

**King Vs. King**

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**SooperKanoon Citation :** [sooperkanoon.com/867518](http://sooperkanoon.com/867518)

**Court :** Kolkata

**Decided On :** Mar-08-1929

**Reported in :** AIR1930Cal418

**Appellant :** King

**Respondent :** King

**Judgement :**

**Costello, J.**

1. (After giving the facts and on a scrutiny of evidence finding the adultery of respondent proved, the Judgment proceeded). There remains, however, another matter with which I have to deal, and that is the question whether, in the circumstances of this case, the petitioner is entitled to the relief which he seeks. It is clear, to my mind that the petitioner has been guilty of considerable delay in the institution of these proceedings. The explanation which he gives amounts to this. He says that he did not take proceedings against his wife, after he had discovered her in bed with the co-respondent on 18th June, because he thought his story, without further corroboration would not be believed, and that, after the correspondent's garments and shoes, had been surreptitiously removed from the petitioner's premises, he found himself in the position of having no tangible evidence to support his story. I have already indicated that if the petitioner's story is accurate in every detail there was available the evidence of his nephew, Erie,

who was said to be sleeping in the place which has been described as the pantry, and who was aroused by the co-respondent seeking to take refuge in that place. According to the petitioner, the co-respondent went quietly into this pantry and awakened Eric Ryan by saying quite calmly : 'uncle has returned, you better get up,' or words to that effect. That of itself strikes me as being a very unlikely thing for the co-respondent to have done seeing that he was being violently pursued by the petitioner and being chased through the different rooms of the fiat but it does appear from the petitioner's story that the co-respondent did either go into the pantry or knock at the door or do something which must have indicated to Eric Ryan that a stranger was in the flat. That of itself would have afforded very ample and satisfactory corroboration of the petitioner's story. For some reason or other, the petitioner did not see fit to call Eric Ryan in these proceedings, even now that he has brought his affairs before the Court. The explanation given is the one I have already referred to viz., that the probability was that Eric Ryan would decline to say anything which might be of assistance to the petitioner as against the respondent who was his aunt by blood.

2. I am not at all disposed to accept the explanation given by the petitioner with regard to his inaction and his failure to take proceedings at or about the time when these events took place, Had he really been burning with a sense of the wrong which had been done to him by the co-respondent, I think he would have found time and made an occasion to go and take legal advice with regard to the position with a view to ascertaining whether he was likely to succeed if he took proceedings for divorce. I take the view that, at that time, the petitioner was more or less content to let his wife go, and it may be that they were living on such terms that the petitioner was rather glad to be relieved of the presence of his wife. At any rate, it seems clear to my mind that at that time he was not so righteously indignant either with his wife or the co-respondent that he had any intention of taking proceedings at all, because he admits that, for the space of a year or more, he really made no serious attempt to obtain any evidence in corroboration of his own story. It is a very significant fact that, when this case finally does come before the Court, the main evidence, on which the petitioner relies, is the evidence of persons who, one would have expected, would have been available to the petitioner from the very outset, viz., Mr. Dunn and the three servants. It seems to

me that if the petitioner could obtain the evidence of these four persons in the year 1926 or 1928, he could just as easily, or possibly more easily, have obtained that evidence in the year 1920. To some extent, the same observation applies with regard to the evidence in connexion with the events at Darjeeling. It is quite true that the petitioner says that what put him on enquiry with regard to Darjeeling was the fact that in October 1927, he received a letter from Mr. Wallace, but even that did not have the effect of causing the petitioner to institute proceedings. Indeed he does not seem to have pursued the matter, because right up to the very moment when this case was coming for trial, he had not, as far as I can see, obtained any proof other from Mrs. Wallace or from Mr. Singh, and actually an application was made to me that this case should be postponed in order that the petitioner might get the evidence of these witnesses from Darjeeling. It is a significant and curious feature of the case, therefore, that the petitioner really did not get any of the evidence with which he now establishes his contentions, until just before this case had come for trial. I cannot help feeling, therefore, that had no other proceedings taken place between the parties this husband would have been quite content to go on living apart from his wife and to continue to permit her to live in adultery with the correspondent. It appears that the husband was finally aroused to action by reason of the fact that the respondent removed certain articles of furniture and he was so incensed at his wife's action that he promptly took proceedings against her in the police Court with regard to the removal of the furniture and then for the first time publicly made a charge against his wife of having committed adultery with the co-respondent.

3. After those proceedings, his wife instituted civil proceedings in this Court, as I understand, in respect either of some of the same articles of furniture or some other articles of furniture, which were in the flat at Soaldah, and it is only after she had retorted upon the petitioner by taking civil proceedings as a sort of quid pro quo for the criminal proceedings which he himself brought that at last he was stung into instituting proceedings for a dissolution of his marriage. It does not really matter which of these persons first made accusations against the other with regard to the morning of 18th June 1926, having regard to the fact that I have come to the conclusion that the petitioner's story is substantially the correct story. What does matter is that the husband should have remained quiescent with the

knowledge of his wife's infidelity and misconduct and have taken no steps to vindicate his honour until the wife had aroused his indignation by reason of her action in regard to the furniture. I cannot help coming to the conclusion, therefore, that the petitioner seems to have set a higher value on his furniture than upon his wife's honour.

4. Those are the circumstances in which this case comes before the Court and Mr. Banerjee has invited me to say, upon the authorities, that there has been such delay and neglect upon the part of the petitioner as disentitles him to the relief he seeks. Mr. Banerjee referred me to the leading cases on this point, e.g., the case of *Mortimer v. Mortimer* [1820] 2 Hags. Con. 310, which contains the well-known dictum of Lord Stowell that the Court:

will be indisposed to relieve a party who appears to have slumbered in sufficient comfort...and it will be inclined to refer either insincerity in the complaint, or an acquiescence in the injury whether real or supposed, or a condonation of it.

5. That dictum of Lord Stowell was quoted with approval and emphasised by Sir C. Cresswell in the case of *Boulting v. Boulting* [1864] 3 Sw. & Tr. 329, where he said delay is not of itself a bar to the suit:

but it is a most material matter, which unexplained would lead the Court to conclusions fatal to the petitioner's relief.

6. The same point was dealt with by Horridge, J., in the Divorce Court in England in the case of *Bickard v. Rickard* [1920] 37 T.L.R. 26, where in effect, Horridge, J., said that it is not open to a party in a matrimonial suit to choose his own time for coming to Court and asking for relief, and I, on my part, desire to say that it is not fitting, and it cannot be tolerated that the petitioner in a matrimonial suit should delay taking proceedings until such time as he is moved to start proceedings by reason of some oblique motive. The matrimonial jurisdiction of the Court is intended to afford relief to a husband or to a wife who feels that he or she has been grievously wronged by the other party, and therefore desires to have the marriage dissolved and possibly to obtain compensation from the person who is responsible for the wrong which has been done. The Court is not to be used

merely as an engine for enabling a husband or a wife to retaliate on the other by reason of some injury which has been done outside the matter of violation of conjugal rights of the parties as such. In this particular case, one cannot help feeling that these proceedings would never have been instituted by this petitioner if the wife had not irritated him by the action which she took in connexion with his furniture. It does seem to me that this husband, so far as the wrong done to him by the co-respondent and respondent is concerned, by reason of their having committed adultery, that this petitioner, in the words of Lord Stowell, has 'slumbered in sufficient comfort.' He continued his ordinary mode of living and went to football matches and other places of amusement, and went on living his life for a considerable period just as he had lived it before, and, as far as I can see, he made no attempt to provide himself with corroboration of his own story of the events of 18th June, nor to obtain other evidence directed to show that his wife had been carrying on an adulterous association with the respondent.

7. In these circumstances, and because this Court should not allow itself to be resorted to at the mere whim and pleasure and at the convenience of a petitioner, I think I ought not to grant the relief which is claimed in this case. The question of delay is always a matter for the discretion of the Court, and I consider, on the whole, this is one of the cases where the Court ought not to exercise its discretion in favour of the petitioner, because the inaction on the part of the petitioner shows not that he was insincere in his complaint to use the words of Lord Stowell in the sense of not believing that his wife had committed adultery, but because there was an acquiescence by him in the injury which he knew he had suffered. Although he knew, as he says, that his wife had committed adultery on or about 18th June, although he had good reason for supposing that she was continuing to live in adultery with the co-respondent, he took no steps in the matter for a very considerable period, and that leads me to think that there was an acquiescence in the situation of such a character as disentitles him to the relief which he claims. The suit is accordingly dismissed.

8. I shall make an order that the respondent's costs must be paid by the petitioner in the ordinary way and the petitioner's costs must be paid by this co-respondent.

