

Lissy Vs. Jaison

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Court : Kerala

Decided On : Dec-08-1999

Reported in : II(2000)DMC59

Judge : Arijit Pasayat, C.J.,; K.K. Usha and; K.S. Radhakrishnan, JJ.

Acts : [Divorce Act, 1869](#) - Sections 19(3); [Hindu Marriage Act, 1955](#) - Sections 5, 12(1) and 13(1); Marriage Laws (Amendment) Act, 1976

Appeal No. : C.M.R. No. 111 of 1998

Appellant : Lissy

Respondent : Jaison

Advocate for Def. : None

Advocate for Pet/Ap. : M.K. Dileep Kumar, Adv.

Judgement :

Arijit Pasayat, C.J.

1. This is a reference under Section 20 of the Indian [Divorce Act, 1869](#) (in short 'the Act') seeking confirmation of the decree passed by the Judge, Family Court, Thrissur. An application was filed by the wife under Section 18 of the Act for a declaration that the marriage solemnised between her and respondent No. 1 was a nullity and consequentially, void. The ground taken was that at the time of

marriage, respondent No. 1 was a lunatic and idiot.

2. Respondent No. 2 was originally impleaded as the guardian of respondent No. 1 and after his death, respondent No. 3 was, impleaded as the guardian.

3. There is no appearance for the respondents inspite of notice and though Vakalatnama has been filed on behalf of the petitioner, no one is present when the matter is taken up.

4. Section 18, as indicated above, deals with the presentation of a petition either by the husband or the wife for a declaration that the marriage was null and void. The ground on which such decree can be passed as appearing in Section 19 Chap. IV of the Act. The provision reads as follows:

'Grounds of decree-Such decree may be made on any of the following grounds-

(1) that the respondent was impotent at the time of marriage and at the time of institution of the suit;

(2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3) that either party was a lunatic or idiot at the time of the marriage;

(4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force.'

5. To substantiate her claim that the respondent was a lunatic and idiot, evidence was adduced. Several documents were brought on record to substantiate the alleged lunacy and idiocy. P.W. 2 was the doctor who treated the first respondent. He deposed that for six years prior to his admission in the hospital on 28.11.1987 the first respondent was suffering from mental derailment. Exts. A1 and XI indicated that the first respondent was being treated for paranoid schizophrenia.

He was also treated as an inpatient in the Mental Health Centre, Thrissur. The evidence of the doctor established that the first respondent was suffering from chronic schizophrenia. A man suffering from chronic schizophrenia cannot lead a normal married life and he would be a lunatic in terms of Section 19 of the Act.

6. The Court is not concerned with the respondent's mental state at the time of petition or at the time of trial, because, even if the respondent was a lunatic or idiot at either of those times, that fact would not be a ground for a declaration that the marriage is null and void. Under Section 19(3), it must be established that the respondent was a lunatic or idiot at the time of marriage. This section contemplates upon a much greater mental disorder, which would suffice for obtaining a decree for divorce under the [Hindu Marriage Act, 1955](#) (hereinafter referred to as the 'Hindu Act').

7. Section 13(1), Clause (iii) and Explanations (a) and (b) appended to said clause deal with similar situations under 'Hindu Act', which read as follows:

'Section 13. Divorce-(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

xxx xxx xxx xxx xxx xxx xxx xxx(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder or such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation-In this clause-

(a) the expression 'mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression 'psychopathic disorder' means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; orxxx

Mental disorder as appearing in Clause (iii) means, mental illness, arrested or incomplete development of mind, of any other disorder or disability of mind and includes schizophrenia/Psychopathic disorder' means, a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.

8. Expression 'incurably of unsound mind' cannot be so widely interpreted as to cover feeble minded persons or persons of weak and/or dull intellect who understand nature and consequences of their acts and are able to control themselves, their affairs, reactions in the normal way. Section 5(ii) of the Hindu Act lays down as one of the conditions for a Hindu Marriage that neither party must be incapable of giving valid consent in consequence of unsoundness of mind or has been suffering from mental disorder. Section 12(l)(b), renders, at the instance of the other party a marriage voidable, which is in contravention of this condition. Clause (iii) of Sub-section (1) of Section 13, deals with incurable unsoundness of mind which may occur even subsequent to the marriage. Onus of proving that the other party to the marriage is of incurably unsound mind or that he/she is suffering from mental disorder is on the person alleging it. It must be proved by cogent and clear evidence. 'Mental' means pertaining to mind. 'Unsoundness of mind' has to be understood as lack of state of mind or capacity to understand one's affairs, or marital obligations, or implications of marital relationship. Clause (iii) has been substituted by Marriage Laws (Amendment) Act, 1976 for the original Clause (iii) which was as under:

'has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition.'

9. Simple expression 'of incurably unsound mind' appearing in the original clause is replaced by a very complicated one with definition of two expressions therein. It is a pedantic rigmarole, meaning nothing except unsoundness of mind. Section makes a distinction between 'unsoundness of mind' and 'mental disorder'. Besides,

mental disorder may be continuous or intermittent. But unsoundness of mind must be incurable, which continuous. A spouse is 'incurably of unsound mind' if he or she is of such mental incapacity as to make normal married life impossible and there is no prospect of any improvement in mental health, which would make this possible in future. See *Whysall v. Whyshall*, (1959) 3 All. ER 389. A person of unsound mind is either an idiot or lunatic in a more serious stage. Clause (ii) of Section 5 of the Hindu Act has also been substituted by the 1976 Amendment Act. Original clause reads as follows :

'neither-party is an idiot or lunatic at the time of marriage.'

Term 'unsound mind' is more comprehensive. Idiocy and lunacy are species of unsoundness of mind. Mental defectiveness falls chiefly under three grades known as idiocy, imbecility and feeble mindedness. Any state of mind which falls short of lunacy or idiocy cannot be a ground for annulment of marriage. Persons differ from one another in the degree of intelligence possessed by them; it would be a dire calamity if it could be said as a matter of law that a marriage entered into by a person who is neither a lunatic nor an idiot in a serious stage, because he or she lacks intelligence, although otherwise capable of understanding the nature of the bonds of matrimony into which he or she is entering or has entered. 'Unsound mind' or insane memories, which all persons must understand to be a depravity or reason, or want of it. (Per Hardwicke in *C. Barnsley's case*: 2 Eq. Co. Ab 580). 'There is an important difference between, 'unsoundness of mind' and 'dullness of intellect'. Unsoundness of mind may arise from perversion of the mental power and may exhibit itself by means of delusion or strong antipathies, which is called 'Mania', or it may arise from what may termed a defect of mind, as where the mind was originally incapable of directing itself to anything requiring judgment, which is 'idiocy' or where a mind, originally strong, has become weakened by illness or age though producing no such insanity as to amount to mania. 'Idiocy' in general is very easily proved. It is manifested in a variety of ways by impropriety or indecency of conduct, dirtiness in the habits or by vacancy of aspect, though this last test can only be appreciated by those who have seen the party. Another test is by means of numbers, i.e., by showing that the party cannot understand the commonest rules of arithmetic.' (Per Wood V.C. in *Harrod v. Harrow*, 23 LTOS

243).

10. Sub-clause (b) of Clause (ii) of Section 5 provides for incapacity to give valid consent due to mental disorder of such a kind or to such an extent as to make a person unfit for marriage and the procreation of children. Opening words of Section 5 state that a marriage may be solemnised between any two Hindus if the conditions (i) to (v) thereof are fulfilled. By necessary implication, it follows that a marriage which does not fulfil those conditions cannot be solemnised, and if solemnised would be illegal and void. In order to appreciate meaning of the expression 'incurably of unsound mind' and the test applicable in any such case, it has to be noticed that the state of mind envisaged is a decree of unsoundness, or incapacity of mind properly called insanity. The question is to be determined not upon wire-drawn speculations but upon tangible and established facts. It is important to notice that to bring a case within the ambit of Clause (iii) of Sub-section (1) of Section 13, mental disorder should be of such a kind and to such an extent that the applicant cannot reasonably be expected to live with the respondent. The gravity and importance of the issue requires that the Court ought to form its own independent judgment on the point. Medical testimony can be of considerable assistance and even guidance but the question is one for the Court and not for the experts and evidence of experts does not relieve the Court from the obligation of satisfying itself on the point beyond reasonable doubt. There should be strict enquiry into the matter. Court's duty in this regard is very sensitive. The institution of marriage is of vital importance to society. According to Bentham, under whatever point of view the institution of marriage is considered, nothing can be more striking than the utility of this noble contract, the time of society and the basis of civilization, and that to perceive its benefits, it is only necessary to imagine for a moment what men would be without that institution. Sick marital relations pose a problem not merely for the related spouses, they have much wider implication. They have their repercussions and impact upon society and the same give rise to social problems. Harmony in society is inconceivable, where there are dissatisfied parties that make a home which is one of the most crucial units in the hierarchy of social institutions. Emotional stability of the society is linked with the institution of marriage concepts underlying matrimonial relations affect not only happiness of the individuals, they are also concerned with social norms and ethical

mores.

11. Expression in the sub-clause 'reasonably expected to live with the respondent' is to be liberally construed. At the same time, any over-liberalisation is likely to destroy sanctity of the institution of marriage. In the home, the consideration that really obtains is the natural love and affection which counts for so little on these cold Courts. Atkin, LJ in a famous judgment said 'The parties themselves are Advocates, Judges, Court, Sheriff's Officer and Reporter. In respect of these promises, each house is a domain into which the King's writ does not seek to run and to which his officers so not seek to be admitted'. It takes two to make marriage a success and only one a failure (per Horbert Louis Samuel). If one does not find it reasonably impossible to live with the other on account of mental disorder, Clause (iii) of Sub-section (1) of Section 13 comes into operation.

12. A Christian marriage is a civil contract as well as religious sacrament. The contract portion requires that the person who is a party knows what it is. The test is whether the person in question is capable of understanding the nature of the contract, its implications and effect. In that background, Section 19(3) of the Act has been enacted. Its effect is because of incapacity to contract on account of idiocy or lunacy at the time of marriage.

13. As the respondents remained ex parte, the material evidence of the doctor as well as the petitioner went unrebutted. The evidence established lunacy and idiocy at the time of marriage.

14. The ground on which the petitioner had sought for a declaration of nullity of the marriage had been established by materials on record. As the first respondent was a lunatic at the time of marriage, the marriage is a nullity. The conclusions of the learned trial Judge are in order.

15. We, therefore, confirm the decree passed by the learned trial Judge in terms of Section 20 of the Act.

This CM. Reference is accordingly disposed of.

