

Khacheru vs Mt. Khairunissa on 18 August, 1950

Equivalent citations: AIR1952ALL638, AIR 1952 ALLAHABAD 638

JUDGMENT

Bind Basni Prasad, J.

1. This is a deft's appeal arising out of a suit by a wife for the dissolution of marriage. Parties are Muhammadans.

2. It is the common case of the parties that the plff. Mt. Khairunnisa, was married to the deft, about two & a half years prior to the suit, She was minor then & therefore, she stayed with her father. Her age at the time of the suit was about sixteen years. It seems that the deft. insisted that she should come to live with him. Her father desired that she should go to him after attaining majority. This appears to have sown the seeds of discord, between the parties. It was alleged by the plff. that when she was coming in a bullock-cart with her parents from her maternal grandfather's place, she was forcibly taken away by the deft. & his party. She remained there for about 20 or 22 days & during this period she was subjected to great cruelty. She was beaten & was shut in a room. On these grounds she prayed for a declaration for the dissolution of marriage.

3. The deft, denied the cruelty & resisted the claim.

4. The trial Court held that cruelty was not proved & dismissed the suit. In appeal learned Civil Judge held that cruelty was established. He accordingly decreed the claim.

5. It appears from the judgment of the learned Civil Judge that he was much impressed with the evidence of the plff. & believed her in entirety. It must, therefore, be taken that the plff. was assaulted by the deft. & subjected to cruelty. Her life was made miserable.

6. The respondent has remained absent, though duly served with a notice. Learned counsel for the appellant contends that, having regard to the language of Section 2(viii)(a), Dissolution of Muslim Marriages Act, 1939, it was necessary for the plff. to prove that she was "habitually ill treated". Learned counsel contends that when she lived with the deft. only for 20 or 22 days, any ill-treatment meted out to her cannot be said to be a "habitual ill-treatment". The word "habitual" means by habit. When the deft. from the very start began to ill treat the plff. & to beat her and never showed the affection of a husband towards her, it is clear that he, by his conduct, showed that his habit was one of maltreatment of his wife. No hard & fast rule can be laid down as to the period required for proving "habitual ill-treatment" of a wife. I am inclined to the view that if within the first twenty days of the wife, living with her husband, she is assaulted by him, shut up in a room and ill-treated in other manners, it is a case of habitual ill-treatment & the inference would not be

unreasonable that the husband would not, in future, treat her with affection.

7. I see no good reason to interfere with the decree passed by the lower appellate Court & dismiss the appeal.