

Abdurahiman Vs. Nassera

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Court : Kerala

Decided On : Nov-22-2000

Reported in : I(2001)DMC378

Judge : Mr. K.S. Radhakrishnan and; Mr. G. Sasidharan, JJ.

Acts : [Dissolution of Muslim Marriages Act, 1939](#) - Sections 2; [Indian Penal Code \(IPC\), 1860](#) - Sections 498(A); Muslim Marriage Act, 1939 - Sections 4

Appeal No. : M.F.A. 914 of 2000

Appellant : Abdurahiman

Respondent : Nassera

Advocate for Def. : P.K. Muhammed, Adv.

Advocate for Pet/Ap. : T.M. Abdul Latiff, Adv.

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. This appeal is preferred against the order in O.P. No. 297 of 1999. That was a petition filed by the wife under S. 2 of the [Dissolution of Muslim Marriages Act, 1939](#), for dissolution of the marriage with the appellant-husband. We may narrate

the facts as we get in the O.P.

2. The marriage between the petitioner and respondent was solemnised on 15.5.1997 as per the custom and law prevalent in the Muslim community. After the marriage petitioner was residing in the house of the respondent for about 2 months. According to the wife, her life during the said time was miserable. On the next day of the marriage, the respondent went for shopping with a lady who came from Bombay. He continued to live with that lady in various places. He also treated the petitioner with cruelty. He used to manhandle her after consuming liquor. At the time of marriage petitioner was given gold ornaments weighing about 100 sovereigns and an amount of Rs. 1 lakh. Respondent demanded an amount of Rs.1 1/2 lakhs towards dowry. Since she could not give the said amount, she was manhandled. After two months of their marriage, respondent went abroad. After one year four months he came back and stayed at Trivandrum for 8 days, and from there he went to Bombay. Petitioner enquired about the reason for not coming to her house. She came to know that he got some illegitimate affair with a lady at Trivandrum and that he went there to stay with her. Without coming to petitioner's house, respondent went abroad and later he come back again after one month. There was some dispute between the petitioner and the respondent with regard to his relationship with other ladies. After mediators' efforts, petitioner went to the house of the respondent and she was again illtreated demanding dowry. On 25.2.1999, the father and mother of the respondent again illtreated the petitioner, and demanded the amount of Rs. 1.5 lakhs. Respondent did not maintain the petitioner and consequently petitioner had to go back to her house. Parents of the respondents insisted that unless the amount is paid, she will not be taken back to the house of the respondent.

3. Petitioner, therefore, preferred this petition under S. 2 of the [Dissolution of Muslim Marriages Act, 1939](#), since the respondent failed to maintain her for a period of two years.

4. Family Court issued notice to the respondent. Respondent did not appear. Notice was then served by affixture. Respondent's father appeared before the Court and submitted that he was ready to take back the petitioner with him. -

However, respondent did not appear. Consequently the court declared him ex-parte. Petitioner examined herself as PW. 1. She deposed in accordance with the allegations raised in the petition. She reiterated that she was not being maintained by the respondent for more than 2 years and was treated with cruelty. For the bodily injury caused to the petitioner a case was registered against the respondent, his father and mother under S. 498(A) of the IPC and the same is pending consideration.

5. The Court below considering the evidence adduced by the petitioner, allowed the petition, and ordered dissolution of marriage. Aggrieved by the same this appeal has been preferred. Counsel for the appellant-husband submitted that husband could not appear before the Family Court and file the written statement, due to reasons beyond his control, since he was away from India. According to him, court below ought to have given an opportunity to contest the case. Appellant wanted to contest the case by producing a power of attorney, but the court below refused to accept the same. Further it is stated that petitioner has not made out any ground for grant of dissolution of marriage under the Act.

6. Counsel for the respondent-wife submitted that petition was perfectly maintainable since the appellant failed to maintain her for about 2 years. S. 2 of the [Dissolution of Muslim Marriages Act, 1939](#) entitles a wife to maintain a petition for dissolution of marriage.

7. In order to resolve the controversy, we have to examine the scope of S. 2 of the Act and whether respondent-wife has made out any ground for dissolution of marriage. We may extract the said provision for easy reference:

2. Grounds for decree for dissolution of marriage:--A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely-

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years.

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Petition was moved by the wife on the ground that husband neglected or has failed to provide for her maintenance for a period of two years. It has been stated in the petition as well as in the deposition of the petitioner, that her husband failed to maintain her for a period of two years.

8. The [Dissolution of Muslim Marriages Act, 1939](#) was enacted to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie. In the Statement of Objects and Reasons, it is stated as follows:

'There is no proviso in the Hanafi Code of Muslim Law enabling a marriage Muslim woman to obtain a decree from the Court dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her unprovided for and under certain other circumstances. The absence of such a provision has enabled unseemable misery to innumerable Muslim women in British India. The Hanafi Jurists however have clearly laid down that in cases in which the application of Hanafi Law causes hardship, it is permissible to apply the provisions of the 'Maliki, Shafi'i or Hambali Law'. Acting on this principle, the Ulemas have issued fatwas to the effect that in cases enumerated in clause 3, Part A of this Bill (now see S. 2 of the Act) a married Muslim woman may obtain a decree dissolving her marriage. A lucid exposition of this principle can be found in the book called 'Heelatan Najeza' published by Maula Ashraf Ali Sahib who has made an exhaustive study of the provisions of Maliki Law which under the circumstances prevailing in India may be applied to such cases. This has been approved by a large number of Ulemas who have put their seals of approval on the book.

As the Courts are sure to hesitate to apply the Maliki Law to the case of a Muslim woman, legislation recognizing and enforcing the abovementioned principle is

called for in order to relieve the sufferings of countless Muslim women.

One more point remains in connection with the dissolution of marriages. It is this. The Courts in British India have held in a number of cases that the apostasy of a married Muslim woman ipso facto dissolves her marriage. This view has been repeatedly challenged at the bar, but the Courts continue to stick to precedents created by rulings based on an erroneous view of the Muslim Law. The Ulemas have issued Fatwas supporting non-dissolution of marriage by reason of wife's apostasy. The Muslim Community has again and again given expression to its supreme dissatisfaction with the view held by the Courts. Any number of articles have been appearing in the press demanding legislation to rectify the mistake committed by the courts; hence clause 5 (now see S. 4) is proposed to be incorporated in this Bill. Thus, by this bill the whole law relating to dissolution of marriage is brought at once place and consolidated in the hope that it would supply a very long felt want of the Muslim Community in India...'

The [Dissolution of Muslim Marriages Act, 1939](#) is considered to be one of the most important enactments, which recognises the rights of the Muslim women for dissolution of marriage in contra distinction with the rights of the Muslim husband to declare a talaq. Quran has expressly sanctioned the dissolution of a woman's marriage in case of necessity by ordaining 'if a woman be prejudiced by a marriage, let it be broken off: Quran: IV:34-35.

9. Regarding the object of the statutory provision dealing with the grounds of dissolution of marriage, the Allahabad High Court in *Mt. Sofia Begam v. Zaheer Hasan Rizvi*, AIR 1947 Allahabad 16 held that the object of the Act is to ameliorate the lot of Muslim wives and enlarge her rights for the matrimonial separation. Allahabad High Court again in *Kaloo v. Mt. Imaman*, AIR 1949 Allahabad 445, held that the provisions of the Dissolution of Muslim Marriages Act are complete and self-sufficient and cannot be subordinated to any rules of procedure prescribed by Muslim Law. This Court in *Moosa v. Fathima*, 1983 KLT 787 held that wife is entitled to decree for dissolution of marriage only if she is able to satisfy the court that husband has neglected or failed to provide for her maintenance without reasonable cause. In *Kunhayi Sahara v. Hamza*, 1985 KLT

35, a learned Single Judge of this Court dealing with S. 2(ii) of the Act, held that a casual visit by husband and even an offer then to present the wife some money and clothes do not amount to a provision for maintenance.

10. The above mentioned judicial decisions would indicate that wife has got a right for dissolution of marriage on the ground that the husband neglected her or failed to provide for her maintenance for a period of two years. We are of the view that if the husband wants the marriage relationship to continue, he should see that wife does not get a ground under clause (ii) of S. 2 to approach the Court for dissolution of marriage. The duty to provide maintenance to the wife is to keep the relationship in tact. In the instant case, it was specifically pleaded and proved that she was not being maintained by the appellant for more than 2 years, apart from other grounds of cruelty. Those allegations were not controverted by the husband. We notice at the time of filing the petition, petitioner was 20 years old and husband was 29 years. They have no children. Counsel for the wife categorically submitted that petitioner has no intention to reside with the husband and to be in the family way. Counsel apprehends that if further relationship is maintained, and a child is born to the respondent, that would again create further difficulties to her.

In view of the aforesaid circumstances, and in view of the recalcitrant attitude of the husband-appellant, we find no infirmity in the order of the Family Court, to be interfered with in this appeal. Consequently, we dismiss the appeal.