

**Patrick Herbert Van-hek Vs. Mrs. More Ilma Van-hek**

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**Court :** Kolkata

**Decided On :** Dec-23-1981

**Reported in :** AIR1982Cal356

**Judge :** Anil Kumar Sen, ;Bhabes Chandra Chakrabarti and ;Sudhindra Mohan Guha, JJ.

**Acts :** [Divorce Act, 1869](#) - Sections 10 and 17

**Appeal No. :** Divorce Suit No. 5 of 1978

**Appellant :** Patrick Herbert Van-hek

**Respondent :** Mrs. More Ilma Van-hek

**Judgement :**

**B.C. Chakrabarti, J.**

1. This is a reference under Section 17 of the Divorce Act made by the learned Additional District Judge, 7th Court, Alipore after having passed a decree of divorce in Divorce Suit No. 5 of 1978 of his Court. The petitioner instituted the suit in 1977 on an allegation that the petitioner and the respondent both of whom are Indian citizens professing the Christian, faith were married in May, 1944. Since after the marriage they were living peacefully and four children were born to them. The children have attained majority and are now living abroad. Sometime in 1965

the respondent wife picked up acquaintance and intimacy with a seaman and became very friendly with him. She started mixing with the said seaman freely and in such a manner that the petitioner felt humiliated and lowered in the estimation of others. His attempts to correct and mend the wife turned futile. On the 25th Dec. 1965 the respondent left the matrimonial home and went away to her mother's place at No. 1 Molisii Street, Calcutta. She has been residing there ever since and has been leading an adulterous life with the said seaman. It is said that the name and whereabouts of the seaman with whom the respondent is living is not known to the petitioner as the seaman lives away from India in connection with his employment and seldom comes back to India. On these allegations, the petitioner prayed for a decree of divorce under Section 10 of the Divorce Act.

2. The respondent, it appears had entered appearance and filed a written statement denying the allegations but did not eventually contest the claim at the time of hearing. On behalf of the petitioner husband none other than the petitioner has been examined as a witness. He says that he was married with the respondent in 1944; that four children were born unto them; that the respondent was having an affair with a seaman and that she left the matrimonial home in Dec. 1965 to live with her mother at No. 1 Motisil Street, Calcutta, so that she can meet the said seaman as often as she likes. It is also his evidence that his attempts to bring her back failed and he could not make the seaman a party respondent as he could not ascertain his name and whereabouts. He paid a surprise visit on 1-1-1978 when he says he found his wife and the said seaman in a compromising position.

3. On the evidence thus adduced the learned Additional District Judge felt satisfied that the allegations of desertion as far as back in 1965 has been proved and it has further been proved that the respondent is living in adultery with a seaman.

4. The decree so made is now before us upon a reference under Section 17 of the Divorce Act. Notices having been issued from this Court after receipt of the reference, an Advocate appeared for the petitioner although none appears today at the time of hearing. The respondent was duly served.

5. Having considered the case made out in the application for divorce and the evidence on record we are unable to sustain and affirm the decree of dissolution of marriage as passed by the learned Additional District Judge. The case in the application for dissolution is that the respondent has been very friendly and intimate terms with a particular seaman from the year 1965, The suit was instituted in 1977 i.e, to say nearly 12 years thereafter, The law requires that in the case of a suit for dissolution of marriage by the petitioner husband on the ground of adultery, it is necessary to make the adulterer a co-respondent. In order to evade making the said person a co-respondent it is said in paragraph 22 of the petition that the name and whereabouts of the said seaman is not known to the petitioner as he lives away from India and seldom comes back. The evidence however, suggests otherwise. It reads as if that the respondent deserted the matrimonial home with the sole object of meeting the said seaman as often as she likes. The suggestion obviously, ii that they meet too often and too frequently. If that be so, it is difficult to believe that the petitioner husband could not collect the name and whereabouts of the seaman during the period of 12 years' that passed between when he first came to know of the relationship between them and the date of institution of the suit. Therefore, we are not satisfied as to the explanation for not making the seaman a co-respondent in this case.

6. This apart the evidence as it is, appears to us to be insufficient to prove the allegations of adultery. The case is that the respondent has been leading an adulterous life by mixing with a seaman in such manner that his prestige was lowered in the estimation of others. But curiously, not a single other person came forward to corroborate the story of the petitioner. His evidence that merely 12 years after the desertion he thought of paying a surprise visit and found out the respondent and the seaman in a compromising position appears to us unbelievable. We are unable to accept the evidence as sufficient to prove the charge of adultery.

7. If that allegation fails the suit for dissolution of marriage under Section 10 of the Divorce Act must necessarily fail for desertion simpliciter cannot be a ground of dissolution under Section 10 of the Divorce Act. In that view of the matter, we are unable to affirm the decree passed by the Additional District Judge. The decree as

passed is set aside and the suit is dismissed. Reference is thus disposed of, There will be no order for costs.

**Anil Kumar Sen, J.**

8. I agree,

**Sudhindra Mohan Guha, J.**

9. I agree.

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