

Sesamma Phillip vs P. Phillip & Etc on 18 January, 1973

Equivalent citations: AIR 1973 SUPREME COURT 875, 1973 (1) SCC 405, (1974) 1 SCC 405, 1973 (1) SCWR 615, 1973 SCC(CRI) 349, 1973 SCD 260

Bench: S.M. Sikri, A.N. Ray, D.G. Palekar, M.H. Beg, S.N. Dwivedi

CASE NO.:

Transfer Petition (civil) 26-27 of 1972

PETITIONER:

SESAMMA PHILLIP

RESPONDENT:

P. PHILLIP & ETC.

DATE OF JUDGMENT: 18/01/1973

BENCH:

S.M. SIKRI & A.N. RAY & D.G. PALEKAR & M.H. BEG & S.N. DWIVEDI

JUDGMENT:

JUDGMENT 1973 AIR (SC) 875 = 1973 (1) SCC 405 The Judgment was delivered by PALEKAR, J. :

PALEKAR, J. for the These are two petitions for the transfer of two criminal cases filed against the petitioner Mrs. Sesamma Phillip in the court of the Additional District Magistrate, Durg, Madhya Pradesh, to a competent court at Delhi subordinate to the High Court of Delhi.

2. The petitioner had joined as a Staff Nurse in the Safdarjung Hospital, New Delhi, in the year 1962 and has been working there since then. On April 23, 1967, she married one Mr. P. Phillip who was employed as a Junior Supervisor in the Bhilai Steel Plant in the Tehsil and District of Durg, Madhya Pradesh. They lived together at their native place after marriage for about a month and during that period the petitioner became pregnant. The husband then left for Bhilai and the petitioner came to Delhi in June, 1967 to join her duty. In December, 1967 the husband came over to Delhi for a few days and on January 10, 1968, the petitioner gave birth to a son at Safdarjung Hospital, New Delhi. After that the husband again came and lived with the petitioner till April, 1968.

3. Sometime later, the petitioner learnt from a close family friend that her husband Phillip had been keeping a concubine named Kunjamma in his house at Bhilai. The petitioner went to Bhilai with her son with a view to dissuade her husband from following a wrong course since ultimately that would wreck their marriage and affect the future of the child. She tried both personally and through their friends and relations to persuade him to give up the concubine, but Mr. Phillip refused and asked her not to interfere with his private life.

4. The petitioner then returned with her son to Delhi to join her post and thereafter on November 20, 1968, Mr. Phillip filed a petition for judicial separation before the First Additional District Judge, Durg, M.P. At about this time Mr. Phillip's sister Miss Richel also joined her at Delhi and lived with her for about two months. According to the petitioner the sister's whole idea in living with her was to persuade the petitioner to agree to the judicial separation. She also told her that her brother was a very tough man and that if she did not consent to the judicial separation he would harass and kill her and snatch away the child. The petitioner, however, refused to oblige and thereafter in about January, 1969, Miss Richel left Delhi to join her brother at Bhilai.

5. It appears that some correspondence was going on between the petitioner, on the one hand, and Miss Richel, on the other, and basing her case on this correspondence, Miss Richel filed a complaint in the court of the First Class Magistrate, Durg on June 24, 1969, alleging that in this correspondence the petitioner and her brother had committed an offence of defamation under Section 500, I.P.C. That complaint is Case No. 999/1969/1319/69. The petitioner engaged Shri R. L. Parakh, Advocate, Durg to appear on her behalf in that case and instructed him to apply to be exempted from personal attendance in court. She was very much afraid to go to Durg, which was about 1500 Kilometers away from New Delhi as she had no relations and friends at that place. She also sent a telegram to the Magistrate requesting him to dispense with her personal attendance at court because she was afraid that her husband might kill her. The learned Magistrate dispensed with her attendance and that case is still pending.

6. On February 4, 1970, the petitioner filed an application before the Chief Divisional Magistrate, Delhi, against her husband for maintenance for herself and her child. But the same was dismissed on July 20, 1970.

7. In the meantime, however, it appears Mr. Phillip withdrew his petition for judicial separation on July 6, 1970, because of some technical defect. After curing the defect he re-filed the petition. In this petition he not only asked for judicial separation but also for the custody of the child. The petitioner was afraid to go to Durg to attend the court and so she allowed the petition to be disposed of ex parte. The learned Judge ultimately on January 24, 1972, granted the prayer for judicial separation but refused to give the custody of the child. The petitioner, however, was not aware of the result of the proceeding till very much later.

8. When the above litigation was going on Mr. Phillip wrote very indecent and minatory letters to the petitioner on post cards with the deliberate intention that the letters may be read by the petitioner's friends and relations. On November 20, 1970, he filed a criminal complaint against her for defamation on the basis of the allegations made in the complaint which she had filed before the Chief Divisional Magistrate, Delhi on February 4, 1970. In this complaint Mr. Phillip alleged that the statements made in the complaint before the Magistrate had defamed him.

9. We thus see that apart from the petition for judicial separation which was filed by Mr. Phillip, two complaints were filed against the petitioner

- first by her sister-in-law on June 24, 1969 and the other by Mr. Phillip himself on November 20, 1970 - all at Durg.

10. The number of the complaint filed by Mr. Phillip against the petitioner is Criminal Case No. 15527 of 1970.

11. In this complaint the petitioner was summoned to appear before the Magistrate on January 22, 1971. The petitioner did not go to Durg but applied through an advocate for exemption from personal attendance. That was granted on condition that she will appear in court when required. When the case came up for hearing on July 5, 1972, the learned Magistrate made the following order :

"5-7-1972 :

Complainant with Sri R. K. Maitra Advocate Accused by Sri B. R. Dubey Advocate.

Complainant does not want to examine either himself or any other witness. Complainant closed his case. Now accused be produced for examination under Section 342, Cr. P.C. Case for examination of the accused on 17-7-1972. (Sd.) V. C. Agrawal, S.D.M. (J)."

12. It is not clear from this order what induced the learned Magistrate to call the petitioner for examination under Section 342, Cr.P.C. when the complainant did not want to offer himself as a witness in the case nor had he any other witness to examine. We may, however, leave it at that. The petitioner did not appear before the Magistrate on July 17, 1972 and thereupon the Magistrate issued a non-bailable warrant of arrest against the petitioner. The warrant was executed on July 31, 1972, at Delhi but the petitioner was bailed out by a local Magistrate on her giving security for attendance before the Durg Magistrate on August 10, 1972.

13. The petitioner, however, could not attend the court of Durg Magistrate on the date fixed because on August 7, 1972, she fell seriously ill and was admitted as an indoor patient in the Safdarjung Hospital. She was advised by the Doctors to take complete rest for three weeks. The petitioner was, however, worried about the warrant from Durg and so she sent one Shri Shiv Murthi Shukla to appear before the Magistrate on her behalf and present the medical certificate so that her non-appearance on August 10, 1972 may be condoned. Accordingly, Shukla went to the court of the Magistrate on August 10, 1972, at Durg and through her advocate informed the Magistrate about the petitioner's condition. The learned Magistrate was good enough to adjourned the case till August 25, 1972. When Shukla was leaving the court Mr. Phillip met him and started scolding him as to why the petitioner had not come and what business had had to come to Durg on her behalf. Mr. Phillip also told him that if on the next hearing the petitioner did not attend, "no body will be worse than him". Mr. Phillip also told him that the case for the judicial separation had already been decreed. On the next day also i.e., on August 25, 1972, the petitioner could not go to Durg because she was still an indoor patient at Safdarjung Hospital. So she sent Mr. Shukla again on that date to seek further adjournment. On her behalf an application was made by her advocate and the case was further

adjourned to September 21, 1972.

14. It is the case of the petitioner that as she had not personally attended the court and Mr. Shukla had appeared instead, Mr. Phillip was very much annoyed. He angrily asked Mr. Shukla as to why he had not brought the petitioner and the child. As he was with his counsel and other persons at the time Mr. Phillip did not speak much. Later, however, when Mr. Shukla was going back after attending the court Mr. Phillip, accompanied by an unknown man, started abusing and threatening Mr. Shukla. Mr. Shukla told him that the petitioner was still ill and would come to court after recovery. But Mr. Phillip and his companion told him that he was making false excuses. They told him that they will set him right so that he may not think of coming again to Durg, and, therefore, they gave him two or three slaps. Mr. Shukla raised an alarm which brought some persons on the spot and then Mr. Phillip and his companion left after giving him further threats of beating. On the same day Mr. Shukla filed his First Information Report for assault with the Police at Durg. A copy of the F.I.R. is annexed to the petition.

15. It is the complaint of the petitioner that the complaints for defamation filed against her were clearly without substance as they disclosed no offence. A copy of the complaint filed by her sister-in-law Miss Richel is annexed to the petition and it is contended that a mere reading of the complaint would go to show that no offence under Section 500, I.P.C. had been made out. Miss Richel referred to a letter or letters supposed to have been written to her and the other members of the family by the petitioner and her brother and these letters, according to Miss Richel had defamed her and the members of the family. What parts of these letters were defamatory, is not stated. Referring to the complaint filed by Mr. Phillip - a copy of which was annexed to the petition - the petitioner contends that the charge of defamation was entirely based upon the petitioner's application for maintenance in which she had said that she was entitled to maintenance because she could not cohabit with her husband as he was keeping a mistress in the house. It was alleged that this was a privileged document and no complaint for defamation could be filed on the basis of her application under Section 488, Cr.P.C. She also pointed out that her husband had not even offered himself as a witness in the case and still her presence in court was demanded by the learned Magistrate for examination under Section 342, Cr.P.C. Her case is that both the complaints were without substance and they had been filed with the ulterior motive to harass her so that her presence being procured at Durg, she might be physically molested and her young son taken away from her.

16. In considering whether the two cases should be transferred to Delhi it would not be proper to say anything about the merits of the two cases. But we have no doubt at all that the petitioner is not unreasonably afraid to go to Durg. Mr. Phillip has made it clear in no uncertain terms that he wants her at Durg with an ulterior motive. In this connection we have only to read the postcards that he had written to her between 1969 and 1970 after he had filed his petition for judicial separation. The postcards are so indecent and venomous in content that they are actually unreadable. Malice is seen in every line of those postcards. They disclose that he had deliberately written open postcards maligning the petitioner, her parents and other friends and relations so that others may read them. They leave no doubt in one's mind that, given the opportunity, Mr. Phillip may not desist from causing physical harm to the petitioner. A counter- affidavit has been filed on behalf of Mr. Phillip

before us and it is not denied that he is the author of these postcards. Of course some excuse is put forward for writing such nasty letters. But the excuse is so feeble that no notice need be taken. His violent mood is further illustrated by the fact that he showed great displeasure when Mr. Shukla attend the court on behalf of the petitioner. On the first occasion when Mr. Shukla appeared in the court he was pointedly asked to see that on the next occasion, not he, but the petitioner came to court or otherwise he would have to face unsavoury consequences. On the next date, i.e. August 25, 1972, when Mr. Shukla went to court, instead of the petitioner, he is alleged to have been assaulted and Mr. Shukla filed information with the police. A copy of the information is field with the transfer petition. Indeed Mr. Phillip in his counter-affidavit has denied the facts alleged by Mr. Shukla. But having regard to the violent disposition disclosed by Mr. Phillip in his letters, we are inclined to think that there may be substance in the petitioner's allegation that Mr. Shukla had been physically molested because he attended the court instead of the petitioner. Durg is about 1500 kms. away from Delhi and we think that in the interest of the physical safety of the petitioner it would be in expedient that the Criminal cases should be tried at Durg. Moreover, so far as Mr. Phillip's complaint is concerned the publication of the defamatory matter, if any, was at Delhi. In our view it would be expedient to transfer both the cases - the one filed by Miss. Richel and the other by Mr. Phillip against the petitioner from the Magistrate's court at Durg and to direct the same to be tried by a competent Magistrate at Delhi. Criminal Case No. 999/1969/1319/1969, filed by Miss. Richel and Criminal Case No. 15527/1970 filed by Mr. P. Phillip, both pending disposal before the learned Additional District Magistrate, Durg, M.P. are transferred to the Sessions Judge, Delhi who shall direct the same to be disposed of in accordance with law by a competent Magistrate at Delhi subordinate to him.