

Pradip Kumar Sahu Vs. Sobharani Samantaray

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Court : Orissa

Decided On : Aug-30-1983

Reported in : AIR1984Ori29; 56(1983)CLT363

Judge : D. Pathak, C.J., ;P.K. Mohanti and ;J.K. Mohanty, JJ.

Acts : [Divorce Act, 1869](#) - Sections 10, 22 and 23

Appeal No. : Matrimonial Reference No. 1 of 1982

Appellant : Pradip Kumar Sahu

Respondent : Sobharani Samantaray

Advocate for Pet/Ap. : L. Mohapatra and ;J.R. Behera, Advs.

Judgement :

Pathak, C.J.

1. This is a reference made by the learned District Judge, Sambalpur under Section 17 of the Indian [Divorce Act, 1869](#) (hereinafter called the 'Act') arising out of a petition purported to have been made under Section 10 of the Act.
2. The learned District Judge, on a perusal of the solitary evidence of the petitioner, has passed a decree nisi dissolving the marriage between the parties and hence this reference.

3. On a perusal of the petition filed by the husband, it is amply clear that the case is not covered by the ground available to the husband under Section 10 of the Act. According to the provision of Section 10, the only ground on which the husband can apply for dissolution of the marriage is adultery committed by the wife. On a bare reading of the petition, we find that this is a case of cruelty which is not a ground available to the husband under Section 10 of the Act for making an application for dissolution of marriage.

4. The learned District Judge has overlooked the provision of Section 10 of the Act where the only ground available to the husband for filing such a petition for dissolution of marriage is adultery. Neither from the petition nor from the evidence adduced by the petitioner, there is an iota of material to show adultery on the part of the wife. What has been stated in the petition as well as in the evidence is that the parties were married on 23-4-1974 according to the rituals prescribed for the marriage tender the Christian religion. Ever since the marriage, both of them lived together as man and wife in the house of the petitioner and from the said wedlock one son was born to them on 13-2-1975. Some time after the birth of the son, the opposite party who was serving in the V. S- S. Medical College Hospital, Burla expressed her desire to reside in the Nursing Hostel at Burla on false pretext of inconvenience of communication and harassment in journey. She was persuaded not to do so by all concerned, but to no effect. She ultimately left for Burla to reside in the Nursing Hostel. No male person was allowed to enter the hostel. So the petitioner used to call the opposite party through the Chowkidar remaining at the gate whenever he went to the Nursing Hostel to meet the opposite party on each occasion. Various attempts were made by the petitioner to bring her to his home without any avail. On one occasion on 15-3-1978, the petitioner went to Burla from Therubali to persuade the opposite party to come to Therubali. In the bus stand, he met his brother-in-law ' Prasant Kumar Samant-ray who gave him a threat in the public place that the opposite party would divorce him if he insisted on her to come and live with him. In Sept. 1976 the petitioner had been to see her. It was then evening. The opposite party was on duty. At that time she told him that he should come to her room after her dirty hour was over. Her duty hour was up to 9 p.m. So the petitioner went to her at about 9.30 p.m. and wanted to stay with her for the night, but the opposite party did not allow him to stay there and asked him

to go away. The petitioner expressed that since it was night he should sleep in the verandah, but that was also not agreeable to the opposite party. It is stated by the petitioner that as a result of the behaviour shown by the opposite party, he was mentally tortured and his health had run down. The petitioner tried his level best to make reconciliation, but without effect. On a perusal of the petition as well as the deposition of the petitioner, we have no hesitation to hold that the petitioner has proved a case of cruelty and desertion committed by the opposite party.

5. The learned District Judge has recorded a finding that the opposite party is guilty of desertion and cruelty and accordingly passed the decree nisi dissolving the marriage between the parties. As we have earlier adverted, the only ground available to the husband, the petitioner, is adultery, and desertion and cruelty not being the grounds, the learned District Judge was not justified in passing a decree nisi dissolving the marriage between the parties.

6. Be that as it may, this is, however, a case which would come under Sections 22 and 23 of the Act. According to Sections 22 and 23, cruelty and desertion without reasonable excuse for two years or upwards are ground for judicial separation. On a perusal of the petition and after scanning the evidence adduced by the petitioner, we find that this is a clear case where the opposite party should be held to be guilty of desertion and cruelty meted out to the petitioner.

7. In the result, we are not in a position to confirm the decree of dissolution passed by the learned District Judge, However, we pass a decree on the facts as noticed above for judicial separation,

P.K. Mohanti, J.

I agree.

J.K. Mohanty, J.

I agree.