

B. Vs. S.

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Court : Kerala

Decided On : Feb-03-1997

Reported in : I(1997)DMC620

Judge : K.A. Abdul Gafoor, J.

Acts : [Indian Divorce Act, 1869](#) - Sections 10

Appeal No. : O.P. No. 5057 of 1996

Appellant : B.

Respondent : S.

Advocate for Def. : R.J. Krishnakumar, Adv.

Advocate for Pet/Ap. : Sebastian Champappilly, Adv.

Disposition : Petition allowed

Judgement :

K.A. Abdul Gafoor, J.

1. The petitioner got married with the respondent on 16.1.1995 at Vimaiagiri Cathedral Church, Kottayam as per the Christian rites. They belong to Roman Catholic Syrian Christians (Knanaya) Community. Their marriage was arranged by their parents. Petitioner is employed as Staff Nurse in Saudi Arabia, whereas the

respondent is employed in the United States of America. After marriage, they lived only for 6 days. The petitioner submits that the respondent was too cruel towards the petitioner in compelling her for unnatural sex. To concede to his unnatural lust the respondent had even inflicted physical assault and caused injuries. On 18.1.1995 and 19.1.1995 such incidents took place. Therefore, the petitioner states that she had been subjected to cruelty by her husband. Therefore, this petition has been filed under Sections 18 and 10 of the [Indian Divorce Act, 1869](#) to declare the marriage null and void or in the alternative seeking a decree for dissolution of their marriage. The petitioner at present does not press her case under Section 18 of the Indian Divorce Act. The petitioner is pressing her claim under Section 10 on the basis of cruelty and sodomy.

2. The only issue arises, thus, in this case is whether the respondent had committed cruelty and sodomy on the petitioner.

3. The petitioner has averred in her petition as follows :..... 'At night, the petitioner was beckoned to the toilet and demanded that she should masturbate the respondent. Thereafter, the respondent wanted to experiment with all types of sexual perversions. He insisted upon the petitioner to lick his penis and hold it in her mouth. Much against her protests, the respondent inserted his organ into the mouth of the petitioner and the petitioner could not bear this and she vomitted. Even thereafter, the respondent did not leave the petitioner. He wanted to try insertion from behind and compelled the petitioner to take position. As the petitioner resisted, the respondent caused severe pain by bending her hands behind her back. Being shocked and being afraid, the petitioner suffered everything and as she lay sobbing, the respondent inserted his male organ into annus of the petitioner causing severe pain to the petitioner, and he accomplished the sexual act. Even while the petitioner was laying there on the floor and in tears, the respondent said that he could get better satisfaction by annual intercourse, and that the petitioner has no strength of muscles in her vagina. It was a nightmare for the petitioner. On 19.1.1995, the petitioner was having severe body ache and yet she was taken for shopping. The petitioner had a very miserable existence - on 19.1.1995 as the respondent by his words and deeds went on humiliating her. He took pleasure in insulting the petitioner in front of others.

However, the visit to the relatives were promptly attended to on 20.1.1995. At night, the petitioner was so tired and sick and yet the respondent insisted on having sex and he accomplished his desire in both natural and unnatural ways,. On 21.1.1995, the petitioner and the respondents were taken to the petitioner's residence at Kaipuzha. On the night of 21.1.1995, the respondent tried to have unnatural sex and as the petitioner was about to scream, the respondent abstained from his efforts. On 22.1.1995, early in the morning the petitioner along with her relatives and the respondent went to Cochin and the petitioner took the flight to Bombay and on 23.1.1995 she left to Saudi Arabia. The respondent also left to USA within a few days thereafter.'

It is also averred that the petitioner, after she reached in Saudi Arabia, wrote to the parents in both the families and both the families decided to take both of them to counselling. Accordingly, the petitioner came down from Saudi Arabia in November, 1995. The respondent also came from United States. They approached a Psychiatrist. The petitioner submits that after examination the Psychiatrist confirmed that the respondent had personality disorder and that he was unable to take any decision as his own. The Psychiatrist was of opinion that there should be a follow up in the matter of the petitioner. But the respondent refused to cooperate with the Psychiatrist for further follow up action. The respondent was taken for some meditation. That also did not succeed; .

4. In support of the averments contained in-the original petition the petitioner as PW.I deposed as follows. In her deposition, she spoke so :..... 'On that evening, he took me to the toilet and asked for masturbation. I refused. Then, he struck my head towards the wall. Thereafter, he came to the room. The respondent persuaded me to have oral sex. I resisted. He forcefully did it. On the same day, he told me that my vagina is not strong enough to satisfy him. Therefore, he shall attempt sex through annus. I did not consent to it. Then, he twisted my hand. Thereafter, he forcefully had unnatural intercourse through my annus. Thereafter, he was finding one or the other fault with me and about my figure including facial appearance. This process repeated on the next day also.'

5. The respondent appeared through Counsel earlier. But at the time of examination of the petitioner as PW.I Counsel reported no instruction. There was no cross examination. Accordingly, the petitioner proved her case in the petition in support of cruelty. Counsel for the petitioner brought to my notice the decision reported in *Grace Jayamani v. E.P. Peter (SB)*, AIR 1982 Karnataka 46, it was held that:

'That being so, we are satisfied that the respondent indulged in sodomy on his wife, the present petitioner, and that the petitioner has made out a case for a decree for divorce by dissolution of the marriage with the respondent.'

Based on this decision, the petitioner submits that sodomy alone is suff' ...,[
ground for the petitioner to get a decree for dissolution of marriage,

6. As per the Full Bench decision reported in *Mary Sonia Zachariah v. Union of India*, 1995(1) KLT 644 (FB)=II (1995) DMC 27 (FB), cruelty simpliciter is sufficient, if proved, to grant a decree for dissolution of marriage.

7. In this case, the petitioner has spoken to in terms of her averments in the original petition and she had proved her case. The respondent did not enter the box. At the time of taking evidence, his Counsel reported ho instruction. In the decision reported in *Beena v. Alexander Kurien*, 1996(1) KLT 740, this Court held as follows : (para 10)..... 'It has to be noted that the respondent did not tender evidence and ontrovert the evidence of the petitioner. It is also significant to note that the co-respondent has also remained ex-parte. The conduct of the respondent in not mounting the box and giving evidence speaks for itself and amounts to ail implied admission of the allegations made by the petitioner.'

On its basis, it has to be taken that the allegation of unnatural sex and sodomy alleged by the petitioner is proved.

8. What is cruelty All kinds of continuous cruel act committed by one against another come within the fold of cruelty. In *A. v. B*, 1996(1) KLT 275, this Court held as follows : (para 10).....'10. The leal concept of cruelty which is not defined by statute, is generally described as conduct of such character as to have caused

danger of life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger. The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. It may be mental, such as indifference and frigidity towards wife, denial of company to her, hatred and abhorrence for wife, or physical like acts of violence and abstinence from sexual intercourse without reasonable cause.'

Sex plays important role in matrimonial life. Therefore, conduct of one among .the parties towards the other in the matter of sex is an important factor in the married life. Insistences of unnatural sex, continued compulsion for oral sex, .sex through annus causing pain and physical injury to make the wife to concede to such unnatural sex will certainly amounts to cruelty. The decision of the Kamataka High Court in Grace, fayamani's case supports this conclusion.

9. So, I hold that the respondent had committed cruelty on the petitioner, entitling the petitioner for a decree for dissolution of the marriage with the respondent.

Original Petition is allowed to the above extent. There will be no order as to costs.

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