

Mrs. Georgians G. Marks Gideon vs Edward Nathnial Gideon And Sm. Ram Pyari on 17 September, 1954

Equivalent citations: AIR1955ALL8, AIR 1955 ALLAHABAD 8

JUDGMENT

Mootham, J.

1. This is a wife's application under Section 17, Divorce Act, for the confirmation of the decree of the learned District Judge of Agra dissolving the petitioner's marriage with the respondent on the grounds of her husband's adultery, cruelty and desertion. The learned District Judge was satisfied that each of these charges had been satisfactorily proved, taut we are unable to take that view.

In our opinion, the evidence is wholly insufficient to establish any one of these allegations. The averment in the petition with regard to adultery is that the respondent had an illicit connection with a woman, Shrimati Ram Piari, in the year 1952 and the only evidence in support of this allegation is the statement of the petitioner that "My husband continued to carry on his connections with Shrimati Ram Piari. Her husband kicked up a row."

2. The parties were married in the year 1946. It is stated in the petition that from this time onwards, that is for a period extending for a number of years, the respondent repeatedly assaulted the petitioner by beating her. On this allegation there is no evidence other than that of the petitioner herself, and that evidence goes no further than saying that she was beaten on unspecified occasions.

3. The first respondent is said to have deserted the petitioner in the year 1949 when he left Tundla for Delhi. It is, however, in evidence that he returned to Tundla in July, 1950, and again for a short time in 1952. The petitioner swears that since the year 1949 the respondent has failed to provide her with any maintenance, but that fact by itself is not enough to prove desertion.

4. It has been laid down in a number of cases, the most recent of which is -- 'Galler v. Galler', 1954 LRP 252 (A), a decision of the Court of Appeal in England, that an alleged matrimonial offence must be proved beyond reasonable doubt. The reason for the rule is to be found in the sanctity which the law attaches to the marriage tie which is not to be disrupted save on strict proof of the commission by the respondent of the acts which he is alleged to have committed. As Lord MacDermott said in -- 'Preston-Jones v. Preston-Jones', 1951 AC 391 at p. 417 (B):

"The jurisdiction in divorce involves the status of the parties and the public interest requires that the marriage bond shall not be set aside lightly or without strict inquiry. The terms of the statute recognize this plainly, and I think it would be quite out of keeping with the anxious nature of its provisions to hold that the Court might be

'satisfied', in respect of a ground for dissolution, with something less than proof beyond reasonable doubt.

I should, perhaps, add that I do not base my conclusions as to the appropriate standard of proof on any analogy drawn from the criminal law. I do not think it is possible to say, at any rate since the decision of this House in --'Mordaunt v. Moncreiffe', (1874) 2 SC & D 374 (C) that the two jurisdictions "are other than distinct". The true reason, as it seems to me, why both accept the same general standard--proof beyond reasonable doubt--lies not in any analogy, but in the gravity and public importance of the issues with which each is concerned."

5. The learned counsel for the petitioner asks this Court to send back the proceedings to the Court of the learned District Judge in order that the petitioner may have a further opportunity of adducing evidence in support of her allegations.

In the circumstances we think we should accede to this request. We accordingly direct that the record be returned to the learned District Judge who will afford the petitioner an opportunity of adducing evidence. All such additional evidence as may be recorded will be certified by the learned District Judge and returned to this Court with as little delay as possible.