

Philip Vs. Susan Jacob

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Court : Kerala

Decided On : Feb-26-2001

Reported in : AIR2001Ker195; II(2001)DMC290

Judge : Mr. S. Sankarasubban and; Kum. A. Lekshmikutty, JJ.

Acts : [Divorce Act, 1869](#) - Sections 10; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : M.F.A. No. 1154 of 1998

Appellant : Philip

Respondent : Susan Jacob

Advocate for Def. : Prasad Mathew,; Beena John,; Kurian George Kannathanam

Advocate for Pet/Ap. : Denizen Komath, Adv.

Disposition : Appeal Dismissed

Judgement :

A. Lekshmikutty, J.

1. The petitioner in O.P. (Divorce) No. 29 of 1991 on the file of the Court of the District Judge, Pathanamthitta, filed this appeal against the order in the said O.P.

2. The petitioner, husband of the first respondent filed the petition under S. 10 of the Indian Divorce Act for dissolution of marriage. The petitioner married the first respondent on 23.2.1976 in accordance with the religious rites and ceremonies prevailing in the Christian community. After the marriage, they lived together as man and wife at the residence of the petitioner at Adoor till July 1977 when the first respondent left the matrimonial home and started residence at her house at Thiruvananthapuram. Eversince, they are living separately. The carnal copulation between the petitioner and the first respondent was only for one month and thereafter the petitioner became totally incapable of performing sexual intercourse with the first respondent.

3. The marriage between the petitioner and the first respondent was negotiated and settled by the 2nd respondent who is none other than the brother-in-law of the petitioner, along with Rev. Fr. C.G. Geevarghese. It was subsequently revealed that the 2nd respondent was having illicit connection with the first respondent and the first respondent was his concubine long prior to their marriage. The marriage was arranged by the second respondent only to perpetuate the illegal connection with the first respondent. After the marriage, the first respondent used to go to Thiruvananthapuram once in a fortnight against the will of the petitioner to facilitate and indulge in sexual intercourse with the 2nd respondent at Thiruvananthapuram. It was a pre-planned arrangement between the first respondent and 2nd respondent. Even now, the 2nd respondent is keeping the first respondent as his wife and she is leading an adulterous life. The petitioner had witnessed the illegal relation and committing adultery by the first respondent with the 2nd respondent on 3.2.1991 when he went to the house of the 2nd respondent to see his nephew Renji Chacko. While, the first respondent was residing with the petitioner at Adoor, within a short span of 16 months, she developed illegal connection with respondent 3 to 5 who are all natives of Adoor. The third respondent who is an immediate neighbour made unusual visit to the petitioner's residence while she was alone in the house. He used to intrude into the house of the appellant day and night in his absence and used to indulge in immoral activities. As the petitioner resisted this conduct of the first respondent, disharmony started in the house. Then the petitioner was put to deep sleep after administering soporific poisonous drugs mixing with milk and facilitated full freedom to indulge in adultery with the

respondents and others. Thus respondents 3 to 5 continued to be her adulterers till the first respondent left Adoor finally in July 1977. Even now respondents 2 to 5 and certain others visit the first respondent in her house at Thiruvananthapuram to indulge in sexual connections. Thus, she is living in adultery with respondents 2 to 5 and others. Due to the consumption of the soporific drugs, the petitioner became impotent and he became incapable of performing sexual act. Though there was no carnal copulation between the petitioner and the first respondent after one month of their marriage, she became pregnant. To the knowledge of the petitioner, she became pregnant through one of her adulterers and she delivered a child on 7.11.1977 at Medical College Hospital, Thiruvananthapuram.

4. It is further alleged that the first respondent was cruel to the petitioner while they were living together in the matrimonial home. The first respondent used to shower abusive languages towards the petitioner on all days. She used to destroy very valuable articles in the house and committed theft of money kept by the petitioner. The first respondent is an addict to liquor. She had deserted the petitioner ever since 1977. Therefore, the petitioner sought for a decree of divorce or in the alternative for a decree of judicial separation.

5. The first respondent filed objection denying the allegation levelled against her. It is contended by her that the petitioner deserted her after she was taken to her house on 15.9.1977 for delivery and he is keeping a mistress in his house. A child was born to them in their illegal cohabitation. The petitioner is leading an immoral life. There was a legal marriage between the petitioner and the first respondent and they lived together as man and wife in the matrimonial home at Adoor upto 15.9.1977. On 15.9.1977 she was taken to her family house at Thiruvananthapuram for delivery with the permission and consent of the petitioner. The allegation that the petitioner had sexual intercourse with the first respondent only for one month is false. The child born to them is not an illegitimate child. The allegation of adultery, cruelty and desertion are baseless. She had no illegal relation with respondents 2 to 5. The allegation that she is having illegal sexual intercourse with respondents 2 to 5 is false. The first respondent came to know of the 2nd respondent only after her marriage with the petitioner and she never visited the house of the 2nd respondent without the company of the petitioner. The

allegation that the petitioner witnessed the sexual relationship of the first respondent with the second respondent is false. The allegation that the second respondent was keeping the first respondent as his concubine even before her marriage is nothing but false. She never had any illegal intimacy with the respondents. The parents of the petitioner were also residing in the matrimonial home while they are living together. She never administered soporific poisonous drugs to the petitioner. The petitioner has deserted the first respondent after she had gone to her house on 15.9.1997. Since the petitioner did not maintain the first respondent and the child, she filed a petition under S. 125 Cr. P.C. In the said case, maintenance was awarded. The petitioner filed a petition for judicial separation which was dismissed. In the said petition, there was no allegation regarding the adultery on cruelty. She is a lovable wife and the allegation that she was cruel towards the petitioner is absolutely false. There is no bona fides in the petition.

6. Respondents 3 to 5 have filed separate objection raising similar contentions. It is further contended that the petitioner used to pick up quarrel with his father and on many occasions they interfered in the matter and persuaded his father to leave the house and take shelter to some other place. Accordingly, they shifted their residence. After leaving his wife and child the petitioner is keeping another lady and leading an immoral life with her from 1977 onwards and a child is also born to him in that relation.

7. On the above pleading, the lower court raised six issues. The evidence in this case consists of oral testimony of PWs. 1 to 4, CPWs. 1 to 4, Exts. A1 to A13 and B1 to B4. The lower court after appreciation of the evidence and pleadings, dismissed the petition. Aggrieved by the said order, this Miscellaneous First Appeal is filed by the petitioner alleging that the order passed by the lower Court is not sustainable and the lower court failed to appreciate the evidence in its correct perspective.

8. Heard both sides. The point for consideration is whether there is any reason to interfere with the order passed by the lower court. The petitioner filed the petition before the lower court for dissolution of the marriage between himself and the first

respondent on the ground of adultery, cruelty and desertion. Respondents 2 to 5 are the co-adulterers. According to the petitioner, the first respondent is leading the life of a prostitute. There is no dispute with regard to the legal marriage between the petitioner and the first respondent. The parties are Christians, governed by the Indian Divorce Act. It is admitted by both parties that after marriage, they lived together as man and wife in the house of the petitioner. But according to the petitioner he had carnal copulation with the first respondent only for one month and thereafter, he became incapable of performing sexual act. The petitioner was examined as PW.1. He gave evidence in accordance with the averments in the petition. According to PW.1, the first respondent left the matrimonial home on her own accord in July 1977, whereas the case of the first respondent is that she was taken for delivery on 15.9.1977 and ever since they were having sexual relationship. His specific contention is that the first respondent was having illegal relationship with the second respondent, his brother-in-law even prior to their marriage and he had witnessed them indulging sexual intercourse when he went to the house of the 2nd respondent at Thiruvananthapuram. According to PW1, the first respondent is living in adultery with respondents 2 to 5 and others. The second respondent was keeping the first respondent as his concubine and they were continuing their illegal relationship.

9. It is his further case that he became incapable of having sexual intercourse since the first respondent used to administer soporific poisonous drug to him by mixing with the milk given to him in the night. It was purposefully done to put him in deep sleep and for having sexual relationship with respondent 2 to 5 and other persons of the locality. To prove his sexual weakness, the petitioner cited and examined PWs.2 and 3. Both of them are doctors who treated PW-1. But nothing has been stated by them in respect of his incapacity to do sexual act. PW-2 is the Medical Officer in Public Health Centre, Enadimangalam. According to him, he treated the petitioner for diabetics. Ext. A11 is the certificate issued by him to the petitioner. It would only prove that the petitioner was being treated by him for diabetics. Even though he was cited to prove that if a person consumes poisonous drug, there would be chance for diabetics, the Doctor overruled the suggestion and stated that there is no possibility of a person becoming a diabetic person he consumes poison. But according to him, if a person takes steroids in huge

quantity, there is possibility of him becoming a diabetic patient. His evidence further shows that when the petitioner came to him, he complained that he was having sexual weakness, but he did not test the sexual capacity of the petitioner and he advised him to consult a neuro surgeon. Nothing has been stated by PW-2 that the petitioner is incapable of doing sexual act due to the consumption of poisonous drugs.

10. PW-3, Doctor Velayudhan of Giji Hospital, Thiruvananthapuram is another doctor who treated the petitioner. Ext. A10 card was issued by him. As per this witness, the petitioner complained that he was having sexual weakness and shortening of a finger in his left leg. According to PW-3, if a person takes sleeping pills, there will be decrease in memory power and sexual power. He further stated that if a person takes sedative continuously, that will affect his brain. But he also did not test the sexual capacity of the petitioner. So the evidence of PWs. 2 and 3 would not help the petitioner to prove that he was weakness in performing sexual act due to the consumption of poisonous drugs.

11. The evidence of PW-4 would only show that he took initiative along with the second respondent for negotiating the marriage between the petitioner and the first respondent. But he has stated that he did not take any special interest in arranging the marriage. PW-4 was a Priest. During cross-examination he has stated that the petitioner is keeping another woman as his wife and they are living in the same house.

12. The counter petitioner adduced evidence to show that the allegations levelled against her are absolutely false. She has no illegal relation with respondents 2 to 5 or any other person. According to her, she had acquaintance with the second respondent only after her marriage with the petitioner and she had never gone to the house of the 2nd respondent without the company of the petitioner. The evidence shows that the first respondent is a native of Thiruvananthapuram. As per her evidence, after the birth of the child in November 1977 he maintained the first respondent and the son till December 1977. Thereafter, he neglected to maintain them. So she filed M.C. No.14 of 1980 before the Chief Judicial Magistrate's Court, Kollam under S. 125 of the Cr.P.C. Ext. B1 is the copy of the

order of this Court in Crl.R.P.321 of 1980 and Ext. B2 is the copy of the order in M.C. No. 14 of 1980 of the C.J.M. Court. She was working in Sunday School under the management of Marthoma Syrian Church in Thiruvananthapuram.

13. Apart from the interested testimony of the petitioner, there is no other reliable evidence to substantiate the contention of adultery. But he had no succeeded in proving the same. The chastity of the wife is questioned by the husband. The evidence reveals that both of them are educated. It is very hard to believe that an educated employed woman is living in adultery with so many persons. It has come out in evidence that the parents of the petitioner were residing with the petitioner. If actually the respondents were the usual visitors of the house in his absence, naturally the father and mother of the petitioner would have been witnessed the same. They are the most competent persons to swear about the incident. But they were not cited and examined. The neighbours were also not examined. Under S. 10 of the Indian Divorce Act, any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since solemnization thereof, been guilty of adultery. Even though a wild allegation is raised by the petitioner against his wife, it was not proved. In the absence of any reliable evidence, no decree for divorce can be passed.

14. Another ground alleged in the petition is cruelty and desertion. As stated above, a divorce on the ground of cruelty and desertion is not available to the husband-petitioner under S. 10 of the Indian Divorce Act. So far as Christian husband is concerned, it is impermissible to dissolve the marriage by a decree of divorce on the ground of cruelty and desertion.

15. It is submitted by the learned counsel that if the court feels that no decree for divorce could be passed, then a decree for judicial separation may be passed. The third respondent was examined as CPW-2 and the 5th respondent was examined as CPW-3. CPW-4 is the additional 7th respondent. The 3rd respondent is the son of the brother of his father. He was residing in a house very near to the house of the petitioner. All of them gave evidence that they were falsely impleaded as parties to this proceedings with ulterior motive and they have no sexual

relationship with CPW-1. As per the evidence of CPW-3, he is a newspaper agent and he was impleaded as a respondent, since he refused to give false evidence against the 1st respondent.

16. There is an alternative prayer in the petition that dissolution of marriage if not possible, he may be given a decree for judicial separation. As stated above, the petitioner has not succeeded in proving that the first respondent is living in adultery and there is absolutely no evidence to prove the cruelty also. The allegation that the first respondent administered poisonous drugs to the petitioner also is not proved. It is submitted by the learned counsel for the petitioner that even as per the admission of the first respondent, it can be seen that the first respondent is living in Thiruvananthapuram from 1977 onwards and she has deserted the petitioner. The petitioner has raised wild allegation against the first respondent which he could not prove. That itself is a sufficient reason for the wife to live separately. So even if there is desertion, it cannot be stated that there is no reasonable cause for living separately. The most cruel thing that can be done against a woman is to question her chastity without any basis. In the present case, the allegation is that the first respondent is living in adultery and she is leading the life of a prostitute. In such circumstances, there is reasonable cause for her separate living. So, no decree for judicial separation also can be passed.

In the result, the order of the lower court is confirmed and this appeal is dismissed. In the circumstances of the case, the petitioner is directed to pay the costs to the first respondent.

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