

## Andrias Soni Vs Mr. Joyce Prasad Soni

**Court:** Madhya Pradesh High Court

**Date of Decision:** June 26, 1984

**Acts Referred:** Divorce Act, 1869 " Section 20

**Citation:** AIR 1986 MP 180

**Hon'ble Judges:** P.C. Pathak, J; Gulab Chand Gupta, J; C.P. Sen, J

**Bench:** Full Bench

**Advocate:** P.S. Gothwal, for the Appellant;

### Judgement

C.P. Sen, J.

This is for confirmation of the decree for nullity of marriage u/s 19(4) of the Indian Divorce Act, 1869, which requires to be

confirmed u/s 20 of the Act.

2. The parties are Christians and they were married on 27-6-1981 as per rites and ceremonies in their community at Ajmer. After the marriage, the

respondent came to live with the petitioner at Jabalpur on 30-6-1981 and both of them lived together as husband and wife for 15 days in the

petitioner's house in Agrawal Compound, Napier Town, Jabalpur. Thereafter the respondent left for Bhilwara in Rajasthan where she is serving as

Principal in some Christian school. Since then she has deserted the petitioner. They have no issue from their marriage. The petitioner's case is that

in the last week of December 1982, he for the first time came to know that the respondent was already married at the time of her marriage with the

petitioner. She had married one Mashih Prasad on 27-12-1965 at Central Methodist Church, Ajmer. The marriage was not dissolved and the

former husband was alive at the time of the second marriage. These facts" were suppressed by the respondent and the petitioner was defrauded in

marrying the respondent Therefore, the marriage is a nullity u/s 19(4) of the Act. Summonses were duly served on the respondent by the ordinary

process as also by registered post but she failed to appear and remained ex-parte. Petitioner Andrias Soni (P. W. 1) has proved his marriage with

the respondent Since the petitioner could not get a certificate of the marriage, he filed an affidavit as required under the rule. S.M. Julias (P. W. 2)

has proved the first marriage of the respondent with Mashih Prasad in Central Methodist Church, Ajmer, on 27-12-65. The witness was present in

that marriage. The respondent and Mashih Prasad were then working in the same school at Ajmer as teachers. -Mashih Prasad lived with the

respondent in her house till December 1978 and thereafter he disappeared. The next witness Aster Mashih (P. W. 3) has deposed that she had last

seen Mashih Prasad on 27-10-1981 i.e. four months after the marriage of the petitioner with the respondent, while she was traveling from Delhi to

Jabalpur. Mashih Prasad had entered in her compartment at Agra station, Relying on the statements of these witnesses, the learned District Judge

has declared the marriage to be nullity.

3. The respondent was ex parte before the trial Court. Notice of this proceeding was sent to the respondent by registered post and the

acknowledgment is on record. However, she failed to appear in this Court also. We have heard the learned counsel for the petitioner and gone

through the record and we are satisfied that the marriage between the petitioner and the respondent was a nullity u/s 19(4) of the Act since the

respondent's earlier marriage with Mashih Prasad was subsisting and the first husband was alive at the time of the second marriage. The statements

of the petitioner's witnesses have not been challenged and they have gone un rebutted. There is no reason why these witnesses would speak falsely

against the respondent especially the two witnesses S.M. Julias (P. W. 2) and Aster Mashih (P. W. 3). They are independent persons and they

have no axe to grind against the respondent. Ex. P. 1 is the copy of the marriage register showing marriage of the respondent with Mashih Prasad

on 27-12-1965. No evidence has been led to show that this marriage stood dissolved when the respondent contracted the second marriage with

the petitioner. Since Mashih Prasad was alive at the time of the second marriage of the respondent with the petitioner, the second marriage was a

nullity.

4. Therefore, we affirm the decree u/s 20 of the Act. Parties to bear their own costs. However, the petitioner is directed to deposit paper book

cost of Rs. 16.45/-.