
(1946) 04 AHC CK 0022

Allahabad High Court

Case No: None

Mt. Banno Begam

APPELLANT

Vs

Inayat Husain and
Another

RESPONDENT

Date of Decision: April 11, 1946

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 498

Citation: AIR 1948 All 34 : (1947) 17 AWR 172

Hon'ble Judges: Sinha, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Sinha, J.

This is a plaintiff's appeal arising out of a suit for dissolution of marriage. The plaintiff, Mt. Banno Begam, is a young Mohammedan girl. On 12-10-1943, she brought a suit in the Court of the Munsif of Moradabad for the dissolution of her marriage, on, the allegation that she was a minor when she was married on 20th December 1942, and, by reason of the fact that her husband was a man of loose morals and had charged her with adultery, she was exercising her option of dissolution. She also said that the marriage, though formally performed, had not been consummated.

2. The defence, generally, was a denial of the plaintiff's plea of minority on the date of the marriage, of the charge of immorality and a further plea that the marriage had been consummated. It was also pleaded that the defendant had presented the plaintiff with ornaments worth Rs. 200 at the time of the marriage and that the suit was the outcome of the avarice of her father.

3. The learned Munsif held that the plaintiff was not a minor on the date of her marriage and that she had failed to prove that the defendant was immoral. He also held that the

marriage had been consummated. He, however, found that the defendant had charged the plaintiff with adultery and this entitled her to claim dissolution. He, in the result, decreed the suit.

4. The lower appellate Court found that the plaintiff had retracted the charge of adultery and that this was enough to put the plaintiff out of Court. The learned Civil Judge did not address himself to the findings of the learned Munsif on other questions. He allowed the appeal and dismissed the suit. The plaintiff has come before me in second appeal.

5. The plea of minority is a very important plea and a finding on it will have a very important bearing on the fate of the case. According to the plaintiff, she was a minor on the date of her marriage, which took place on 20th December 1942. She described herself in the plaint, which was, as I have already said, presented on 12th October 1943, as fifteen years and six months. The learned Munsif rightly placed on the plaintiff the burden of proving minority and held that she had failed to prove that she was a minor of the date of the marriage. The learned Civil Judge has, as I have already said, not considered this question. Even if I were to accept the finding of the learned Munsif it is obvious that the plaintiff must on the date of the marriage have just emerged from minority. I would have very much liked the learned Civil Judge to have decided this question. Beyond this I do not wish to pursue the matter further.

6. On the question of the charge of adultery levelled by the husband against the wife, feel that the learned Civil Judge has distinctly strayed into an error. The charge is contained in an application u/s 498, Criminal P.C. (Penal Code?) made by the husband against the wife, on 8th September 1943. It is in Vernacular and, translated in English it reads thus:

Mt. Banno Begam is my lawfully wedded wife. She used to live with me. The accused Chhote visited my house sometimes. Four days ago, I left my house and came to the shop. My wife lived in the house. On my return home in the midday I did not find my wife. I searched for her, but could not find her. I came to know from people that the accused had enticed away my wife for adultery. She was putting on ornaments worth Rs. 250. I have been searching for her, but the accused has somewhere concealed her. When I went to her father's house, people even there could give me no trace of her. Then I went to the house of the accused and found my wife there. I wanted to bring her back to my house, but the accused did not allow this to be done and was prepared to fight. The accused has kept my wife as his own wife, and does not allow her to come. He has kept her in illegal restraint.

The suit followed in the wake of this application.

7. An application in the nature of a retraction was made by the defendant before the learned Munsif on 11-5-1944. This application is a curious document. It says:

The petitioner withdraws the charge made by him against his wife in proceedings u/s 498, Criminal P.C. (Penal Code?) u/s 240 of Mulla's Mohammedan Law.

It then makes reference to another case which he had filed, against another man, Mohammad Husain. That need not detain me, inasmuch as it was made after the institution of the suit.

8. These, in brief, are the facts. The case has been argued with considerable ability and fairness on both sides. The question is whether, on these facts, the wife is entitled to claim dissolution or the husband to resist her? The case law on the subject of Laan is scanty and light has to be sought from the original text. It is not pretended, that the doctrine of Laan has no place in the Anglo-Mohammedan Law or that it should be considered obsolete. There is consensus of authority that it is an extant doctrine, vide *Zafar Husain v. Ummat Ur Rahman* AIR 1919 All. 182. It is, however, argued on behalf of the respondent that there has been a sufficient recantation and the wife is no longer entitled to the relief claimed. Apart from the time when, or the stage at which, it was made, is the recantation adequate in law or in fact? It is true that the social conscience views with extreme disapprobation any attempt to break up a home and Mr. Lari, the learned Counsel for the respondent, argues that the Court should, as far as possible, construe the words used as sufficient recantation. But this argument loses sight of a consideration of equal, if not greater, importance that the true conception of a home is one where parties, bound by conjugal ties, live in amity and enjoy the confidence of each other. The wife has a right to enter her caveat against an attack upon her character by the husband and claim reparation of the wrong done to her. The husband must, if he has once wronged his wife by charging her with adultery, be prepared to take the consequences and the only way he can avoid them, is by making an honest admission that the accusation was false.

9. It is significant that, although Imam Abu Haneefa and his disciple, Mohammed, have recognised the doctrine of "recantation", his equally erudite and brilliant disciple, Imam Aboo Yousaf does not share their view. He says:

She is for ever prohibited to him, and that he cannot marry her-the prophet having said, "two who make imprecation can never come together".

But even the master and the disciple, who agreed with him, make it perfectly clear that, for "recantation" to be effective,

the husband should acknowledge that his accusation was false by saying, "I falsely laid adultery to her charge".

(Hamilton's *Hedaya* by Grady, Book IV, Chapter X, p. 125).

10. Mr. Jalaluddin Ahmad, the learned Counsel for the appellant, has strenuously contended that the recantation, in the present case, does not answer the legal test. There is no unqualified withdrawal; no admission that the imprecation was false. The language used clearly indicates that the so-called recantation was motivated by a desire to fill in the legal gaps. There is no word amounting to an expression of withdrawal of the accusation

and to a vindication of the honour of the wife. There is, in other words, no genuine or honest withdrawal.

11. This contention is, to my mind, correct-The language used leaves an impression on the mind that the defendant felt that the charge that he had made against the wife, was an obstacle in his way and he should get rid of its effect. One looks in vain in it for a frank withdrawal of the charge, which alone can constitute a valid and effective "recantation."

12. The view which I have taken is in consonance with the view taken in [Mt. Rahiman Bibi Vs. Fazal](#), I, therefore, allow the appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance, but, under the circumstances of the case. I direct the parties to bear their own costs throughout.