J.

1. This is a reference made by the District Judge, Sagar for confirmation under Section 17 of [Divorce Act, 1869](#) (hereinafter referred to as the Act) of decree nisi passed by him under Section 14 of the Act, dissolving the marriage between the parties.

2. The petitioner/husband filed the petition under Section 10 of the Act for dissolution of marriage which took place on 7-5-1975, according to the custom prevalent amongst the Christians. After marriage both lived together in Naya Mohalla Ward of Sagar. As A result of wedlock, the respondent gave birth to male

child by name Manish, now aged about four years. The petitioner is employed in Armed Force and is also a Hockey Player. In connection with his duties, he remained out of Sagar. After successful completion of training, the petitioner was permitted to keep his family with him at the place of posting. The petitioner requested the respondent to accompany him, but the respondent declined. Meanwhile, the respondent was employed as a clerk in Irrigation Department of the State and started earning a salary of Rs. 400/- per month. In March 1978 both had decided to go to Kamti, but to his utter surprise, when he reached his house on 27-3-78, the petitioner found the respondent missing from his house. On enquiry, he learnt that she had returned back to her parents' house at Gopal Ganj, Sagar along with all her ornaments. All this she did without his consent. He tried to persuade her by visiting her parents' house, but she declined to give company and, therefore, the petitioner had to go all alone.

3. The respondent filed a petition vide Civil Suit No. 18-A of 1978 for judicial separation in the Court of Distt. Judge, Sagar but the same was dismissed by Order dt. 14-5-80. The respondent filed another application for judicial separation under Section 22 of the Act vide Civil Suit No. 20-A of 1980 against the petitioner.

4. In order to attend the hearing of the said suit in Sagar Court on 8-1-81, the petitioner came to Sagar on 7-1-81. At about 10.00 P. M., the petitioner went to meet the respondent in her parents' house. The petitioner found that the doors of the house were chained from inside. However, from the window light in the room was visible. When there was no response to the repeated calls given at the door, the petitioner peeped in through the chink of the shutters and to his utter surprise he saw the respondent in a compromising position with a stranger young boy. Upon this, the petitioner shouted more loudly and gave repeated thuds to the door, in response to which the respondent at last opened the door. He then noticed the said young-boy running away from the back-door of the said house. He chased him unsuccessfully. Despite persistent enquiries, the respondent did not disclose the name of that boy. The petitioner therefore claimed exemption to implead the adulterer as a corespondent. Thus, the petitioner prayed dissolution of his marriage on the ground that his wife, the respondent has been guilty of adultery.

5. The respondent filed her written statement denying all the allegations and submitted that the ground was imaginary with a mala fide intention to lower her reputation in the society as also in the office where she was employed. She also expressed her intention to file a complaint under Section 500, I.P.C. for defamation.

6. The petitioner also made an application under Section 11 of the Act for exemption to implead the adulterer as co-respondent. The allegations that the respondent has been guilty of adultery made in the petition were reiterated in this application as well. The respondent through her reply submitted that on account of the false and baseless allegations against her character, she has suffered humiliation and loss of reputation in the society. Therefore, she was no more interested to live with the petitioner. After filing this reply, the respondent absented, with the result the case proceeded ex parte against her.

7. On pleadings of the parties, issues were framed. The petitioner examined himself and one Abdul Sattar to prove his case. Accepting the evidence of the petitioner and his witness, the learned District Judge held that the respondent has been guilty of adultery that there was no condonation by the petitioner and that the petition was presented without any collusion with the respondent. In view of these findings the learned Distt. Judge passed decree nisi dissolving the marriage and referred the case for confirmation to this Court.

8. Notices were issued by this Court to both the parties. The petitioner alone appeared. The respondent, despite service of notice on her on 16-6-85 did not appear in this Court. Learned counsel for the petitioner submitted that there was sufficient proof on record to show that the respondent was guilty of adultery and that the petitioner never condoned the same. The petition was prosecuted without there being any collusion and as such the decree nisi deserved to be confirmed.

9. In order to prove the charge of adultery, the petitioner examined himself and one Abdul Sattar. The petitioner stated that he came to Sagar on 7-1-81 to attend the hearing in Civil Suit No. 20-A of 1980 filed by the respondent in the Court of District Judge, Sagar. At about 10 in the night, he went to the respondent's parents' house to meet her. He found that the doors were closed from inside.

Despite repeated knocks, there was no response from inside. The petitioner, therefore, peeped inside the house where the light was on and to his utter surprise, he saw that the respondent was lying stark naked and one young-boy was committing sexual intercourse with her. The petitioner started shouting more loudly to coerce her to open the door. At last, the respondent did open the door and the adulterer boy tried to make good his escape through the backdoor. The petitioner chased him but could not succeed. He returned back to the respondent to enquire from her the name and whereabouts of that boy. The respondent did not disclose the name of that boy at all. Frustrated by her conduct and indifference, the petitioner returned back.

10. Abdul Sattar (P. W. 2) runs a tailoring shop in the neighbourhood of the respondent's parents' house in Gopal Ganj. On 7-1-81 at about 10.00 P. M. when he was about to close his shop, he saw a young-boy running away from the side of the respondent's house and going towards the police station. After some time, the petitioner also came running from that side and enquired of him if any young-boy had passed from that side. This witness confirmed that one young-boy passed from in front of his shop, but he could not recognise him, since he had seen him only running. The witness further stated that young-boys were frequently seen visiting the respondent in that house.

11. In *Earnest John White v. Mrs. Kathleen Olive White (Nee Neade)*, AIR 1958 SC 441 it was observed that terms of Section 14 make it plain that when the Court is to be satisfied on the evidence in respect of matrimonial offences, the guilt must be proved beyond reasonable doubt and it is on that principle that the Courts in India would act and the reason for adopting this standard of proof is the grave consequence, which follows a finding of guilt in matrimonial causes. In a suit based on a matrimonial offence, it is not necessary and it is indeed rarely possible to prove the issue by any direct evidence, for in very few cases can such proof be obtainable. In another case *Samuel v. Roshni*, AIR 1960 Madh Pra 142, it was observed :

'In India, it is not usual for a young man and woman to live together in a house when they are neither related nor married to each other. Society being very much

more conservative here than elsewhere, it would not be unreasonable to infer adultery from the facts : (1) that only the respondent and the co-respondent stayed in one house together for a long time; (2) that the respondent had refused to go back to her husband; (3) that the respondent and the corespondent had not the courage to come into the witness box to deny the charge of adultery, and (4) that they had ample opportunity to commit adultery by being alone in the house, and their stay together cannot be accounted for on any other reasonable innocent hypothesis.'

12. 'The petitioner, stated that he saw through the chink in the window that oneboy was committing sexual intercourse with the respondent. The door was closed from inside and was initially not opened and the respondent opened it only after the petitioner made repeated efforts to get it opened. The petitioner saw the boy running away from the back-door of the house. He even chased him up to some distance, but he failed to catch hold of him. The fact that the petitioner chased the adulterer is corroborated by Abdul Sattar, who stated that he had seen one young-boy running away from in front of his shop, although he could not recognise him. On the evidence of these two witnesses, we are satisfied that the respondent consented to the commission of adultery on her by a stranger young-boy on the night of 7-1-81. The other circumstance which point to her guilty mind are her disinclination to open the door in response to the first call given by the petitioner, her refusal to live in the petitioner's house and instead shifting to live all alone in her parental house at Gopal Ganj Sagar and her refusal to accompany the petitioner earlier to the place of his posting. Above all the respondent could not gather courage to enter the witness box to deny the allegations.

13. In *B. Raja Rao v. Yesu Manu*, AIR 1967 Andh Pra 276 (FB) the petition for dissolution of marriage was filed by the husband on the ground of wife's adultery. After filing written statement denying allegations of adultery, the wife remained ex parte. The husband's evidence was supported by the statement of disinterested witness and one inmate of the house. There was no evidence in contradiction let by the opposite party. No collusion also between the parties was inferable. The Court held that the evidence was sufficient to grant a decree of dissolution. Accordingly decree nisi was confirmed.

14. The only other aspect, which calls for consideration, is whether there has been any collusion between the parties. The petitioner denied this on oath. Earlier he made an application under Section 11 of the Act for exemption to implead the adulterer. In reply to that, as also to the main petition, the respondent submitted that the allegations were absolutely false and baseless. She also notified that she would file a complaint under Section 500, Indian Penal Code against the petitioner. Frustrated by false and baseless allegations insinuating her character and questioning her fidelity, she declared that she was not interested any more, to live with the petitioner. If the allegations, are untrue, they do constitute legal cruelty entitling the wife to file a petition for judicial separation or to oppose a petition for restitution of conjugal rights filed by the husband. Her failure to contest the petition for dissolution, or enter the witness box in our opinion, does not give rise to an inference of collusion with the petitioner. It is also true that earlier the respondent herself had filed a petition for judicial separation, which for want of adequate proof, was dismissed in 1978. A perusal of the relevant provisions in the Act would show that it is more onerous for a wife to seek dissolution of marriage or judicial separation than the husband. She is required to satisfy many other requirements before she can successfully obtain a decree against the husband. That also cannot give rise to an inference that the respondent was colluding. No woman in this country ordinarily invites a finding of guilt against her in relation to matrimonial offence, like adultery by remaining ex parte. We are satisfied that there has been no collusion between the parties for the present petition.

15. We are satisfied that decree nisi dissolving the marriage between the parties was rightly granted. No cause has been shown by the respondent against the same, despite service of the notice. Even otherwise, we are fully satisfied that it is a fit case in which decree for dissolution of marriage must be passed.

16. We accordingly confirm the decree nisi dissolving the marriage between the parties. There shall be no order as to costs.