

FULL BENCH

Before Falshaw, Kapur and Bishan Narain, JJ.

MRS. INDERJIT KAUR,—*Petitioner.*

versus

MR. ALBERT MICHAEL DAMPIER OVERMAN,—
Respondent

1954

3rd August

Matrimonial Reference No. 2 of 1954

*Divorce—Petition for by a person guilty of adultery—
Requisites thereof—Amendment of the petition in such
cases, when to be allowed.*

Held, that it is well settled that where the petitioner has been guilty of adultery, even if the opposite party does not wish to make this adultery the basis of a counter-petition, it is the duty of the petitioner to admit the adultery and to move the Court to condone it and exercise its discretion in the petitioner's favour.

Held further, that no amendment could be allowed to correct the defects in the petition, since a party who wishes the Court to exercise its discretion in his favour must come to the Court with a full and frank presentation of the facts in the first instance, and cannot expect the Court to exercise its discretion after an admission of this kind has been made only through the force of circumstances.

Petition under Section 10 of the Indian Divorce Act, for dissolution of marriage for confirmation of the decree nisi passed by Shri J. S. Bedi, District Judge, Ambala on 13th November 1953.

B. S. CHAWLA, for Petitioner.

NEMO, for Respondent.

ORDER

Falshaw, J.

FALSHAW, J. This case comes before us for confirmation of the decree of the District Judge of Ambala, sitting at Simla, for the dissolution of the marriage of the petitioner Inder Jit Kaur with the respondent Albert Michael Dampier Overman.

Although the decree in the petitioner's favour was finally passed *ex parte* and nobody has appeared before us on behalf of the respondent to oppose the confirmation of the decree of the District Judge, the case presents certain unsatisfactory features. The parties were apparently married by the Registrar of Marriages at Delhi on the 30th of March 1950, and the petition was filed at Simla, in April 1953, claiming a dissolution of the marriage on the ground of certain alleged acts of adultery and cruelty committed by the respondent while the parties were residing together at Simla, though the petition does not contain any clear allegation that Simla was the last place where the parties resided together. The petitioner also alleged that the respondent had deserted her a year before the petition was filed.

The record shows quite clearly that the respondent was intending in the beginning to contest the petition vigorously as he filed written statements in reply both to the main petition and to the subsidiary petition for alimony and costs *pendente lite*. In his written statements he denied that the Court at Simla had any jurisdiction and he alleged that in fact he and his wife had resided together throughout at Delhi until January 1952, when he alleged that in fact she had deserted him. He also put in an application for the amendment of his written statement in which he made further serious allegations against his wife. He alleged that in fact she had left him at the instance of and had been committing adultery with one Dr. Gopal Singh Dardi, who was even now maintaining her and financing her divorce petition.

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The learned District Judge proceeded first of all to decide the question of local jurisdiction, on which point he recorded the statement of the petitioner and two witnesses who were alleged to have been in the service of the parties when they were living at Simla. These witnesses were cross-examined, and in fact the petitioner herself was cross-examined at great length, and in the course of her cross-examination a series of letters written by her to Dr. Gopal Singh Dardi, Exhibits R. 3 to R. 14, bearing dates between the 6th of May and the 3rd of October 1951, were shown to her and she admitted that she had written these letters to Dr. Gopal Singh Dardi.

This evidence was recorded on the 8th of June 1953, and the 8th of July was fixed for the remaining evidence of the petitioner and the evidence of the respondent. On that date counsel appeared on behalf of the respondent and simply said that he had no evidence to produce and that the point of jurisdiction of the Court was conceded, and a date was then fixed for evidence on the merits. Thereafter no evidence was summoned on behalf of the respondent and no further appearance was made for him. The result was that after recording the

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statements of the petitioner and the same two witnesses the learned District Judge found that the Court had jurisdiction to try the petition and that the acts of adultery and cruelty alleged by her were proved, and he, therefore, granted her a decree *nisi*. At the same time the prayer for alimony was rejected as not having been pressed.

Falshaw, J.

It seems to me that in disposing of the case in this manner the learned District Judge has ignored the elementary principles on which decrees are to be granted in cases of this kind. One issue which is always to be framed and decided in these petitions is whether there is no collusion between the parties, but no such issue appears to have been framed in this case or discussed in the brief judgment although the very fact that, after setting up a strong defence which might have served as a ground for a counter petition for divorce on the part of the respondent, and apparently strenuously contesting even the jurisdiction of the Court, the respondent should suddenly have withdrawn his opposition is in itself a *prima facie* indication of some sort of collusive arrangement between the parties. This suspicion is particularly strong in view of the fact that the letters admittedly written by the petitioner to Dr. Gopal Singh, *prima facie* appear to contain evidence of an adulterous relationship between the latter and the petitioner.

In the circumstances to confirm the decree *nisi* would involve our totally ignoring important facts which are present on the record, namely the apparently collusive withdrawal of the respondent's opposition to the petition and the fact that *prima facie* the allegations of the respondent that his wife had left him and been guilty of adultery with another man appear to be well-founded. It is well settled that where the petitioner has been guilty of adultery, even if the opposite party does not wish to make this adultery the basis of a counter-petition, it is the duty of the petitioner to admit the adultery and to move the Court to condone it and exercise its discretion in the petitioner's favour. The learned counsel who represented the petitioner

before us had to concede that such is the case, and all he could do was to suggest that even now the case should be remanded to the lower Court and that the petitioner should be allowed to amend her petition accordingly, but I do not think that this would be the proper course to take in the present case since a party who wishes the Court to exercise its discretion in his favour must come to the Court with a full and frank presentation of the facts in the first instance, and cannot expect the Court to exercise its discretion after an admission of this kind has been made only through the force of circumstances. I would accordingly instead of confirming the decree nisi set it aside with no order as to costs.

KAPUR, J.—I agree.

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