

(1963) 11 AP CK 0014

**Andhra Pradesh High Court****Case No:** C.M.A. No"s. 107 and 110 of 1962

Parimilla Rajalingam

APPELLANT

Vs

Akuthota Lingayya and Another

RESPONDENT

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**Date of Decision:** Nov. 18, 1963**Acts Referred:**

- Andhra Pradesh High Court Rules - Rule 9
- Hindu Marriage Act, 1955 - Section 13(1)(I), 21

**Citation:** AIR 1964 AP 308**Hon'ble Judges:** P. Chandra Reddy, C.J; Anantanarayana Ayyar, J**Bench:** Division Bench

**Advocate:** D.V. Sastry, as Amicus curiae, M. Venkata Subbarao, in C.M.A. No. 107 of 1962, A. Raghuvir, in C.M.A. No. 110 of 1962, for the Appellant; M. Venkata Subarao in C.M.A. No. 110 of 1962, A. Raghuvir in C.M.A. No. 107 of 1962 and C.R. Krishnaswami Ayyangar, for S.M. Hasan, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Anantanarayana Ayyar, J.

1.Akuthota Lingaiah filed O. P. No. 55 of 1961 in the Court of the District Judge, Warangal, praying for a decree of divorce against his wedded wife, the first respondent, by dissolution of marriage, for damages of Rs. 500/- against the second respondent and for custody of his male child, Basva Raju, aged about three years after removing the child from the custody of R-1. Respondents 1 and 2 contested the petition after filing separate counters. Both sides let in evidence. The learned District Judge awarded a decree of divorce with costs which were recoverable from both the respondents. He also directed the second respondent to pay Rs. 500/- as damages and directed the child, iiasva Raju, to be put in the custody of the petitioner. R-2 filed C.M.A. No. 107 of 1962 and R-1 filed C. M. A. No. 110 of 1962 against the order of the lower Court. Both the appeals, being against a common

judgment, were heard together by common consent.

2. For the sake of convenience, the parties are referred to in this judgment by their denomination in the lower Court.

3. The petitioner married R-1 in about 1952. The marriage was consummated two years later. As a result of the conjugal life, the male child, Basva Raju, was born to R-1 by the petitioner in the year 1958. From about 1960, the petitioner was working as a mil) labourer in Azam Zahi Mills and living in Warangal. In the same locality, R-2 was residing. He was employed in a Co-operative Society.

4. The contentions in the petition are as follows: From about a year prior to the petition, R-1 began neglecting the petitioner also quarrelling with him on trifling matters and to leave his house wilfully in his absence. The petitioner began to suspect her character and learnt that she had developed intimacy with R-2. The petitioner tried his best to mend the behaviour of R-1, but in vain. One day, the petitioner opened the box of R-1 when the latter was sitting in her bouse, about a month prior to the petition and searched it out of suspicion. He then found kept concealed within the box, tucked up inside the sarees, several photographs which showed both the respondents in a compromising position in different styles and poses. R-2 himself was a photographer. Of these photographs, he filed six with the petition. They are Exs. A.1 to A.6. On recovery of the abovesaid photographs from the possession of R-1, the petitioner demanded an explanation. There was no other go for her except to admit her guilt of her illicit connections with R-2.

The abovesaid photographs are sufficient proof of her leading an unchaste life and having sexual intercourse with R-2 who was not admittedly her spouse. She committed acts of adultery with R-2 while living in the house of the petitioner at Karimabad, Warangal. The petitioner wanted to settle the dispute amicably but R-1 went away from the house of the petitioner in the first week of March 1961 in the absence of the petitioner when he was away on duty in the mills sensing that she could not meet the allegations made by the petitioner. From then, she was living with her parents. R-1 was living a life of adultery and, therefore, she was not entitled to keep her child in her custody as the child might be spoiled. R-2, by developing illicit intimacy with R-1 and leading his adulterous life with R-1, has destroyed the peace and harmony of the petitioner's family life and ruined his hearth and home. The petitioner was also defamed in society. Therefore, he was entitled to damages to an extent of Rs. 500/-.

5. R-1 filed a counter contending as follows: The alleged recovery of photos from the possession of R-1 and demanding of explanation and R-1's leading unchaste life are all false. On the evil advice of the petitioner's brother, Rangayya, the petitioner drove away R-1 from his house. At that time, R-1 was in the fifth month of pregnancy. The petitioner was also cruelly ill-treating R-1 at the instigation of his brother, Rangayya I and the latter's wife.

6. R-2 filed a counter in which he denied the adultery. He also alleged as follows:

"The petitioner admitting of his wife's behaviour, says that he tried to mend her, but did not take any legal steps. This shows that he himself was conniving at her behaviour. Finally he came forward with this scandalising allegation against this respondent as a result of his failure to be elected as a Municipal Councillor, and because this respondent canvassed against him. But there is absolutely no tint of truth in the allegations.

.....Even taking for granted that they are pictures of the respondents, no sane person would expose them that lead to a risk of life and fame. As such, they cannot be admitted to be true for a single moment. Art of photography can do and undo the life and reputation of a person which is unaccomplishable to a common man.

It at all the allegation that R-1 was carrying on her immoral relations with this respondent for the last one year living in the house of the petitioner itself and he is actively conniving at it, it means that he never wanted to take any action for reasons better known to himself. A husband conniving the wife's illicit relations with another person cannot apply for a divorce or for any damages from the man alleged to have connections with his wife."

7. The learned District Judge framed four issues as follows:

1. Is the 1st respondent living in adultery with respondent-2 and she left petitioner's house in the circumstances stated by the petitioner in his petition?

2. Is the petitioner entitled to the custody of child, Basva Raju?

3. Is the petitioner entitled to get damages and if so how much?

4. To what relief?

8. Petitioner deposed as P.W. 1 and examined besides two other witnesses who are neighbours. He also marked as Exs. A.1 to A-6, six photographs which he filed with his petition. R-1 and R-2 deposed R. W. 1 and R. W. 2 respectively. They did not examine any other witnesses or mark any documents. P. W. 1 spoke about the facts mentioned in the petition including the seizure of the photographs from the box of R-1. He also deposed to the following effect. One night, the petitioner returned home at about 10-30 p.m. He found the door bolted from inside, knocked at it and asked for its being opened. The door opened. Suddenly, R-2 rushed out of the house through the door and then ran away. P. W. 1 raised a hue and cry. Then the neighbour (P. W. 2) saw R.2 coming out of the house and running away after scaling a dilapidated wall of P. W. 1's house. At that time, the petitioner's mother was in the house but she was old and blind. R-1 left the petitioner's house out of fear. He brought R-1 back from a neighbour's house and questioned her. Subsequently, some days later he searched the box of R-1 and found the photographs (Exs. A.1 to A.6) in it. He complained to R-1's parents. R-1 then went away with the child, Basaya

Raju, from the petitioner's house, in the absence of the petitioner, to her parent's house. P. W. 1 showed these photographs to the neighbour (P. W. 2). At that time, R-1 was present. P. W. 2 questioned R-1 about those photographs. R-1 admitted that it was her mistake. The petitioner also showed the photographs to the neighbour (P. W. 3). P. W. 2 had seen R-1 coming out of R-2's house and also met R-2 at a fresh water tap on ten occasions.

9. In her deposition, R-1 as R. W. 1 deposed as follows: She never took photographs with R-2. She had no relations with him. R-2 was a friend of the petitioner and was coming to her house along with the petitioner. The petitioner wanted to marry Sujata who is more handsome than R-1. Therefore, the petitioner has filed this case. The male person in Exs. A-2 and A.3 is R-2 but the woman in Exs. A.1 to A.6 is not R.1. R.1 says so because the photographs have not been taken by her to her knowledge. She did not confess before P. W. 1 as alleged by him.

10. R-2 as R. W. 2 deposed as follows: He visited the house of the petitioner three or four times. On all those occasions, the petitioner himself was present. He went like that as P. W. 1 asked R.2. to canvass for him (P. W. 1) in the elections. In Exs. A.2 and A.3, R.2 is present. The woman seen in Exs. A-1 to A-6 is R-1. He also stated thus:

"In Exs. A-1, A-2 and A-3, I see my photograph. With skill photography, Exs. A.1 to A.4 can be prepared. There is one person by name Satyanarayana at Warangal who knows skill photography. I know photography. If necessary and time is given, I can bring Satyanarayana to say that such skill photographs can be prepared.....

I never took R-1's photograph. Unless the photographs of both persons are taken, they cannot be united as in Exs. A.1 to A.4. The photographs of the lady in Exs. A.1 to A.6 is that of R.1, Mallikamba. I cannot say whether a married woman who is not living in adultery will take photographs as in Exs. A.1 to A-6. On seeing Exs. A.1 to A-4 I say that unless the lady is living in adultery she will not permit for such photographs of her being taken."

The learned District judge says that the evidence of P. W. 2 that he had seen R-1 talking at the tap with R-2 did not appear to be correct because the tap was away from P. W: 2's house and because it could not be presumed that R-1 was talking with R-2 in public at the time. There is nothing impossible or unbelievable in R-2 meeting her (R-1) at a tap which was far away from her house, if she had really intimacy with R-3 and if R.2 was a friend of the petitioner and even visiting the house of the petitioner. But, all the same, the learned District Judge believed the other evidence on the side of the petitions and held that the photographs clearly proved that R-1 and R-2 must be having illicit intimacy. It has been urged before us, as it was contended before the learned District Judge, that the photographs (Exs. A-1 to A-6) do not prove that R-1 was living in adultery with R-2 and that such photographs can be prepared by a photographer's skin and manipulation. The learned District Judge rejected this contention on the ground that for such artificial preparation of

photographs there must be at least one photo of R-1 and that R-1 deposed that no one had taken her photograph up to the date of her deposition in Court. Though R.W. 2 said that he could examine one Satyanarayaim as an expert in photography to prove his contention, he did not examine that Satyanarayana. It is not stated before us that R-2 was denied at any time an opportunity to summon and examine Satyanarayana. We see no reason to doubt the truth of the evidence of the P. Ws. in this matter.

11. The learned District Judge has also mentioned in his judgment as follows:

"I was closely observing the demeanour of P. W. 1 and R. W. 1 while they were in the witness box. P. W. 1 appears to be a god fearing person. R. W. 1 seems to be a fashionable lady. When this Court asked her to state about the salary of, her husband, she said that he works for 15 days and sleeps for the rest of the 15 days in a month. When she was asked about the status of her husband, she says that if he were to have any status he would not have produced the photographs in the Court."

The deposition of R. W. 1 contains the statement as referred to above. We see no reason to disagree with the finding of the learned District Judge that P. Ws. 1, 2 and 3 are reliable. It is clearly proved that these photographs (Exs. A.1 to A.6) were seized from the box of R-1. The case of R-1 is only a complete denial of the photographs being in her box. There is no room to disbelieve the fact that P. W. 1 searched the box of R-1 and seized them from it which means from R-1's possession. It is clear from the evidence of R.W. 1 and R. W. 2 that the persons in the photographs are R-1 and R-2. They are found together in such style and posture as to leave room for a reasonable inference that they were having close intimacy, that they must have had habitual illicit intercourse and that R-1 must have been living in adultery with R-2. The plea of the theoretical possibility of the photographs having been taken by skill photography cannot be accepted as a convincing explanation for these photographs. It is not the case of R-1 or R-2 that they were in those postures when acting as in a cinema or while rehearsing in a dramatic performance. We see no reason to disagree with the finding of the learned District Judge on Point No. 1 that R-1 was living in adultery with R-2.

12. The learned advocate for the wife (R-1) contends that full details of adultery have not been mentioned in the petition as required by Rule 6(g)(ii) of the Rules framed under the Hindu Marriage Act, 1955. We have already extracted in this judgment from the petition, the portion relating to the actual allegation of living in adultery. It is true that in the petition, there is no mention of the particular incident in which R-2 is said to have come out of the house of the petitioner in the night and run away after scaling a wall. But, the petitioner gave evidence about this incident and the evidence was recorded without any objection being raised regarding it. The respondents also cross-examined the petitioner and his witnesses as regards the evidence on this point. So, we see no reason to hold that the lower Court acted wrongly in taking into account this evidence in coming to its conclusion. The main

evidence consists of the photographs (Exs. A.1 to A.6) which give a clear picture of the relationship between R-1 and R.2.

13. Shri M. Venkata Subba Rao, the learned Advocate for R-2, contends that the award of damages to the petitioner against R-2 is illegal. Section 14 of the Hindu Marriage Act (XXV of 1955) runs as follows:

.....

provided that the Court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf....."

Section 21 reads:

"Section 21. Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated as far as may be by the Code of Civil Procedure, 1908."

14. These two Sections clearly indicate that the Legislature contemplated framing of rules, by the High Court and that those rules could relate to the proceedings under the Act. In exercise of the powers conferred by Sections 14 and 21 of the Act, the High Court made certain rules to regulate proceedings under that Act. Rules 8 and 9(1) run as follows:

"8. Co-respondent. -- (1) Where a husband's petition alleges adultery on the part of respondent, the alleged adulterer shall, if he is living, be made a co-respondent in the petition:

"9. Damages and costs against co-respondent.-- (1) Where damages are claimed, the Court shall assess the damage and direct in what manner the damages, if any, awarded shall be paid or applied."

Shri Venkata Subba Rao contends that as the Act itself does not provide for the award of damages, it is not possible for the High Court to lawfully frame a rule under which damages can be claimed. To deal with this point, we appointed Shri D.V. Sastry as Amicus Curiae. He has rendered valuable assistance in placing before us the law on the subject. Shri D.V. Sastry has urged that the substantive law under which the award of damages is made is the law of torts and that Rule 9 only makes a procedural provision when the petitioner makes a claim regarding the damages that are due to him under the general law.

15. Shri M. Venkata Subba Rao relies on the decision in *Dharma Narasimha Reddy v. Janepalli Siddiah* 1959 2 AWR 66. In that case, it was held that Rule 24-A of the rules framed under the Hyderabad Tenancy and Agricultural Lands Act (XXI of 1950) was ultra vires the rule-making power of the Government as it took away the finality which was attached to an order of the Tahsildar u/s 35 of the Act. The learned Judges observed therein as follows (at p. 68):

"On the language of the relevant provisions of law, the problem to be solved is whether this rule, is opposed to the intendment of the main provisions of the Act. It is clear from a perusal of Section 35 that the authority which is competent to receive an application and decide on questions of claims put forward by protected tenants is the Tahsildar.....

The adjudication by the Tahsildar under that section is conclusive and acquires a finality, subject to the result of an appeal to the Collector. But the effect of Rule 24-A is to take away that attribute from the order of the Tahsildar .....

It is a well settled canon of interpretation of statutes that the rules framed under an enactment cannot travel beyond it, much less could they run counter to the scope of the provisions of the enactment. The offending rule is utterly inconsistent with the intendment of Section 35..." In the present case, it is true that there is no specific provision in any section of the Act for award of damages. From this, if it were to be inferred that there is no provision in law at all for award of damages, then the contention of Shri M. Venkata Subba Rao would have some basis. On the other hand, if there were provisions for substantive right of damages in some law, though it is not in the provisions of the Hindu Marriage Act itself, Rule 9 would only amount to a rule of procedure which would enable the petitioner to claim that right of damage in a petition for divorce.

16. In Halsbury's Laws of England, Second Edition, Volume 16, it is laid down in paragraph 957:

"If a third person, without just cause, persuades or entices a wife to live apart from her husband..... that person commits an actionable wrong for which the husband is entitled to recover damages."

In paragraph No. 958 it is stated:

"A husband may also maintain an action for damages for the loss of the society or services of his wife against a third person in respect of any other wrongful act whereby he is deprived of the benefit of such society or services."

17. In [Sobha Ram Vs. Tika Ram](#), it was observed as follows : at p. 905 (of ILR) : (at p. 455 of AIR):

"In bur opinion, the husband has a right to the society of his wife, and the infringement of that absolute right by any other person is a tort....

The case of a wife stands on a different footing from that of a servant or daughter because there is a contract of marriage between the husband and the wife. The action of the defendant infringed that contract of marriage, and on account of the infringement" of that contract the husband is entitled to damages.....

Moreover, it is to be noted that the Penal Code provides in Section 498 for a complaint to be brought against a person who entices away any married woman

with intent that she may have illicit intercourse with any person. The action of the defendant was therefore a crime against the section and has been so found by the Court. It is provided in the Criminal Procedure Code, Section 109, that no Court shall take cognizance of an offence u/s 498 of the Indian Penal Code except upon a complaint made by the husband of the woman or certain other persons in his absence; that is, the criminal law recognizes that this particular offence of Section 498 of the Indian Penal Code is an offence which is specially directed against a husband, and that a husband is a person aggrieved by such an offence- If, therefore, the matter is an offence against the husband in the penal law, it must also be a tort against that husband in civil law, which will entitle him to sue for damages." Adultery is also made an offence by the Penal Code u/s 497, I.P.C.S. 199, Cri P. C. governs offence u/s 497, I.P.C. in the same way as it governs offence u/s 498, I. P. C. It is clear that adultery by R-2 with R-1 is an infringement of the absolute right which the petitioner, as husband, had to the society and services of his wife under the contract of marriage and is a tort and that the husband is entitled to damages. The observations of the learned Judges regarding the enticement of the wife apply with at least equal force to adultery with the wife.

18. Order 1, Rule 3, C. P. C., runs as follows: "All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative., where if separate suits were brought against such persons, any common question of law or fact would arise." Order 2, Rule 3, C. P. C. provides as follows:

"(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit."

19. In [Linton Vs. Guderian](#), the petitioner applied for dissolution of marriage with his wife and also claimed damages against the co-respondent (Linton) in respect of adultery which he (petitioner) alleged. The learned Judges held that the Court had no jurisdiction to grant divorce. Then they took up the question whether, in those circumstances, the petition could be allowed to stand as a petition for damages against the co-respondent u/s 34 of the Indian Divorce Act. The learned Judges observed as follows: (at p. 543) (of ILR Cal): (at p. 603 of AIR):

"There can be no doubt that the Causes of Action, to use the common law expression, against the co-respondent for damages and against the wife for divorce "Are Different and Distinct", although, upon a true construction of the Divorce Act, the same defences are open to these claims. But I am not of opinion, in view of the plain terms of Section 34, which says that the husband may claim damages in a petition limited to such object only, that it can be right in a case of this character to



say that, because the Court has no jurisdiction to grant a decree for divorce, it cannot treat this petition as a petition for damages alone and award damages upon it." Section 34 of the Indian Divorce Act (Central Act IV of 1869) runs as follows:

"Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner." But the above decision makes it clear that the cause of action against a co-respondent for damages is different and distinct from the cause of action against the wife for divorce.

20. In *Cox v. Cox* ILR 45 Cal 525: (AIR 1918 Cal 156 ), it was observed that the jurisdiction vested in the Court by the Indian Divorce Act to enable it to grant divorces in respect of persons was a special jurisdiction.

21. In [\*Ambi Pundalik and Another Vs. Pundalik Shankar\*](#), the learned Judges observed as follows: (at p. 522):

"It is significant to note that the Legislature has deliberately used the word "petition" and proceedings under the Hindu Marriage Act are to be initiated by a petition. The word "suit" is so common that it is impossible to conceive that it would escape the attention of the framers of the law. It is noteworthy that the word "suit" has been used in respect of matrimonial proceedings under the Indian Divorce Act. That shows that the word "petition" must have been deliberately employed by the Legislature with the object of distinguishing these proceedings (under the Hindu Marriage Act) from ordinary suits."

22. In *Varalakshmi v. Veerareddi*, 1960-1 Andh WR 270: (AIR 1061 Andh Pra 359) the question arose as to whether appeals from decrees passed under Sections 9, 10, 11 and 13 of the Hindu Marriage Act should be registered as C. M. As. or as First Appeals. It was held that adjudications under those sections of the Hindu Marriage Act are regarded as decrees only for the purpose of those sections and they could not be treated as decrees within the meaning of Section 2, Sub-section (2) of the C. P. C. In coming to that conclusion, the learned Judges observed as follows: at p. 2711 (of Andh WR) : (at p. 359 of AIR):

"Thus, the pre-requisite of a decree is that the proceeding which results in an adjudication should start in a suit.....

This section (Section 26, C. P. C.) gives a clue to the problem as to what a suit is, namely, that it is a proceeding which is initiated by the filing of a plaint."

It was held that, in the absence of a specific provision in enactments, adjudication in any proceeding which is started otherwise than by presentation of a plaint would not be a decree for purposes of Section 96, C. P. C. The learned Judges held that appeals against decrees under Sections 9, 10, 11 and 13 of the Hindu Marriage Act should be registered as C, M. As.

23. In *Antala Gope v. Sarbo Gopain* AIR 1062 Pat 489 the question was referred as to whether Rule No. 20 framed by the Patna High Court under the Hindu Marriage Act, which is substantially similar to Rule 9 framed by the Andhra Pradesh High Court, was consistent with the Act; but it was not decided.

24. Our attention is drawn to the decision of the Gujarat High Court in [Jaswantrai Jethalal Vaidya Vs. Vimal and Another](#), in which it was held that claim for damages cannot be joined in a petition for divorce under the Hindu Marriage Act. It does not appear from that decision that there was a rule framed and in force within the jurisdiction of the Gujarat High Court, corresponding to Rule 9 as framed by the Andhra Pradesh High Court. We do not follow that decision in this case which has to be decided with reference to the law in force in Andhra Pradesh State after duly taking into account, Rule 9 which has been framed by this High Court and is in force.

25. The position of law is as follows: The right of a husband to damages against a co-respondent who has committed adultery with the former's wife is based on the law of torts and exists independently of the Hindu Marriage Act. Ordinarily, damages for adultery would have to be claimed against the offender in a suit for damages instituted by way of presentation of plaint in a Civil Court of competent pecuniary jurisdiction determined with reference to the quantum of damages. On the other hand, the relief of divorce will have to be sought for by a husband against his wife by presentation of a petition u/s 13 of the Hindu Marriage Act against his wife, when based on her living in adultery. The Court before which it is to be presented is the District Court as defined in Section 3(b) of the Hindu Marriage Act. The cause of action in such a petition (proceedings) would be different from the cause of action in a suit filed by the husband against the alleged adulterer i.e., man who is alleged to have committed adultery with the former's wife. Order 1 Rule 3 and Order 2 Rule 3 Civil Procedure Code, which relate to suits would not be sufficient to enable the two reliefs to be combined together as prayers in one plaint or petition.

26. Section 21 of the Hindu Marriage Act specifically provides that proceedings u/s 13, as well as other proceedings under the Act, shall be regulated by the Code of Civil Procedure, subject to not only the provisions contained in the Act but also subject to such rules as the High Court may make in that behalf. Under the powers vested in the Andhra Pradesh High Court the latter framed rules. The "Court" as mentioned in Rule 9 (1) is defined in Rule 1 (ii) as follows :-

" "Court" means the Court mentioned in Section 3(b) of the Act."

Consequently, the Court which shall assess the damages under Rule 9 (1) is the Court u/s 3(b) of the Act i.e., District Court, It is also the Court in which proceedings will lie on a petition for divorce by the husband against the wife who was living in adultery and in which proceedings the wife would be respondent.

27. The heading of Rule 9 namely, "Damages and costs against co-respondent" as well as the body of Sub-rules (2) and (3) of Rule 9 show that the damages are to be claimed against the alleged adulterer in the same proceedings in which the husband claims relief of divorce against his wife. In such proceedings, the husband would be the petitioner, the wife would be the respondent and the alleged adulterer against whom the damages are claimed would be the co-respondent. This is also clear from Rule 8 which provides that the alleged adulterer (if he is living) shall be impleaded as a co-respondent in the petition. By virtue of Rule 8, the alleged adulterer (if he is living) would be a co-respondent in the petition, whether the husband claimed damages against him or not. Thus, Rule 9, when read with other rules, makes it clear that damages may be claimed against co-respondent namely, the alleged adulterer in the petition filed by the husband against his wife for divorce.

28. Section 34 of the Indian Divorce Act can also be looked upon as making a procedural provision, in view of the fact that damages could be claimed on the basis of a tort under the general law of tort without there being any provision for such damages as substantive law in the Indian Divorce Act. The fact that this provision regarding procedure is incorporated by a section in the Indian Divorce Act whereas similar provision is not provided in the Hindu Marriage Act itself, has no special significance and does not necessarily mean that damages cannot be claimed by a Hindu husband against an alleged adulterer. For, as already explained, Section 21 of the Hindu Marriage Act specifically provides for rules to be framed by the High Court to regulate proceedings under the Act whereas there is no such provision in Section 45 of the Indian Divorce Act which runs as follows: -

"Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure."

It is worthy of note that the Indian Divorce Act contains a provision in Section 11 for the alleged adulterer being made a co-respondent whereas there is no such provision in the Hindu Marriage Act itself. Such provision has been made under Rule 8 framed by the High Court, under the Hindu Marriage Act, 1955.

29. The Court-fees and Suite Valuation Act (Andhra Act VII of 1956) makes provision for

court-fees on the claim of damages in petitions for divorce. Article 1 of Schedule II to the Act runs as follows: -

"(vii) Petition or memorandum of appeal under the Hindu Marriage Act, 1955 Ten Rupees.

Explanation:- If in a suit falling under any of these clauses, there is a specific claim for damages separate fee at the rates specified in Article 1 of Schedule I shall be charged on the amount of damages claimed."

This provision is consistent with Rule 9 and other Rules framed by the Andhra Pradesh High Court.

30. In the result, we find that the contention of Shri M. Venkata Suhba Kao is not tenable. We hold that Rule 9 is valid and that the award of damages by the lower Court is lawful. We see no reason to interfere with the quantum of damages awarded. We find no room or need to doubt the correctness of the order of the lower Court or to interfere with it in any manner.

31. No other contention has been urged before us.

32. We confirm the order of the lower Court and dismiss both the Civil Miscellaneous Appeals with costs of Akuthota Lingaiah. We express our thanks to Shri D. V. Sastry for the valuable assistance which he has rendered to us in these proceedings. We direct that the petitioner, Akuthota Lingaiah, should pay a sum of Rs. 50/- to Shri D. V. Sastry, the Amicus Curiae.