Madras High Court
Soundarammal vs Sundara Mahalinga, Nadar on 26 September, 1979
Equivalent citations: AIR 1980 Mad 294, (1980) 2 MLJ 121
Bench: Sathiadev
JUDGMENT

1. This appeal is preferred against C. M. A. No. 69 of 1975 on the file of the District judge, Tirunelveli who disagreed with the order of dismissal made by the Subordinate judge, Tirunelveli in O. P. 62 of 1972, which was a petition filed by the respondent hereto .under S. 13(I-A) of the Hindu Mar. nage Act 25 of 1955 . The appellant here in is the wife of the respondent

2. It transpires that they were married on 17-7-1956 and they lived together tin W10-1961. It is claimed by the appellant herein, that, because of cruelty and several other factors, she was driven out of the house by the respondent herein. She also refers to the respondent living in adultery with another woman. O. P. 5 of 1962 was filed by the respondent for restitution of conjugal rights and it was ordered on 5-11-1962. Appellant filed O. P. 117 of 1963 for restitution of conjugal rights, but that petition was later on withdrawn. Appellant then filed O. P. 85 of 1,967 in the Sub-Court, Tuticorin under Ss. 10, 11, 24 and 27 of Act 25 of 1955 (hereinafter referred to as the Act) for declaring the marriage as null an void or in the alternative for judicial separation. In that petition, she impleaded one Tirunamakani as the second respondent, who according to the appellant herein, had gone through an illegal marriage ceremony, with the respondent here. in and therefore, in view of the adulterous nature of life led by the respondent here. in, she was entitled to the reliefs prayed for therein.

3. Several. points were framed for consideration therein and the court came to the conclusion that the appellant had established that the respondent herein was living with another woman and a child had been born out of such adulterous and illegal relationship. That petition was allowed and a permanent alimony and maintenance at the rate of Rs. 25 per month was ordered and the respondent herein was to pay maintenance from the date of petition.

4. After the expiry of the statutory period of two years, respondent filed O. P. 62 of 1972 in the Sub-Court, Tirunelveli, seeking relief under Sec. 13(1-A) of the Hindu Marriage Act. Respondent herein had referred to the marriage with the appellant on 17-7-1956 and that they had no issues, and only till 1967 they were living together. After referring to the earlier proceedings, he had pleaded that subsequent to the order in O. P. No. 85 of 1967, ordering judicial separation, there being no cohabitation between them, and the period of two years having elapsed, he is entitled to a decree for divorce.

5. The appellant here in opposed this petition on the ground that the respondent cannot take advantage of his own 'wrong'. He had, with a wicked intention, married another woman and lives with her and the restitution of, conjugal rights asked for by him in O. P. 5 of 1962 was a pretence and a farce. It is only the respond who made it impossible for her to lead a marital life, and he being in the wrong, he cannot allege his own wrong and wickedness in living with another-woman, as the basis. for securing relief in this. petition. Furthermore, he had not paid any maintenance amounts so

far She had raised other objections and referred to the difficult circumstances in which she had to live, because of the adulterous life led by the respondent.

6. The Sub-Court came to the conclu sion that the respondent cannot take advantage of his, own mistake for getting a decree of divorce in spite of the existence of lawful marriage between the appellant and the respondent he had been living in adultery with another woman, and this has prevented the appellant from rejoining her husband, and therefore, dismissed the petition.

7. The appellate Court dealing with this only point held, that no new ground has been alleged by the appellant to resist the petition for divorce, which has to be ordered as a matter of course, as soon as the period is over and, that there is no scope for the applicability of Sec. 23(1)(a) of the Act, and whatever had been claimed as the basis for relief in O. P. 85 of 1967 cannot again be pleaded in a petition filed under S. 13(1-A)(i) of the Act. Therefore, it allowed me appeal.

8. Mr. V. Narayanaswami, learned counsel for the appellant, contends that the scope of S. 23(1)(a) of the Act has not been correctly understood by the lower appellate Court because, it would be applicable in respect of any proceedings instituted under the Act. When a petition is filed for divorce as on the basis that the period stipulated under the Act had elapsed after the relief of judicial separation has been ordered, it will not straightway entitle a party to the proceedings to ask for relief of divorce or dissolution of marriage as a matter of course, if it be shown that such a party is taking advantage of his or her own 'wrong'. In this case O. P. 25 of 1967 was filed for judicial separation on the ground that the respondent had been 1iv'ing adultery with another woman, and subsequent to the orders passed in O. P. 85 of 1967, if he had driven out or abandoned that woman or if she had died, the parties could have come together. The wrong committed by the respondent being recurring one, and which could be avoided by him after the petition for judicial separation was ordered, and when this category of wrong which can be avoided after petition for judicial separation is ordered having not been avoided by him, he cannot constitute the present proceedings taking advantage of the amendments effected to the Act, which has presently enabled any party to the proceedings to seek for further relief on the basis of the earlier petitions, irrespective of the fact whether the party is defaulting spouse or not. Prior to the amendments effected in 1964, it was only the party who presented the earlier petition, who could file the subsequent petition for divorce. But the amendment effected in 1964, have no doubt enabled even the defaulting spouse to present a petition for divorce. Would that mean that S. 23(1)(a) of the Act will not be applicable as against him? In the present case for the purpose of spiting the appellant and to make her life full of miseries and sufferings, the respondent has deliberately taken another woman into his house, and gone through a form of marriage ceremony which is not valid in the eye of law, and when such wanton disregard of the law had been. Practiced by him, it is unthinkable that. he should be enabled to take advantage of his own 'wrong', and get an order for dissolution of the marriage, which would have far-reaching repercussions on the future of the appellant, who had entered the marital fold expecting not only a happy life, but also a secured and settled fife to which she would normally be entitled to, and which had been deprived of by the infatuation which the respondent had developed towards another woman in spite of a subsisting marriage. Therefore, the learned counsel for the appellant pleads that in spite of 1964 amendments, S. 23(1)(a) of the Act can still be invoked in respect of continuing recurring 'wrongs' of the nature that is being committed by the respondent herein. Further one of

the grounds taken in 0. P. No. 85 of 1967, filed by the wife, referred to the adulterous life led by respondent with another woman. This is an aspect which he could have given up after the earlier order, and which would have in turn enabled the appellant to re-join her husband. But when the husband persists in committing the wrong, it disables: him to take advantage of his own wrong to get a divorce, and therefore the court below has erred in holding that the one and the only aspect to be looked into subsequent to 1964 amendments is to find out whether the statutory period had lapsed, and thereafter even the wrongdoer can get the decree for divorce, as a matter of course. He refers to the decission ' wherein the meaning of the expression 'wrong' in S. 23(1)(a) of the Act, has been considered an held, that it is "something more than a mere disinclination to agree to an offer to reunion, it must, be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled."

9. Based on this decision, he further contends that there is no basis for the contention that the wrong to be pleaded under S. 23(1)(a) should be one which has happened after the order of judicial separation and it could have no connection to whatever had been pleaded in the earlier petition, more go in a matter of this nature where the ground pleaded for judicial separation being a continuing one and which can be abandoned, and when the husband persists in continuing to commit the wrong, it is grave enough to disentitle him to get the relief of divorce.

10. Mr. Subramaniam, learned counsel for the respondent, straightway relies upon the decision rendered in (FB) and also to the decision in , to contend that the amendments effected in 1964 had resulted in divorce being liberalised and the intendment of Parliament is to enable parties to secure the relief of divorce without the restraints which were incorporated earlier in the Act, and if S. 23(1)(a) of the Act is applied to the instant case, it will make the reliefs made available under 1964 amendment, totally nugatory. He contends that the claim of respondent living with another woman is false, and even if it be true, it having formed the basis for relief in O. P. No. 85 of 1967, it cannot again be held against him when he is entitled to file the petition by virtue of the amendments effected in 1964. Relief for divorce having been made liberal enabling even wrong doer to file petition for divorce, after a petition filed for judicial separation or restitution of conjugal rights is ordered and, the one and the only factor that must then be looked into is the period of one year prescribed under the Act, which should lapse after the orders are passed in the earlier petitions.

Respondent had established that, after orders were passed in O. P. No. 85 of 1967, there has been no cohabitation between him and the appellant, and that the respondent is not taking advantage of any wrong committed by him.

11. The lower appellate court took Into account only one point for consideration by stating - 'the only question to be decided in this case is whether the petitioner is entitled to a decree for divorce, in s ite o the fact that he is, living with another girl by name Thirunanakkani..It was held that the trial court by relying on S. 23(1)(a) of the Act, had misconstrued its application because in its view the very wording of S. 13(1-A) of the Act would clearly show that a decree for divorce should follow as a matter of course, if the parties to the petition for judicial separation have not resumed cohabitation after two years or upwards after the decree for judicial separation. For taking this view, it has held that the oppositions to the petition filed by the husband-is based on the same ground which was

relied upon in the previous petition for judicial separation which was secured by the wife in O. P. 85 of 1967, and since she wants to rely on the same wrong which was the subject-matter in the earlier O. P., S. 23(2)(a) of the Act cannot be invoked. Therefore in its view, there being no new ground alleged by the wife in the present petition for resisting divorce, the appeal has to be allowed.

12. The present appeal has been preferred on the ground that the lower appellate Court has misunderstood the scope and enforceability of, S. 28(1)(a), and there being a substantial question of law, it calls for interference in this civil miscellaneous, second appeal. It is pointed out, by, Mr. Naryanswami, Counsel for the appellant dealing with the amendments effected by Amending Acts 44 of 1964 and 68 of 1976 to Hindu Marriages Act, they had not resulted in S. 23(1)(a) of the Act be made inapplicable in proceedings of this nature. In respect of the amendments effected which have resulted in grounds for divorce being diversified and the period of duration for relief having been reduced and also enabling both husband and wife to institute petitions for divorce irrespective of the act as to who had initiated the earlier proceedings, the enforceability of S. 23 of the Act has not been taken away, because Parliament being aware of the existence of S. 28 of the Act had not chosen either to delete it or modify it, or incorporated any provisos to amended provisions of S. 13 of the Act to exclude its applicability in respect of petitions filed under S. 13 of the Act. So far as the present case is concerned, he relies upon the concept of 'wrong' which is purposefully incorporated and retained in S. 23(1)(a) of the Act. Even though the husband against whom the petition, for judicial separation has been filed by the wife and she having secured the relief, she can still prevent the husband from getting relief under S. 13 of the Act, when he is in the ' wrong'. According to the learned counsel for the appellant, if the husband does not come within any of the categories provided under S. 23 of the Act, only then he can institute a petition under. Sec. 18 of the Act, even though he had not come to court earlier seeking for relief either on one ground or other.

13. Mr. I. Subramaniam, counsel for the respondent contends that subsequent to the amendments effected under Act 44 of 1964 (Act 68 of 1976), there has been a liberalisation regarding divorce and even the, wrongdoer is now enabled to file a petition for divorce on mere passage of time which has been statutorily fixed and therefore, the only statutory requirement for maintaining the petition under See. 13 of the Act by a wrongdoer is to satisfy the court that after a decree had been obtained by the wife for restitution of conjugal rights or for judicial separation, there has been no restitution of conjugal rights or resumption of cohabitation, as the case may be.

14. Therefore, when relief is sought under S. 13(1-A) of the Act, the wife cannot take recourse to S. 23(1)(a) of the Act to plead that the husband is in the 'wrong' and hence he cannot get relief for divorce. He states that the appellant herein secured the relief of judicial separation on the plea that the respondent is living with another woman and therefore she cannot again rest on the Same ground and plead that he has committed wrong! which would disentitle him to file a petition for divorce which is now available to him by the amended provisions of the Act. He refers to the decision of the Full Bench in , and pleads that the entire approach to be made regarding grant of divorce under Act 25 of 1955 has gone through radical changes and there is a duty on the part of the court to give a harmonious construction which would enable the wrongdoer also to secure the relief which is now conferred on him by Parliament To substantiate this type approach, he refers to various passages in the said judgment of the Full Bench which are: -

"From the various amendments made In the provisions of S. 13 by the Parliament, one thing is obvious that the Parliament, thought it fit to liberalise the dissolution of marriage between the parties where there is no possibility of the spouses continuing matrimonial relation, " After referring to S. 28(1)(a) of the Act, it was held -

"The language of the section is clear that the advantages of his or her own wrong or disability should be unconnected with the relief which is sought to be claimed in the proceedings....It would thus be seen that if she failed to comply with the decree for restitution of conjugal rights, it cannot be said that she committed any wrong after the passing of the decree against her.. ..The advantage of her own wrong, or disability mentioned in S. 23(1)(a) would be an advantage of her own wrong, disability foundation of which was laid after the decree for restitution of conjugal rights was passed.... In my view, if the events mentioned in S. 13(1-A) are satisfied, in a case where the decree for restitution of conjugal rights has been obtained, by other party, either party can legitimately apply for dissolution of marriage by decree of divorce irrespective of the act that the spouse against whom decree has been granted has faded to comply with the said decree.... It is only to the limited extent in proceedings of divorce under S. 13(1-A) where the divorce is claimed by either of the parties on the ground that there has been no resumption of cohabitation after the passing of a decree for judicial separation or that there has been no restitution of conjugal rights after a period of one year or upwards, after the passing of the decree for restitution of conjugal rights, then the said provisions cannot be invoked on the ground of non-compliance with the decree passed so as to hold that the said Act of non-compliance is in any way taking advantage of his or her own wrong... It would further be seen who has suffered a decree a restitution of conjugal rights has already been adjudged to have left the company of the other spouse, without reasonable cause. The said wrong was committed much before the passing of the decree for restitution of conjugal rights and It cannot be said that the said wrong has been committed after the passing of the decree, for restitution of conjugal rights. Moreover, living separately from the spouse cannot be regarded as a wrong as the term 'wrong' as contemplated under S. 23(1)(a) of the Act contemplates causing of some injury to the other side. The only reasonable way of construing the provisions and giving effect to Legislative intent is to say that See. 23(1)(a) applies to cases based on the concept of 'wrong', 'disability' and not to S. 13(I-A) which is not based on that concept. At any rate, the on or disability contemplated by S. 23(1)(a) not the non-resumption of cohabitation or the non-restitution of conjugal rights which are the basis of S. 13(1-A).

Mr. Subramaniam, learned counsel, gathering strength from these passages would advance the contention that the amendments effected to the Act had enabled the wrongdoer to be treated on a par with the wronged Sec. 23(1)(a) is not intended to be applied in respect of all types of proceedings that arise under the Act and so far as S. 13(I-A) is concerned, it has no applicability whatsoever. His contention is to the effect that when the wronged or affected person moves the court for relief under Act 25 of 19.55 and gets a relief, it would be a sufficient ground for the wrongdoer to take full advantage of his own mistakes, commissions and omissions and secure relied under S. 13(1)(a) of the Act. He forcefully pleads that a duty is cast on the Court to give a harmonious interpretation and the legislative intent behind the amendments brought about by Act 44 of 1964, and Act 68 of 1976 should not be frustrated by invoking S: 23(1)(a) of the Act.

15. He also refers to the decision in , wherein also it has been held that Ss. 23 and 13(1-A) of the Act have to be harmoniously construed and unless after the earlier decree, it be established that thereafter any circumstance had occurred which would be a. template for institution of a petition for wrong under See. 23 of the Act, relief can be obtained under S. 13(I-A) of the Act even by wrongdoer, or mere lapse of the statutory period.

16. The counsel for the appellant relies upon the decision of the Supreme Court in , which was a case wherein the wife had secured a decree for restitution of conjugal rights. But when she presented a petition under S. 13(1-A (ii) of the Act for divorce, it was resisted by the husband by pleading that in spite of his several attempts to take her back, she had deliberately avoided them and therefore she cannot take advantage of her own wrong, and hence S. 23(1)(a) will become applicable and her petition deserves to be rejected. It was held in the aid decision that the failure to comply with a decree for restitution of conjugal rights will not constitute 'wrong' within the meaning of S. 23(1)(a), and therefore she can secure divorce under Section 13(I-A)(ii) of the Act.

17. The Supreme Court had taken note of the amendments effected in 1976, but since it was not relevant to the matter in controversy, their Lordships proceeded to hold -

"The grounds for granting relief under S. 13 including sub-sec. (1-A) however continued to be the subject to the provisions of S. 23 of the Act."

After referring to the decision in , and the Full Bench decision of the said court in ILR (1971) 1 Delhi 6, it was held that the law has been stated correctly in both the decisions above referred to that -

"In order to be a 'wrong' within the meaning of S. 23(1)(a), the conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion, it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is other. wise entitled".

Therefore Mr. Narayanaswami, learned counsel for the appellant, contends that in spite of amendments effected to Act 25 of 1955 enabling defaulting spouse also to seek relief or divorce, before such a person can secure the relief, he or she should satisfy the court that any of the inhibitions contemplated under Sec 23 of the Act do not exist. If it is shown that the conduct of the person who seeks relief is serious enough to justify the denial of relief, such a person cannot merely rely upon the statutory period contemplated for the institution of a petition for divorce.

18. I have already referred to the solitary point considered by the lower appellate court, According to the court below the mere fact that the husband is living with another girl by name Thirunanakkani, cannot still be pleaded by the wife as a ground to resist the petition for divorce, because she had relied upon the same ground in securing the decree for judicial separation in O. P. 85 of 1967 filed by her and that as soon as the period of two years is over, as a matter of course divorce has to be granted to the wrong doer on the basis of the wrong committed by him.

19. The Provisions of the Act as amended, and the decisions above refer red to, in my view, do indicate that the amendments effected under Central Acts 44 of 1964 and 68 of 1974, resulted in

providing further grounds for divorce and to reduce the period for securing divorce after a, decree is passed for judicial separation or for restitution of conjugal rights. By the amendments effected, the respon dent in the earlier petition (defaulting spouse) is also enabled to be a petitioner in a petition for divorce, as soon as the period contemplated under the Act lapses.

19a. Would this mean that S. 23(1)(a) of the Act would not be applicable, when a petition is filed under S. 13(I-A) of the Act by the wrong-doer?

20. Even though repeated amendments were effected to the Act, S. 23(1)(a) of the Act remained untouched an it was not considered necessary to delete or modify that section or even to provide for an exception in respect of S. 13(1-.A) of the Act. The Full Bench decision relied upon by Mr. Subramaniam, learned counsel for the respondent, has not gone in my view to the extent of holding that S. 23(1)(a) of the Act will be totally in applicable to cases arising under Section 13(1-A) of the Act. The reasoning even by wrongdoer, on mere lapse of the statutory period adopted by it can at best extend only to cases of, non-compliance of decrees for restitution of conjugal, rights, judicial separation, wherein there has been no resumption of conjugal rights or cohabitation within the period contemplated under the Act. I do not think that the Full Bench decision had gone to the extent of holding that the wronged should be -placed on a par with the wrongdoer and much worse to-enable him to claim relief based on his own wrongs and deliberate breaches committed by him of the marital relationship. Harmonious construction of an enactment, particularly dealing with matrimonial affairs cannot lead and should not result in bringing about disharmony of marital relations. What has been attempted to reconcile in the said decision is to hold that the relief ~ that has been given to the wrongdoer or defaulting spouse, is confined to cases wherein refusal to comply with the decree of restitution of conjugal rights, cannot be construed as a 'wrong7 under S. 28(1)(a) of the Act, and nothing more. The amended provisions have to be so construed because as held by the Supreme Court in -

"The grounds. for granting relief under S. 13 including sub-sec. (1 -A) however continued to be subject to the provisions of S. 23 of the Act".

Law can never give a helping hand to a wrong-doer. To prevent. the wrong-doer from seeking relief under S. 13(I-A), Parliament hid, left S. 23(1)(a) untouched inspite of the amendments effected under the Acts 44 of. 1964 and 68 of 1976.

21. What is wrong under S. 23(1)(a) has to be comprehended from the circumstances of each case. In my view, the Full Bench decision of Punjab and Haryana High Court and the decision of the Delhi High Court above referred to, have gone only to the extent of holding that disobedience of decrees of courts for restitution of conjugal rights will not be a ,1wrone within the meaning of S. 23 of the Act, and therefore while . granting 'relief under S. 18 (1-A) of the Act, Section 23(1)(a) cannot be invoked against defaulting spouse. Undoubtedly, S. 23, as framed contemplates that it should be applicable only if instances mentioned therein exist and if the court is satisfied that such instances exist, then alone relief cannot be granted under the other sections of the Act. At this stage, it will be useful to extract , which is to the following effect -

"It may however, be observed that it .may not be understood to have been held that the provisions of S. 13(I-A) are not subject to the provisions of S. 23(2)(a). But, in fact, what we have held is that a defaulting spouse, who has suffered a decree for restitution of conjugal rights, cannot be held to be taking advantage of his or her own wrong merely because he or she has failed to comply with the decree of restitution of conjugal rights. Human ingenuity being what it is, it cannot be disputed that many cases may arise, where notwithstanding that a ground for divorce exists, there may be something in the conduct of the petitioner which would be so reprehensible that the court would deny to such a petitioner relief by way of divorce, on the consideration that the petitioner was taking advantage of his or her own wrong".

The counsel for the respondent has relied upon the earlier extracts, which I have referred to above, to plead that the Full Bench had gone to the extent of holding that S. 23(1)(a) of the Act is no longer applicable in respect of any - proceedings instituted under S. 18 (I-A) of the Act. But the paragraph above referred to, in my view, brings about the purport and e scope of the decision arrived, at by the Full Bench, which is of a very limited extent, and, is not different from what has been held subsequently by the Supreme Court in . I am therefore of the considered view that S. 23(1)(a) of, the Act can still be invoked, when a defaulting spouse institutes proceedings under S. 13(I-A) of the Act, in spite of the fact that such a party has been enabled to seek the relief for divorce after lapse of the statutory period.

22. The cases placed before me are instances h rein relief of restitution of conjugal rights, had been secured, and in the present case, the decree secured by the wife was for judicial separation, and she had not come forward to ask for divorce for valid reasons, which will be referred to by me later, and the husband cannot maintain a petition under S. 18 (I-A) of the Act without satisfying the court that S. 23(1)(a) will not be applicable to him. Hence non-compliance of a decree for restitution of conjugal rights or failure to cohabitate, in the case of a decree for judicial, separation, by itself will not be a 'wrong within the meani4 of S. 23(1)(a) of the Act.

23. The next point to be considered is whether any wrong that has been already pleaded.as a ground for securing relief of restitution of conjugal rights or judicial separation cannot again be relied in against the defaulting spouse when the petition is filed under S. 18 (I-A) for divorce? Counsel for respondent refers to the following sentences in (FB)-

"The advantage of her own wrong or disability mentioned in S. 28(1)(a) should be an advantage of her own wrong or disability, foundation of which was laid after the decree for restitution of conjugal rights was passed."

He also refers to the following sentences In -

"The petitioner for divorce, whether innocent or guilty cannot be -deprived of his/her rights on the grounds which existed prior to the passing of the previous decree."

This view is unacceptable because the wrong that is now pleaded is a continuing wrong and' a persisting. cruelty. The appellant herein filed the petition for judicial separation and it was allowed

on 30-6-1969. ere is nothing in evidence, to show that they have cohabitated subsequently. Appellant in her counter had claimed that she had to leave the husband in 1961, because of the cruelty meted out to her and of the. wickedness of the husband in living with another woman. In O. P. 85 of 1967 filed for judicial separation, she had relied upon the ground that her husband continues to lead an adulterous life with another woman, and there. .fore, she is justified in living away from him. In the petition now filed by the husband, she has referred to the fact that respondent had rashly and in all wickedness married another and has been living with her and that it is impossible for her to go and lead a marital- life with him. Though she had used the expression marriage, there could be no valid marriage of the respondent herein with Tirunamakkani, the woman with whom, he is leading an adulterous -life. Her claim that respondent herein is living with another woman has been accepted by court, and it was on that ground she secured the relief -for' judicial separation. Based on such a finding, and on the relief granted in O. P. 85 of l967, the husband instituted the present proceedings for divorce, which would mean that he is still continuing to lead an, adulterous life. The very fact that he relies upon the order based in O. P. 85 of 1967, as a ground for, relief, proves beyond any doubt that he still lives with another woman. Even the lower appellate Court, had framed the point on the admitted. fact, that he is still living with Thirunamakkani. Such, a conduct having been found to be, reprehensible resulted in grant of the relief of judicial fact.' Even thereafter, it continues to exist totally constituting wrong within the meaning of S. 23 of the Act. After the order was in 0. P. 85 of 1967, if the husband, had ceased to lead an adulterous life, or it the woman had abandoned him, or even if she had died, then there can be no. valid ground for the appellant hereinto refuse .to cohabitate with him in which event, respondent may establish that he has not committed any wrong subsequent to the earlier decree.

24. Leading an adulterous life is continuing wrong. Therefore, mere ,fact that in the earlier proceedings it was continuing wrong. Therefore mere fact that in the earlier proceedings, it was a ground for relief, does not mean unless some other ground is established or the foundation for the wrong is to be made out subsequent to the decree and achieve his nefarious ends and ambitions if upheld by courts, it would be a negation of law. If for sustaining: amendments a harmonious construction is to be resorted, and it is to result in a wrongdoer be helped, of all things in the by legal provisions, then it will -lead to disastrous situations and would , be the easiest handle for the wrongdoer, to wriggle himself out of his marital obligations on his whims and fancies by committing deliberate acts to disrupt marital life. No law can be conceived -of to give relief to a wrongdoer, the foundation of which is based on his- own wrongs. In attempting to make a harmonious construction of the sections in the amended Act, merely because the subsequent amendments are claimed to usher in liberalisation on the aspect of divorce, the court cannot bring about an interpretation which would give a helping hand to a wrongdoer to get relief based on his wrongs, commissions and omissions, which are against law. Illegality and immorality cannot be countenanced as a4s: for a person to secure relief in matrimonial matters. To construe that, any wrong made, out, must be the one which is sequent to the earlier decree, will the purport and scope of S. 23(1)(a), which is still retained in spite of amendments. Therefore even though the defaulting spouse is now enabled to, file a petition. for divorce, if the wrong is of a continuing nature, it cannot be held that merely because it originated even earlier to the first petition and pleaded in that petition, it cannot be taken note of for finding whether such a conduct of the the defaulting person is reprehensible enough to constitute a wrong on the date of the presentation of the petition by him. The Supreme Court held that in spite of

S. 13(I-A) having been enacted, the provisions of S. 23 of the Act will continue-to apply. I am of the view that the decisions relied upon by Mr. Subramanian, learned counsel for the respondent for the proposition that S. 28(1)(a) of the-Act cannot be invoked in petitions file by any sort or category of defaulting ' spouses under S. 13(1) of the Act, can be of no assistance to him. The limited extent to which relief granted. is to hold that the failure to comply with decrees for restitution of conjugal rights and judicial separation would not constitute a 'wrong, ' and therefore such a defaulting spouse can also ask for divorce, and nothing more.

25. If the defaulting spouse, as in this case, persists in doing the same wrong which had formed the ground for the earlier petition filed against him, S. 23(1)(a) will definitely prevent him from seeking relief for divorce. The view taken by the Full Bench in , and the decision in that the foundation for the wrong must be one which had originated subsequent to the earlier decree, does not find favour with this court. Hence, I bold that if it be shown that the petitioner seeking relief under S. 13(I-A) committed any further wrong apart from what has been pleaded in the earlier petition. or the wrong already committed is of a continuing nature, and such conduct is serious enough to identify the other party from complying with the decree that has been passed, the amendments which 1have been effected to the Act do not enable such defaulting spouses to secure a decree for divorce.

26. Earlier it has been stated that the appellant herein had not come forward to ask for divorce for valid reasons, which would be referred t6 later on. Consequent to the adulterous life led by the respondent, she had to file the petition for judicial separation that an justifiable ground, she can live away from an erring husband with fond hopes that her husband would realise his mistakes by passage of time, and the wrong committed b him may come to an end which would result his coming back to live with her. This lingering hope, any woman, like the appellant, nurtures because She does not want to forgo the status of being the wife, whatever estrange went may develop in respect of matrimonial relationship. This is a traditional value which bad gone into the blood of Hindu women whatever be the changing facets they may face in maintaining the status of a married woman irrespective of the wayward life that may be led by the husband. They wait for - the clouds to clear, and therefore it cannot be said that when she bad approached the court for judicial separation, there could be no prejudice caused to her in effecting divorce, as if she had laid the corner stone for it, and the only requirement is the lapse of a period of one year. There being no cohabitation subsequent to her petition for judicial separation, she does not want to be reduced to the position of a divorced woman and be satisfied by getting the mea e maintenance amount invariably fixed under S. 25 of the Hindu Marriage Act.

27. There is yet another valid ground for the wife in not asking for divorce after instituting the earlier proceedings because, if the husband is to predecease she would be entitled to succeed to the estate. There being no provision in the Act, to safeguard, such valuable right, she does not ask for divorce.

28. Before I deal with other aspects I will briefly deal with the question as to what extent the two amending Acts, viz.. Central Acts 44 of 1964 and 68 of 1970 have enabled the defaulting spouse to seek relief under S. 13(I-A) of the Act, without being tested by S. 23(1)(a) of the Act. even though, it is claimed . by the counsel for respondent that there is no restriction imposed on the rights now

conferred on wrongdoer to ask for divorce. The points which have come up for consideration before the High Courts of Punjab and Haryana, and Delhi in the decisions above referred to, can be resolved by holding that the two amending Acts have now enabled defaulting spouses to seek for the relief of divorce, provided he or she satisfies the court, that S. 23 of the Act is not attracted since non-compliance of a decree for judicial separation or restitution of conjugal rights is not a wrong within the meaning S. 23(1)(a) of the Act. Thus, in all those instances in which S. 23 is not attracted, the two amending Acts have enabled even defaulting uses to get relief under S. 18 (I-A) Acts. The amending Acts have not enabled wrongdoers, who would come within the ambit of S. 23(1)(a) of the Act to t the relief of divorce, on the plea at liberalisation had been brought about towards divorce to such an unlimited extent. In my view, the amending Acts 44 of 1964 and 68 of 1976 have not enabled all sorts of defaultin5 spouses to get relief for divorce, which was not at all available earlier, but it would be avail able only in such of those instances, wherein S. 23 of the Act cannot be applied. Hence, I hold that the respondent herein, a continuing wrongdoer, cannot plead that, after the said two Amending Acts, S. 23(1)(a) cannot be invoked against him, and therefore the decision of the lower appellate court is hereby set aside.

29. Counsel for the respondent-husband contended before me that the provisions relating to divorce in Hindu Marriage Act 1955, had radically changed by several amending Acts and the liberalisation made for making divorce easy has to be understood and approached by courts which should reorient its hitherto approach and enable even a wrongdoer to get the reliefs of divorce. He draws inspiration for this sort of contention on the decisions relied on by him. In this perspective, I consider that it would be pertinent and also necessary to focus on several aspects which have not been pro. vided for in the Act to safeguard the interests of wronged women. It would be unjust and inequitable to claim that the said two amending Acts have brought about such liberalisation as to result in considerable harm being caused to women in distress, who have not at all been responsible for disruption of the marital life, and for no fault of them, they are compelled to come to court for reliefs other than divorce. In a case of this nature wherein the husband had developed infatuation with another woman, for no fault of the wife, she is deprived of a happy marital life. with all its attendant benefits on over so many things that happen in a family, The only relief provided under such circumstances under Act 25 of 1955 is to enable the divorced woman to claim permanent alimony and nothing more. Paradoxically courts in most of the cases even nowadays fixpaltry amount of Rs. 25 as monthrly mz~-tenance, as has happened in this case also. There are innumerable decision3 in which even two decades back courts have fixed annual maintenance of about 2 bags of paddv, aboitt Rs. 5 in cash and one saree also, if it is on the generous side.

30. When a woman enters the marital fold, she rightfully anticipates and accepts to be the wife on being assured of a secured and happy life, and if for no fault on her side, er wrongdoer husband is to secure an order of divorce, because she had asked for judicial separation, it is needless to state that payment of permanent alimony under S. 25 of the Act is no satisfactory relief to her. Odds are against her at every step she takes, to realise the paltry maintenance amount. The procedure prescribed for realization of maintenance is so cumbersome and nervetaking that in spite of securing an order for maintenance, she is unable to realise any amount for years to follow. There are innumerable instances wherein even for a decade and more, no amount of maintenance could be realised by courts and paid over to such woman in distress. Even though several amendments have

been made to the Act, the safeguards absolutely essential for mitigating hardships of wronged woman are yet to find a place in the Act. Unless and until suitable provisions are incorporated in the Act in this direction, it would result in grave injustice to womanhood in claiming that liberalisation had been made for securing divorce at the instance of wrongdoer husband.

31. All the necessary safeguards cannot be enumerated in this decision and as and when occasions arise, this court would indicate them. Some of which perceivable are, 'like providing- (1) Compensation for loss of status: A wife as an equal partner in married life, is entitled to look forward to share the benefits and attendant comforts of future prospects of her husband to which she contributes in her own way. He cannot, when h& had secured the best of position in life, abandon the wife leaving to solace herself with maintenance amount the realisation of which Is itself remote in some cases and next to possibility in many instances. If the husband desires divorce, one half of his share in the properties as on date of marriage or a proportionate share on date on which she is forced to leave him, whichever is advantageous to her, to he given to her, like the enabling provision made for a female relative to get a share in coparcenary property under S. 6 of the Hindu Succession Act. It is vided therein that when a Hindu dies having a right in coparcenary e , it will be deemed that a partition ad taken place in respect of his share immediately before his death, Likewise, she can be enabled to get the share in the property for loss of status of being a wife.

(2) If children are in her custody, apart Er6ni the grant of maintenance to them she has to be compensated for the sole responsibility she assumes, which is an endless process of care extended, anxieties experienced and constant attention devoted for their upbringing as future. citizens of this country. But for the forced separation, the burden would not solely be resting on her.

(3) Maintenance pendente lite, S. 24 of the Act, contemplates interim maintenance and for getting necessary expenses for the proceedings, but no effective provision made for summary realisations to be made quickly and effectively. When a husband files a petition, unless he pays the monthly instalments to his wife and children, petition should not be proceeded with. If salaried persons are involved, like deductions made under Income-tax Act, deductions at source and direct payment to her be provided for, on the basis of order of court, instead of herself compelled-to take out execution proceed for non-salaried categories, with whomsoever any amount payable to him is available or any other assets is made out, by a summary order, the realisation should be achieved, from those who,,40~d such assets as a priority claim.

(4) Charges created under S. 25 of the Act to be registered free of cost; S. 25 of the Act enables the court while awarding permanent maintenance to create a char e on immoveable property of husband securing payment of maintenance. By generating fresh litigations and alienations etc, creation of charge had not at all resulted in effective realisations. Any charge created has to be registered at the instance of court, free of stamp charges, in which event, no transaction by any one will affect her rights in realising the periodical maintenance amount, and *in default or delay in payments she would be entitled to take possession of property within a stipulated period.

(5) A condition precedent of paying the entire -maintenance amount before appeal is entertained.

Under S. 30 of the Workmen's Compensation Act. unless the entire compensation is deposited, no appeal can be filed. S. 52 of Foreign Exchange Regulation Act 1973, envisages payment of penalty before an appeal is entertained similar provision, if made in this Act, it will go a long way in mitigating their endless hardships of facing procrastinating litigations.

(6) Properties and assets received from a married man by stranger woman and their oftsprings, to belong only to wife and to children born to her.

In this case, the respondent owns lands and he is also a village munsif. On the basis of big living with another woman, appellant got gew1order for judicial separation and by committing this wrong, if he is enabled to get divorce without reference to S. 23(1)(a) of the Act, he will get married to the other woman (Thirunamakani), who would be entitled to succeed to his properties on his death and not the appellant herein, who had hoped for a life long marital life when her youthful years were taken advantage of by him. When it is established that the husband is living with another woman, requires to be made to deprive her offsprings from acquiring any interests in any property settled or transferred or otherwise parted with by him and the lawful wife be conferred with right to have those transactions set aside. Otherwise, concubinage and bigamy which are promiscuously practised to the detriment of dutiful wives, like that of the appellant, continue to exist unabated.

(7) Qualification of maintenance: S. 25 Act contemplates taking into account of the only factor of respondents income and other property and also the income and other property of the applicant and fixation of a just amount. When divorce is ordered it invariably results in children being reared tip by the woman and they have to forgo - not only the family set up and its atmosphere but also undergo consequential dislocation, mental agony followed up by deterioration in health etc. Such women in distress, have to be necessarily compensated for loss of all such factors and not merely on the only question of the income of the respective parties. Even when compensation is determined under Section 110-A of the Motor Vehicles Act, several factors like pain and suffering, nature of injury, permanent disability etc. are taken into account. Likewise in quantifying compensation in matrimonial matters if provision is made for the following factors to be taken into account, the wronged woman need not be forced to start living in abject poverty conditions:-

i. For loss of status and set up of family;

ii. Compensation for loss of attendant benefits. to which, as a wife, she would have be

iii. Age in which she is forced to separate;

iv. Number of children born by her during subsistence of marriage,

v. The extent to which she had suffered mental agony when divorce results due to any of

vi. Merely because she is handicapped on account of her earlier involvements,' on remar

(8) As a separate category execution procedure has to be provided in the Civil Procedur

In Order 21, C. P. C., relating to execution of decrees and orders, maintenance decrees

32. After deep consideration, In my view, the claim made, and which found acceptance in the Full Bench decision of Punjab and Haryana High Court and in the decision of Delhi High Court, that the law on the aspect of divorce has been liberalised so as to facilitate even the defaulting spouse-wrong-doer-husband to secure divorce, cannot e acceded to, precisely because comprehensive provisions are yet to be made to safeguard wronged women. S. 23 of the Act is retained bv Parliament, in spite of other amendments effected. Quite justifiably, the relief granted. is only for a limited category of defaulting spouses, who do not come within the regulatory folds of S. 23 of the Act.

33. As far as women and children are concerned, blessed with the constitutional mandate, they are entitled to be provided with special provisions to safeguard their interests. As spelt out earlier, being impelled to find out how far and to what extent, necessary provisions require to be made in the Act for the wronged woman, I have dealt with some of them. Unless and until such women are fully safe guarded., no plea of courts being requested to take a liberal approach can be entertained.

34 . Rapidity in change of matrimonial laws by imbibing concepts obtaining in other parts the world may be attempted. But it should be remembered that the traditional healthy values of marital life in our society and particularly existing in rural areas, which assure balanced living for the spouses and in turn forms the backdrop for growing children, should not be destroyed by false impression of liberalisation of laws of divorce, beyond what is contemplated in the Act. The existing drawbacks, in being solved, should not result in reducing the wronged woman wrapped with decree copies 6f alimony without ensuring prompt and uninterrupted realisation of the amounts and assets granted in their favour.

35. The imperative need having been thus expressed, I conclude to bold that the respondent herein, being a continued wrong-doer husband, is not entitled - to the relief of divorce, and hence this appeal is allowed with costs throughout.

36. Appeal allowed.