

A. Thomas Vs. Koshy Thomas

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Court : Delhi

Decided On : Apr-24-1997

Reported in : 1998RLR36

Judge : Mahender Narain,; C.M. Nayar and; S.K. Mahajan, JJ.

Acts : Indian Divorce Act - Sections 10

Appeal No. : Matrimonial Case No. 5 of 1995

Appellant : A. Thomas

Respondent : Koshy Thomas

Judgement :

Mahender Narain, J.

(1) The petitioner, Ms. Annu J. Thomas has filed a petition under the Indian Divorce Act against the respondent Mr. Thomas Koshy. Originally the petition was filed u/s 22 of the Indian Divorce Act and later the petition was amended and plea u/s 10 of the Act was also added thereto. Ex-parte evidence of (he petitioner was recorded by the learned Additional District Judge.

(2) The petitioner deposed that the marriage between the parties was solemnised on 25.9.89 at Gregarios Orthodox Syrian Church, Chembur, Bombay. That the parties had gone to Goa for their honeymoon. According to the petitioner wife for

the first one or two days there was no problem but abnormal behavior of the respondent started to manifest itself thereafter.

(3) The petitioner stated that the respondent used to take drugs and alcohol. As a result, he used to have swings of mood and used to force the petitioner for unnatural S. intercourse which the petitioner found disgusting. Such behavior had made it impossible for the petitioner to live with the respondent. The petitioner further deposed that the unnatural S. behavior of the respondent was unbearable when he was drunk. That respondent continued to force the petitioner for unnatural S. intercourse. Specifically it was alleged that the respondent used to demand non-coital carnal copulation in the form of Fellatio, and the petitioner was not willing to do it. In fact, she found this to be intolerably beastly behaviour. The petitioner also deposed that she refused to give consent for sodomy, that the respondent used to get furious after refusal and used to abuse the petitioner. That the respondent used to resort to physical cruelty by dragging the petitioner by hair and used to beat her up after getting drunk and taking drugs. She asserted that 'He actually committed the said unnatural (acts) on me every time.' It was also deposed to by the petitioner that all dowry articles were taken away by the respondent from her.

(4) In the aforesaid circumstances it was not possible for her to live with the respondent in Bombay and she returned to Delhi. Although an attempt was made thereafter in December, 1989 and again April 1990 by the parties to live together the petitioner could not live with the respondent as his behavior and unnatural desires continued unabated.

(5) The respondent has not cross-examined the petitioner wife. Her statement has gone un rebutted and we have to therefore believe it. In the aforesaid circumstances, we are satisfied that the petitioner is entitled to dissolution of her marriage with the respondent for the reason of the respondent being guilty of beastly behavior with the petitioner against her consent.

(6) We also note that the petitioner in her petition has stated that she was quite disgusted with the conduct of the respondent. We find that the respondent's sexual conduct was stated to be depraved is beastly conduct within the meaning of the

word (bestiality) as defined in Collin's English Dictionary. For the aforesaid reasons we confirm the order of the Additional District Judge and dissolve the marriage of the petitioner and respondent.

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