

## **PUNJAB-HARYANA HIGH COURT**

Miss Shireen Mall

Vs

John James Taylor

(Soni, J.)

21.12.1951

### **ORDER**

**Soni, J.**

1. This is an application by Shireen Mall under the provisions of Sections 18 and 19 of the Indian Divorce Act, 1869, read with Sections 3 and 4 of the Indian Matrimonial Causes (War Marriages) Act XL of 1948, praying that this Court may declare the marriage between her and the respondent to be null and void.

2. The facts as deposed to by the petitioner are that she was employed as a Sergeant in the Women's Auxiliary Corps (India) and was stationed at Meerut. In June 1943 she came to know the respondent John James Taylor, then a Lieutenant in the British Army. They fell in love with each other and he proposed to marry her. He was in Meerut from June 1943 till November 1943. The petitioner states that Taylor had repeatedly told her and had promised that after they had been married they would live in England after his repatriation. Her point is that it was just a false promise. Many letters have been produced showing great affection by the respondent for the petitioner. My special attention was drawn by the counsel for the petitioner to a letter written by the respondent to the petitioner bearing date 26th November 1943 marked Ex. P. 7 in which the respondent Taylor, wrote to her thanking her for a present to his mother and telling her that he had told all about her to his mother in his letters. In this letter Ex. P. 7, it is stated:

"She wants to meet you, she will, when we arrive home; you will come with me, won't you darling? Please sweet heart don't ever change your mind. I'd really finish everything if ever you did that." The petitioner's case is that the respondent's oral as well as written representations were such that the respondent appeared to her to be genuine in his proposal of marriage and in saying that the respondent would take her along with him to England to live there as husband and wife. She and the respondent were married in the Roman Catholic St. Francis Church at Dehra Dun on the 23rd October 1944. The petitioner gives her date of birth as 5th November 1924, so that she was not quite 20 yet

when she was married. Under the provisions of Section 3 of the Indian Christian Marriage Act, 1872, she was a minor as she had not completed the age of 21 years. She states that no notice was given by Father Luke who was the officiating priest regarding their getting married. Taylor was a Roman Catholic while she belonged to the Church of England. A special dispensation was obtained from probably the Roman Catholic Bishop and that after the dispensation no banns were published and no notice was given.

It is in her statement that she wanted her mother to give her consent but she never did so. Her father was dead and the only person who could give consent was her mother. Father Luke never asked her about anybody's consent.

3. The petitioner's case is that the respondent merely wanted her for sexual indulgence and never really wanted her to be married to him and that he practised a fraud upon her. The next day after the marriage the respondent remained at Dehra Dun while she left for Meerut to join duty. After that both of them met during the Christmas week of 1944 at Delhi and stayed there for three days. She states that the respondent never informed her about his repatriation to England. She learnt about this from the fact that her letters to him were returned from his Unit in India. Thereafter she wrote letters to the respondent in England. On the 2nd August 1945 she received a letter from him.

In this letter the respondent wrote as follows:

"Surely my last letter made that quite clear, as far as I am concerned we are finished. And I have no desire to see or hear from you again. I do not think I can put it in any plainer language, I hope that it is clear for you to understand. I would make one point clearer -- I request you to stop writing these foolish and disgusting self-pitying letters, what you say in them means exactly nothing and leaves me with only a feeling of disgust. In fact all I feel for you at the moment is hate, loathing and disgust -- is that clear, I hope it is.

I do not, repeat not, love you and never have or will, can you understand that, I don't think I can make myself any more plainer than that. Also I shall be greatly obliged if you will stop pestering my mother and father with your stupid and degrading literature, I hope that also is clear, as they too have not the slightest interest and find these letters really very tiresome."

4. The petitioner states that she took no steps since the receipt of this letter as she hoped that he would come round and everything would be all right. But it appears that he has deserted her and the petitioner presumes that in England he would be living with another woman or women.

5. The petitioner was at the time of her marriage an Indian Christian and she still is an Indian Christian.

6. No witness other than the petitioner was produced in this case. The petitioner herself went into

the witness-box and made a statement on oath. She produced an affidavit from her mother who is living in Montgomery (Pakistan). She wanted her mother to come and give evidence here, but as the mother was not able to obtain a permit she sent an affidavit. In that affidavit the mother states that she never gave her consent to the petitioner's marriage to the respondent.

7. The present petition has been brought in this Court under the provisions of the Indian Divorce Act read with the Indian Matrimonial Causes (War Marriages) Act, 1948. Under Section 3 of the Act of 1948 the marriages to which the Act applies are marriages solemnized during the war period, where the husband was, at the time of the marriage, domiciled outside India, and the wife was immediately before the marriage, domiciled in India provided that the Act was not to apply to any marriage if, since the solemnization thereof, the parties thereto have resided together in the country in which the husband was domiciled at the time of the residence. War period has been defined as the period commencing on the 3rd September 1939 and ending on the 31st March 1946. Clearly Section 3 applies to the present case. The respondent was domiciled in 1944 in England. He was temporarily residing in India being on Army duty and the parties have never resided together after the solemnization of the marriage. This Act gives jurisdiction to this Court in relation to any proceedings for divorce or for nullity of marriage as if both parties were at all material times domiciled in India and makes the provisions of the Indian Divorce Act apply. There is a proviso that the proceedings for divorce or for nullity of marriage should be commenced; not later than three years from the commencement of this Act. The date of the commencement of this Act is 3rd September 1948 and the present petition was put in on the 23rd August 1951. The Act of 1948, therefore applies to these proceedings.

8. Mr. Kapur, learned counsel for the petitioner submitted that his case fell within the provisions of Section 19 of the Indian Divorce Act, 1869 which provides in its last paragraph:

"Nothing in this section shall affect the Jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud."

9. Mr. Kapur had also urged that the marriage was null and void as at the time when it was celebrated the petitioner was a minor as contemplated by Section 3 of the Indian Christian Marriage Act, 1872; and therefore there could be no valid marriage without the consent of her mother which consent was never given. Mr. Kapur also urged that by virtue of Section 7 of the Indian Divorce Act relief can be given to the petitioner on principles and rules which in the opinion of this Court are as nearly, as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief. Mr. Kapur urged this point because though under Section 7 of the Indian Divorce Act a marriage can be dissolved on the ground that the husband has deserted the wife without reasonable cause for two years and upwards this desertion must be coupled with adultery, yet under the rules and principles on which the Court for Divorce and Matrimonial Causes in

England acts it is & good ground for dissolution of a marriage under Section 2 of the English Matrimonial Causes Act, 1937 which amended Section 176 of the English Supreme Court of Judicature (Consolidation) Act, 1925. If the husband has deserted the wife without cause for three years or upwards preceding the presentation of the petition in Court. Mr. Kapur's argument was that the principles and rules which apply in England would apply to this country because of the provisions of Section 7 of the Act. The argument further was that the respondent had at the time of his marriage in Dehra Dun on the 23rd October 1944 given his age 23, that he must therefore now be of the age of 30 and that the Court should presume that a person of that age during this long interval must have cohabited with some other woman or women in England. Mr. Kapur also argued that because of the provisions of Section 17 of the Indian Independence Act, 1947, the provisions of the Indian and Colonial Divorce Jurisdiction Acts 1926 and 1940 should be deemed to be still applicable to this country, and the English law would apply.

10. I am not convinced that the provisions of the Indian and Colonial Divorce Jurisdiction Acts 1926 and 1940 are still applicable to this country because of the provisions of Section 17 of the Indian Independence Act, 1947. The language of Section 17 does not, in my opinion, bear that out.

11. I am also of the opinion that the provisions of Section 7 of the Indian Divorce Act do not enlarge the ground on which a marriage can be dissolved under Section 10 of the Indian Divorce Act. The provisions of Section 7 gives Jurisdiction to this Court to act and give relief on principles and rules on which the Court for Divorce and Matrimonial causes in England for the time being acts and gives relief, but the opening words of Section 7 are:

"Subject to the provisions contained in this Act..."

If the provisions which are given in Section 10 of this Act give only certain ground on which a marriage can be dissolved I am of the view that the grounds for dissolution of marriage cannot be extended by virtue of Section 7 to grounds which might be prevailing for the time being in England. I, therefore, must hold that the provisions of the amended Section 176 of the Act prevailing in England which allow dissolution of marriage on the ground of desertion of the wife by the husband without cause for a period of three years or upwards would not apply to this country. In this, country desertion by a husband of his wife without cause would be a ground for dissolution of marriage, if the desertion is for a period of two years and upwards and is coupled with adultery. The question then is whether I could presume that during this long interval of more than six years the husband would be cohabiting with a woman or women in England. He is a young man and I think I would not be violating any rules of presumption if I were to draw such a presumption in the circumstances of this case. I am inclined to think that this marriage, if it was a marriage, is liable to be dissolved on the ground of the desertion of the wife by the husband without cause for a period of over two years coupled with presumed adultery which would satisfy the provisions of Section 10 of the Indian Divorce Act.

12. I would, however, go further than this in the present case. The petitioner was undoubtedly a minor as understood in the Indian Christian Marriage Act and her father being dead her mother's consent should have been obtained. This consent was never given and I doubt whether her marriage could have been validly solemnized in Dehra Dun, there being no consent of an undoubted guardian. This fact was known to the officiating priest.

13. In this case I am prepared to go still further. In my opinion the respondent went through the ceremony of marriage without any intention of getting married. He at that time was practising fraud on the petitioner. She would never have given her free consent if she had known that he was going to utilize her for a temporary make-shift sexual relationship. Under Section 14 of the Contract Act consent is said to be free when it is not caused by fraud as defined in Section 17. In Section 17 'fraud' means and includes:

"any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or to induce him to enter into the contract:

\* \* \* \* \*

(3) a promise made without any intention of performing it; \* \* \*

The respondent lured her into the belief that he was deeply interested in her. He disappeared from this country soon after their last meeting in Delhi during the Christmas week of 1944. He never even let her know that he was going to leave this country, and the letter that he sent her from England bearing date 2nd August 1945 shows what kind of man he was and how he had behaved towards her. This is a most disgraceful and disgusting letter. This conclusively proves in my opinion that he was using the petitioner merely for his pleasure during the short time that he was going to be in India without the slightest intention of taking her as his wife to England and living there with her as husband and wife. In my opinion there is no doubt that fraud was practised on her. In these circumstances I consider that the petitioner and the respondent went through a ceremony without any intention on the part of the husband to regard it as a real marriage. I hold that the consent of the petitioner was obtained by fraud and that this marriage was a mere pretence and is null and void. I would, therefore, pass a decree declaring this marriage null and void.

14. Notice was sent to the respondent, by registered post in England. There is a postal acknowledgment receipt in the records of this Court. This creates a presumption that the respondent

was properly apprised of the proceedings in this Court. He has not cared to defend this petition which has been heard 'ex parte.'