Karnataka High Court
M. Clarance vs M. Raicheal And Anr. on 11 April, 1963
Equivalent citations: AIR 1964 Kant 67, AIR 1964 Mys 67, ILR 1963 KAR 788, (1963) 2 MysLJ
Author: N S Rau
Bench: N S Rau, A N Pai, M I Husain
JUDGMENT N. Sreenivasa Rau, C.J.

1. I agree with the conclusions arrayed at by my learned brother Mir Iqbal Husain, J., on all the questions arising in this case and with the proposed order dismissing the petition. As some of the points involved are of great importance, I am adding the following observations:

2. The question of jurisdiction of the Court in which the petition was filed is one of some difficulty. It may also be mentioned that the petition itself does not contain any averment as to the place of residence of either party with reference to the jurisdiction of the Court. The Petitioner (husband) is, however, described as residing at Vaniambadi in North Arcot District, Madras State, and Respondent-I (wife) is stated to be a school mistress in Robertsonpet, Kolar Gold Fields, which is within the territorial jurisdiction of the District Court, Bangalore, to which the petition was present.

3. Under Section 10 of the Indian Divorce Act a petition for dissolution of marriage has to be presented to the District Court or the High Court. Section 3(1) of the Act, while defining 'High Court', says:

"In the case of any petition under this Act, 'High Court' is the one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together."

Sub-section (3) says:

" 'District Court' means in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together."

It will thus be seen that the test for determining the jurisdiction of the High Court or the District Court is the territorial jurisdiction with reference to where the husband and wife reside or last resided together.

4. There appears to be some difference of opinion among the High Courts as to whether the word 'together' qualifies only the words 'last resided' or it also qualifies the word 'reside'. While some High Courts have held that even in the case of invoking the Court's jurisdiction on the ground that the husband and the wife are residing within the jurisdiction of the Court at the time of the presentation of the petition it is necessary that they should be residing 'together', other High' Courts have held that it is enough that both of them are residing within the jurisdiction of the Court, though it may be that they are residing separately. It is, however, unnecessary to express any view on this point, since it is beyond question in this case that the petitioner (husband) was not residing within

the jurisdiction of the District Court, Bangalore, at the time the petition was filed.

So the question for consideration is whether the husband and wife last resided together within the territorial jurisdiction of the District Court. The material placed before the District Court seems to show that the marriage took place in the Muskam Church of South India at Kolar Gold Fields on 22-6-1940, that the Petitioner came to that place for the marriage, that on the night of the marriage his wife informed him that she had had, prior to the marriage, sexual connections with Respondent 2 and that the marriage had been, arranged by her brother by compulsion. On coming to know of this the Petitioner left her in her parent's house and returned to Vaniambadi. Thereafter they never resided together.

The word 'reside' connotes some degree of continuity of stay in a place and the words 'residing together' would consequently mean that the persons residing together should have continuously stayed together in the same dwelling for some time. There is no material in this case to show that the two parties were together at any time except during the marriage ceremony at the Church and at the dwelling where the marriage was intended to be consummated on the night of the marriage. Being together in such circumstances may not be regarded as 'residing together' in the ordinary sense of those words. The Courts, however, have given a liberal construction to the term to obviate obvious hardships and even a brief period of stay together has been held to fulfil the requirements of the provision in cases where the residence together has been confined to one occasion. But in cases where there has been residence together of a more permanent character and a casual or brief residence together, the Courts have taken the view that it is only the former that can be considered as residence together for determining the jurisdiction. Indeed that is the yiew taken by this Court in C. R. C. No. 38 of 1962 (Mys.).

5. The question arises what would be the position in a case where the two parties to a marriage met only at the time of the marriage and did not reside together at all afterwards though such cases must, in the very nature of things, be extremely rare. If valid grounds for judicial separation or divorce exist, are they to be denied the remedy because they are not able to establish that they resided together at any time? Obviously their coming to stay within the jurisdiction of the Court just for the purpose of the presentation of the petition would not amount to residence. Further, when one of such parties wants to present a petition, he or she may be residing within tha jurisdiction of one Court and the other spouse may be residing within the jurisdiction of another Court. There is no reason or principle why in such cases the parties should be denied a relief to which they would otherwise be entitled.

The only necessary elements for a divorce or a judicial separation are that a marriage should have taken place and that grounds justifying judicial separation or divorce should exist. The provision for investing a particular Court with jurisdiction belongs to the region of appropriate machinery for the purpose of granting a recognised relief. It would appear reasonable to think that the relief should not be denied and some way should be found to interpret the machinery provisions in such a manner as not to defeat the ends of justice.

As has already been mentioned above, the Courts have interpreted the term 'residence' liberally and applied it to cases where the husband and wife have stayed together even for a very brief period if they have not resided together in a more permanent way elsewhere. There is no reason why in an extreme case like the one mentioned above the circumstances that the two parties to a marriage were necessarily together at the time of the marriage should not be held to constitute 'residing together' even though it may appear to be straining the meaning of that phrase.

In this connection it may be remembered that in similar contests as, when questions of domicile and nationality arise for consideration, every person is deemed in law to have some place of residence and that place will be regarded as the place of residence which qualifies as representing the nearest approach; in other words, the Courts find a residence and do not allow themselves to proceed on the footing that there is no residence at all. It seems to me that the same principle would be applicable to a case where for the purpose of obtaining matrimonial relief the question of finding a place of residence together of the two parties to the marriage arises. In the case on hand, not only were the parties together at the time of the marriage but if is also in evidence that they stayed together for a part of the night. It should also be added that the marriage certificate gives: West Town, Oorgaum, Kolar Gold Fields, as the residence of both the parties at the time of the marriage, though it is not clear whether it is the same house or building that is indicated. Applying the principle mentioned above, it would follow that the District Court, Bangalore, had jurisdiction to entertain the petition.

6. It may be added that the abovementioned situation has been obviated in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, since both of them provide for conferring jurisdiction not only on the basis of the place where the husband and wife reside or last resided together but also on the basis of the place where the marriage was solemnized. See Section 19 of the Hindu Marriage Act, 1955 and Section 31 of the Special Marriage Act, 1954. Introducing an appropriate amendment to the Indian Divorce Act to bring about the same position in regard to jurisdiction deserves consideration.

7. In the case on hand we have been compelled to deny relief to the parties even though the material before us shows that their conduct has been straightforward. Both in the Petitioner's application and in the evidence of the two parties it is disclosed that the Respondent had to enter into the marriage on account of her brother's compulsion and that on the very night of the marriage she made a clean breast to the Petitioner of her prior association with Respondent 2. The Petitioner thereupon released her from the obligations of matrimony forthwith and later on not only raised no objection to her purported marriage with Respondent 2 but gave his consent with a view to facilitate it. He, however, took no immediate steps to obtain dissolution of the marriage. It will be remembered that the marriage was celebrated on 22-6-40 while the petition for divorce was filed on 3-11-1961, i. e., more than 20 years later. Meanwhile Respondent-1 had a child by Respondent 2 who was about 13 years old at the time of the petition.

The petitioner states that he was discharged from Military Service on 26-6-53 and delayed presenting the petition in deference to the wishes of his mother who was anxious to avoid scandal and that his mother died in August 1961, leaving him free to present the petition. He also states that he had intimated the Respondents about the institution of the proceedings against them. In fact they

appeared in Court on the very day of the presentation of the petition and file a memo stating that they had no objection to the petition being allowed. The Petitioner and Respondent 1 were examined on the same day and the Court made a decree nisi on that day.

It is clear that the Petitioner made a full disclosure of all the circumstances and acted under the bona fide belief that the circumstances warranted a dissolution of the marriage. The reason for our denying him relief is that Courts have to be guided by the particular provisions of the law applicable to the case and not by general notions of right or wrong, for it is those provisions which incorporate what is regarded by the Legislature as the appropriate code of conduct. This factor assumes great importance particularly in the field of matrimonial law as different conceptions are embodied in different systems of personal law and this must continue to be the state of affairs until as visualised in Article 44 of the Constitution, a uniform Civil Code is achieved.

In the present state of affairs different considerations operate in respect of persons belonging to different religions or communities. Until the enactment of the Hindu Marriage Act 1955 no divorce was possible under the Hindu Law, though large sections of people belonging to that community could secure it by virtue of the customary law governing them. The provisions of the Hindu Marriage Act relating to divorce are relatively liberal and so are the provisions of the Special Marriage Act, 1954, which permit divorce by mutual consent. If that Act had been applicable to the present case the position may have been entire-ly different as there was undoubted consent of both the parties.

8. Now the parties are Christians and the petition is governed by the Indian Divorce Act, 1869. Under the provisions of that Act the only ground on which a husband may present a petition for dissolution of marriage is that his wife has since the solemnization of the marriage been guilty of adultery. Under Section 12 of that Act the Court is enjoined to satisfy itself not only as to the facts alleged but also whether or not the Petitioner has been in any manner accessory to or conniving at, the going through the said form of marriage, or the adultery, or has condoned the same.

Section 13 says that if the Court finds that the Petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of, or that he presented or prosecuted the petition in collusion with either of the Respondents, the Court has to dismiss the petition. Section 14 says that if the Petitioner has been guilty of unreasonable delay in presenting or prosecuting the petition, it shall not be bound to grant a decree for dissolution of the marriage.

9. In the present case, no question of connivance at going through the form of marriage arises and for the reasons stated by my learned brother I agree that even though the Respondents presented themselves on the day on which the petition was presented and agreed to its being granted, th'ere was no collusion. Mere failure to raise objections or even the signification of consent will not amount to collusion, if the facts alleged in the petition cannot be challenged and will necessarily lead to the finding of fact or facts justifying grant of the petition. In the circumstances of the case, there could have been no mental element on the part of the Respondents to bring about the result in an oblique way either by putting forward true facts in support of a false case or false facts in support of

a true case, as collusion has been described, and without such mental element there can be no collusion.

10. As regards 'connivance' in respect of his wife's adultery, the Petitioner does not appear to have been aware of what that term meant when he stated in his petition that there was no connivance. The established facts disclose that when he freed his wife on the night of the marriage from her marital obligation he did so as he discovered that her affections were centered on Respondent 2 and he wanted her to he free to live with him. When some five years later she asked him to formally free her to enable her to contract a marriage with Respondent 2, he wrote to her in reply agreeing to do so. In that letter he says that she may treat the letter itself as her release from the marital bond. Respondents 1 and 2 entered into a formal agreement mutually recognising their status as husband and wife. It is no doubt true, as pointed out by Sri Nathamuni lycngar, that this document which is dated 3-2-1947, is a couple of days earlier than the petitioner's letter mentioned above. But there can be no doubt that the Petitioner permitted the so-called marriage between the Respondent for he says in his petition.

"that after 5 years on the genuine request of the first Respondent the Petitioner gave
himself and the first Respondent the Respondents
have got through a marriage by registration on
3-2-47."

In the course of his deposition he says:
"When I was at Shahajahanpnr in Military Service Respondent 1 wrote me a letter reques

It is thus clear that not only did he allow his wife to go away from him and regulate h

conduct but gave his consent to her to live with Resoondent 2 as man and wife. Such living together before the dissolution of the marriage between the petitioner and Respondent 1 could not but amount to Respondent-1 leading an adulterous life with Respondent 2. The position might have been different if the Petitioner had allowed Respondent 1 to go away from him or sent her away or even if he had done nothing to prevent her from living in association with Respondent-2. For it cannot be said that a husband's failure to prevent his wife from committing acts of adultery amounts to connivance.

But in the present case the Petitioner has, with the explicit object of facilitating the Respondent's living together as husband and wife during the subsistence of his own marriage with Respondent-i, given his consent to their 'marriage'. The fact that all the parties were ignorant of the nature and implications of such a course of conduct or that they were ignorant of the law bearing on the matter cannot alter the character of the Petitioner's conduct which clearly amounted to connivance at the adulterous association between the Respondents. It is not the code of conduct which a person adopts for himself or lays down for his wife which governs a determination of the question whether there has been connivance or not, but whether, according to what is understood in terms of the law governing the matter, such conduct amounts to connivance or not. It may very well be that the Petitioner thought that Respondent-i was doing nothing improper in living together with

Respondent-2 who had already held her affections and that he (the petitioner himself) was doing nothing wrong in doing something conducive to their happiness. But nevertheless if the conduct of the Respondents amounted to adulterous association and if the Petitioner consented to and facilitated such an association he undoubtedly connived at it. The case reported in Lloyd v. Lloyd (1938) 2 All ER 480, as pointed out by my learned brother, illustrates the principle involved.

11. Then again it is difficult to hold that the delay which has occurred in the presentation of the petition in this case was such as could be reasonably condoned. Even granting that there was no improper association between the Respondents up to their purported marriage the petitioner waited for fourteen years thereafter before filing the petition. It has already been mentioned above that the Respondents have a child who was 13 years old at the time of the petition. The reasons given by the Petitioner for the delay are that he was in Military Service till 1953, that his mother was anxious to avoid scandal and that he waited till after her death to file the petition. No particulars are given as to how his being in the Army prevented him from taking steps for obtaining a divorce. As regards his mother's wishes, he has stated in the course of his deposition:

"As my mother desired that I should get a decree from the Court with respect to the divorce I am making this petition."

It is suggested by Sri Nathamuni Iyengar that this must be a wrong recording as it runs quite contrary to the statement in the petition. It is difficult to regard it as a wrong recording since the sentence cannot be made to yield any other meaning by adding or taking away a word or two. The utmost that could be suggested is to ignore both the statements and the result would be that there is no explanation for the delay at all. Even if the statement in the petition should be regarded as representing the truth it hardly furnished adequate ground for a delay of 14 years. It should be remembered that the severance of the marital status is a matter that affects not only the parties to the marriage but affects society at large and that is the reason for the requirement of promptitude in presenting a petition for divorce.

12. It is difficult to see what object or objects were sought to he achieved by the Petitioner and the Respondents in the securing of a divorce at this stage of their lives. But their conduct has been honest and straightforward. Nevertheless the Petitioner's request cannot be granted since the law governing the matter clearly prohibits the granting of such a petition in the face of such connivance and delay as has taken place in this case. The learned District Judge's decree cannot, therefore, be confirmed.

13. We cannot help remarking that the learned District Judge has dealt with the matter as if the granting of a divorce was a matter of mere formality. He has not applied his mind to the case properly and has failed to bestow adequate attention on the duty laid on the Court to satisfy itself about the absence of connivance and undue delay.

14. I should also like to add my appreciation of and indebtedness to the two learned Advocates who so readily agreed to be amicus curiae and assisted us greatly by a thorough presentation of all the facts of the case and discussion of the important questions of law involved, requiring as it did much

investigation and study.

Narayana Pai, J.

15. I agree with the conclusions arrived at by my learned brothers and with the order proposed.

Mir Iqbal Husain, J.

16. A decree under the provisions of Section 17 of the Indian Divorce Act dissolving the marriage between the petitioner and the first respondent made by the 'District Judge, Bangalore, is referred to this Court for confirmation. As this case involved some intricate questions of law and as tbe parties were not represented before this Court by any legal adviser, we requested Sri Nathaniuni Iyengar and Sri Rama Kamath to help us by arguing the case on either side as amicus curias and we are grateful for the assistance rendered by them.

17. The facts of the case are quite simple. The petitioner M. Clarance filed an application on 3-11-1961 for dissolution of his marriage with his wife Raicheal, the first respondent, under Section 10 of the Indian Divorce Act. He implead-ed in the said petition James Paul as co-respondent. He alleged that his marriage with the first respondent took place on 22-6-1940 in the South Indian Church at Champion Reefs, Kolar Gold Fields within the jurisdiction of the District Court, Bangalore. On the night of the marriage the first respondent voluntarily confessed to him that she led an amorous life with the co-respondent and that her marriage with the petitioner was arranged by force by her brother. The petitioner believed these statements and on that very night took the first respondent and left her in her parental home. He further alleged that he had no sexual inter-coiirse with her on that night and that fact is borne out by the evidence of the first respondent as well. The Petitioner returned to Vaniyambadi. Thereafter, he had no kind of connection whatsoever with the first respondent. Respondent 1, however, is a permanent resident of Kolar Gold Fields within the jurisdiction of the Bangalore District Court.

18. About five years later, the first respondent requested the petitioner by a letter to give his consent for her marriage with the co-respondent. At that time the petitioner was in military service in Northern India at a place called Shaha-jahanpur. He gave his consent as per the letter marked Exhibit P.2, dated 5-2-1947. Thereafter, the respondents purported to get married and executed a registered marriage agreement dated 3-2-1947. They lived like husband and wife thereafter and have a daughter by name Victoria, aged about 13 years.

19. Long after these incidents, on 3-11-1961 the petitioner filed this application for dissolution of his marriage with respondent 1. The reason for the delay in so doing as given by him, is his itinerant military life and also the wishes of his mother not to file an application for divorce in order to avoid scandal. Therefore, after the death of his mother, the petitioner has filed the application.

20. On the very day the petition was filed, the respondent appeared before Court and submitted that they had no objection for the petition being allowed. Even though such a consent memo was filed by the respondents, the learned District Judge thought it advisable to examine the parties to find out

whether tbe petition was or was not vitiated by collusion. He came to the conclusion that it was not, and therefore, granted a decree nisi for dissolution of the marriage between the petitioner and the first respondent under Section 16 of the Act. It may here be mentioned that no other aspect like connivance, jurisdiction or delay was considered by the learned Judge.

21. The question arises whether it is obligatory on the part of the District Judge to consider these aspects in a case where the parties are not ostensibly at issue but on the other hand, an in general agreement with regard to the facts of the case. It should be remembered that the proceedings under the Divorce Act assume a special importance because of the fact that tinder its provisions the status of married couple is sought to be disrupted. Hence under the scheme of the Act a special responsibility is cast on the Judge trying such, cases to satisfy himself regardisg not only the truth or otherwise of the allegations but also to determine questions of connivance, jurisdiction, delay or whether the petitioner was an accessory to the adultery etc. Their Lordships of the Sup-reme Court in the case of Earnest John White v. Kathleen Olive White, have quoted with approval the observations of Lord MacDermott in Preston Jones v. Preston Jones, (1951 AC 391 at p. 417) to the following effect:

"The jurisdiction in divorce involves the status of the parties and the public interest required that the marriage bond shall not be set aside lightly or without strict enquiry....."

22. The provisions of the Act particularly sections 12 and 14 are specific en the point. Section 12 starts with stating that:

"Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said farm at marriage or the adultery, or has condoned the same, fend shall also inquire into any counter-charge which may be made against the petitioner."

23. Section 14 which deals with the powers of the Court to pronounce the decree for dissolution of the marriage starts with the expressions that:

"In case the Court is satisfied on the evidence that the case of the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to, or conniving at, going through of the said form of marriage, or the adultery of the other party to the marriage or has condoned the adultery complained of....."

24. The learned District Judge, therefore, in our opinion should not only have halted at satisfying himself whether there was collusion between the parties or not but should have proceeded further to investigate into these matters before passing a decree nisi for dissolution of the marriage. It is equally the duty of this Court when the case comes up for confirmation to look into it in the light, of the scheme of the Act and to satisfy itself whether the decree nisi has been properly granted. It may be stated that this Court would ordinarily be reluctant to interfere with the findings of fact. On the other hand, if the learned District Judge has failed to consider such important aspect and has

further erred in not conforming to the statutory provisions of the Act an interference is called for at the hands of this Court.

25. The points that arise for determination in this case are (1) jurisdiction of the District Court as well as of this Court to grant and coo-firm respectively the decree for dissolution of the marriage; (2) whether there was collusion between the petitioner and the first respondent; (3) whether the petitioner connived at the adultery of the respondents or the so-called marriage between them; (4) whether the delay in filing the petition has been satisfactorily explained,

26. A point of jurisdiction was raised by Sri Rama Kamath in the first instance. He urges that the District Judge of Bangalore has no jurisdiction to grant a divorce in this case. The residence of the petitioner was Vaniyambadi. It is only for the purpose of marriage that he came down to Kolar Gold Fields within the jurisdiction of the District Court, Bangalore and soon after the marriage, he went away to that place. Hence it cannot be stated with any justification, it is submitted, that he either resided at Kojar Gold Fields or that he and his wife last resided together at Kolar Gold Fields within the jurisdiction of the District Court, Bangalore.

27. Section 3 of the Act gives the definitions of several relevant terms used therein. According to Section 3 'District Court' is defined as the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together. The important points for grant of jurisdiction to the District Court are these: (i) actual residence at the time of the presentation of the petition, or (ii) where the parties last resided together. Could the last residence together of the petitioner and the first respondent under the circumstances stated above be considered as coming within the category and invest jurisdiction to the Court of the District Judge, Bangalore?

28. In ordinary parlance the word 'reside' denotes the place where an individual or members of his family eat, drink and sleep. In other words, 'residence' signifies a man's abode indicating thereby his continuance in that place. If there is a competing claim between a place of temporary residence and a place of permanent residence, there can be no doubt that the latter could be considered as the place of residence of the parties. In fact, the trend of decisions is to the effect that if the parties have a permanent place of residence, it is the Court which has jurisdiction over that place that is competent to grant a decree nisi and not a Court which has jurisdiction over a temporary place of residence of the parties.

29. Such is the principle laid down in the case of Carol v. Mrs. Carol, reported in AIR 1933 All 39. The place of permanent residence of the petitioner as Inspector of a Railway Company was at Gondia where he was allotted a furnished bungalow. Shortly before the petition was filed, he came to Allahabad for a couple of days and thereafter paid occasional visits to Allahabad. It was held that he cannot be said to be residing at Allahabad and hence the Court at Allahabad had no jurisdiction over (sic) Gondia that was the proper Court to give relief to the petitioner. Similarly in the case of David v. Esther Dennis, reported in AIR 1951 Nag 248 where the petitioner who was a resident of Amla in Betul District came to Nagpur along with the respondent, his wife, for a short period with the intention that he might be entitled to present his petition to the Nagpur Court it was held that

the petitioner and the respondent could not be said to have 'last resided together' at Nagpur and therefore, the Nagpur Court had no jurisdiction to entertain the petition for divorce.

30. In the case of Alfred Stanley Barret v. Mrs. Kathleen Barrett , the question of jurisdiction came up before a special Bench. The petitioner was posted from Lucknow to Pratapgarh where he resided with his wife, the respondent. But he occasionally visited Lucknow and stayed for about three or four days with his wife and the petition for divorce was filed in the District Court of Lucknow though in the petition itself it was specifically mentioned that they resided at Pratapgarh. It was held that the District Court at Rae Bareli and riot the District Court at Lucknow that had jurisdiction to try the case.

31. In the instant case, the decision of this question is not free from difficulty, for, the petitioner came down to K. G. F. for the purpose of his marriage and went back soon thereafter. The spouses did not set up a home anywhere after their marriage. The petitioner joined the army and led an itinerant life for years together. At the time when his evidence was recorded in the District Court, he mentions the place of his residence at Vaniyambadi. There is no evidence to show that he permanently resided therein. Even in his petition he gives his place of residence as Vaniyambadi. The only place where they resided together was Kolar Gold Fields though it may be for a short time. In the absence of any place of permanent residence, the former should be regarded as the place where they last resided together.

32. In a decision of the Madras High Court in the case of D'Souza v. Lobo, reported in AIR 1940 Mad 584 the petitioner who was an employee of the Telegraph Department at Rangoon had wound up his residence. His marriage with the respondent took place at Mangalore where he resided for some time, once in 1934 and on another occasion from the end of 1937 to April 1938. It was held that where a person had no fixed place of residence, the place where he lived with his wife at Mangalore should be regarded as a place of his residence and the District Court of Mangalore had jurisdiction to entertain the application. This case to a certain extent approximates to the facts of the present case. Thus, in the absence of any permanent residence of the parties where they resided together or set up a home, the place where they last resided together should be regarded as the place of residence and hence the petition could be presented to the Court of the District Judge, Bangalore, who had jurisdiction to try the case.

33. The next question is whether there has been collusion between the parties. Prima facie it appears to be so, for, on the very same day the petition was presented both the respondents appeared before Court and filed a memo to the effect that they have received the copies of the petition and that they have no objection for the petition being allowed. Under such circumstances, a duty was cast on the learned District Judge to satisfy himself whether there was collusion between the parties. Rightly did the learned Judge proceeded to take evidence. The petitioner and the respondent were examined. The petitioner has deposed to the facts stated in his petition. The first respondent also confirms the truth of those facts. On this evidence, the learned District Judge came to the conclusion that there was no collusion between the parties.

34. "Collusion" is defined in Wharton's Law Lexicon as follows:

"Collusion in judicial proceedings is a secret agreement between two persons that one should institute a suit against the other, in order to obtain the decision of a judicial Tribunal for some sinister purpose, and appears to be of two kinds: (1) when the facts put forward as the foundation of the sentence of the Court do not exist; (2) when they exist, but have been corruptly preconcerted for the express purpose of obtaining the sentence. In either case, the judgment obtained by such collusion is a nullity."

In the Law Lexicon by P. Ramanatha Aiyar, 'Collusion' is defined as:

"Secret arrangement between husband and wife that one of them shall represent in Court the other as having committed acts constituting a cause of divorce, for the purpose of enabling the plaintiff to obtain a divorce the defendant not actively contesting the plaintiff's allegations."

Stroud in his Judicial Dictionary referring to Matrimonial Causes Act defines it thus, to put forward true facts in support of a false case or false facts in support of a true case, for e.g., for one to commit or appear to commit, an act of adultery, in order that the other may obtain a remedy at law as for a real injury. That is the definition of positive collusion. Negative collusion is defined as an agreement between the parties wrongfully to withhold relevant facts from the Court. The learned author quotes Bucknil, J. in Scott v. Scott, (1913) P. 52 who defines 'collusion' as an improper act done, or an improper refraining from doing an act for a dishonest purpose.

35. I have quoted these several definitions with a purpose. All these indicate that an improper or an ulterior purpose has brought together the contesting parties in order to snatch a decision of divorce from the hands of the Court. That does not appear to be so in the instant case for, the parties have placed all their cards before the Court and have come out with the whole truth however unpalatable it may be to each one of them. No agreement between the parties could be spelled out for obtaining a divorce on untrue facts either; Neither could it be stated that there was any intention on the part of the parties to withhold any relevant evidence for an ulterior purpose of obtaining a divoce. Under these circumstances, there is no basis for holding that the parties have colluded. We have, therefore, no hesitation in accepting the conclusion of the learned District Judge that there is no collusion between the parties in filing this petition.

36. The important point however for consideration is whether there was connivance on the part of the petitioner as per Section 14 of the Act which I have already referred to. Connivance on the part of the petitioner disentitles him from seeking the remedy of dissolution of manage. Stroud in his 'Judicial Dictionary' defines 'connivance' "as applicable to matrimonial cases as the willing consent to a conjugal offence or a Culpable acquiescence in a course of conduct reasonably likely to lead to the offence being committed."

37. A brief reference to the facts of the instant case is necessary to determine this question. The petitioner alleges that on his wife confessing on the very night of the marriage her guilt of adultery which he believed to be true, he left her in her parental home and cleared away to Vaniy-ambadi. The pre-marriage amorous life of his wife of which he had no knowledge cannot in the least make him responsible for connivance. His conduct after marriage is the only determining factor. That

conduct is manifest not only by his in-action tending over several years to protect his rights as a married person but his willing consent to the so-called marriage of his wife with the corespondent. It is in evidence and both the parties have not minced matters in this respect - that after the petitioner left the first respondent, she lived with the co-respondent and a female child was born to them. Further, she intimated to the petitioner by a registered letter that she wanted to marry the co-respondent. In reply thereto the petitioner wrote a letter dated 5th February 1947 marked Exhibit P.2 in the case in Tamil, a translation of the relevant portion of which is as follows:

"Do not worry. Wherever you may be, you may live happily and spend your days in this world without any worry. I bless you with my full heart giving my consent for divorce. Hereafter, you can live according to your own wishes. 1 assure you that I will not institute any proceedings against you and this is my promise.

Last year in February (on 12-2-1946) we met each other at Madras. This year let 12-2-1947 be a day of divorce. Is this letter written in my own hand sufficient to evidence out divorce? Are you happy? Alright.

Yours M. Clarance.

With a heavy heart I will close this last letter with tears.

M. Clarance."

This clearly indicates that he was a willing party to the so-called marriage of the first respondent with the co-respondent. In fact, in his petition also he admits the same as follows:

"That after five years, on the genuine request of the first respondent, the petitioner gave his voluntary consent for her marriage with the second respondent. The petitioner learns that as per his consent and 'consonance' opinion of himself and the first respondent, the respondents have gone through a marriage by registration on 3-2-1947. They have begotten a female child aged about 13 years (at present) by name Victoria. They are living together."

It cannot be denied that the petitioner knew that the amorous connection of the first respondent with the co-respondent which might have existed before marriage continued even after her marriage with him. The letter Exhibit P.2 clearly indicates that the petitioner willingly consented to the so-called marriage of the first respondent with the co-respondent, The registered agreement further evidences that the respondents lived together as husband and wife. Under such circumstances, there can be little doubt that the petitioner connived at the illicit connection between them even after his marriage with the first respondent.

38. What then is the legal effect of such conduct of the petitioner? There can be no doubt that it comes well within the purview of the principle of 'volenti non fit injuria'. The petitioner willingly allowed his wife to lead a life as she pleased with the co-respondent. The petitioner again blessed her before her so-called marriage with the co-respondent. His intention in so doing is immaterial. The

principle laid down in the leading case on the subject Manning v. Manning, reported in (1950) All ER 602 is applicable to the present case.

39. The instant case appears to be one out of the ordinary for, the petitioner in this case has certain peculiar notions of his own regarding the marital life. After the confession of his wife, he has left her to go her own way and not objected to her connection with the co-respondent. perhaps he thought, that was the right thing to do because, he wanted that she should be happy with a man she loved, she had not loved him and her marriage with the petitioner was forced upon her. Again, when she wanted to marry the corespondent, the petitioner had no objection, on the other hand, was a willing and consenting party thereto. Thus, he connived at the going through of the so-called marriage of the first respondent with the co-respondent. Thus, his act comes within the purview of Section 14 of the Act. His case is similar to a case of a husband who knew of the adultery of his wife with the co-respondent but still failed to take action until the peculiar test that he had set up for himself was satisfied.

40. In the case reported in (1938) 2 All ER 480, the petitioner Lloyd knew that Mrs. Lloyd was a mistress of Leggeri. Still he failed to take any action until the satisfaction of the test which he set for himself to the following effect:

"The test with me is whether her affection is changed not whether she commits adultery, and I will ask the Court to give me a decree on the ground of adultery when I find what I really care about namely, that her affection has now been taken from me."

It was held in that case that a husband could not make his own law in the matter. He cannot stand by and tolerate bis wife's adultery, meeting her, conversing with her, having intercourse with her and then, because of some private view of his own of what a wife wrote to her husband, complain of her violation of that private view and seek a remedy at the hands of the Court. In the instant case, the inaction or toleration of a husband who has set up his own standard of morality cannot take him out of the purview of Section 14 of the Act. Unfortunately this aspect of the case has rot been considered at all by the learned District Judge. On this ground alone, the petition is liable to be dismissed.

41. Before closing the only other point that required a passing reference is the delay in filing the petition. The marriage between the petitioner and the first respondent took place on 22-6-1940, but the petition is filed about two decades later, on 3-11-1961. During almost all this period, respondent 1 was living with the co-respondent. These latter had an issue aged about 13 years at the time of the filing of the petition as is evident by the averments made in paragraph 3 of the petition. It is urged by Sri Rama Kamath that this inordinate delay gives rise to a presumption of connivance. There is much force in this contention. The delay in such a case as this indicates that the petitioner has slumbered over his injury and has acquiesced in the same. Though this presumption is a rebuttable one, no sufficient evidence is placed before Court to rebut it. A mere ipse dixit of the petitioner that he deferred to the wishes of his mother until her death is insufficient to rebut that presumption.

42. The above discussion leads us to only one result viz., that the petition is liable to be dismissed and it is so ordered. No costs.

43. Petition dismissed.