

(1925) 11 CAL CK 0029

Calcutta High Court

Case No: None

R.M. Watson

APPELLANT

Vs

F.E. Watson and Another

RESPONDENT

Date of Decision: Nov. 20, 1925

Citation: AIR 1926 Cal 703 : 94 Ind. Cas. 528

Hon'ble Judges: Chotzner, J

Bench: Single Bench

Judgement

Chotzner, J.

The petitioner, Robert Watson, applies to the Court for the dissolution of his marriage with his wife, Frances Watson, on the ground of her adultery with the co-respondent Samuel Mac Farlane. The respondent has filed an answer denying the charge.

2. The co-respondent has not appeared.

3. The admitted facts of the case are that the petitioner and the respondent were married on the 18th July 1914 according to Christian rites and forms at the "Sacred Heart of Jesus" Church at Dhurrumtollah Street in Calcutta. They lived together after the marriage and had issue, a son, born on the 25th January 1915.

4. About the end of 1920 difficulties arose between husband and wife and matters went so far that the petitioner brought a criminal charge against the present corespondent in the Police Court. A charge framed by the Magistrate but before the case came to trial it is said that friends of the parties intervened and their differences were adjusted. The Magistrate's order dated 19th January 1921 records: "Complainant does not wish to proceed with the case as all differences have been settled. Complainant is fully satisfied with the explanation given by his wife. Accused undertakes not to interfere with the complainant and his wife in the future."

5. Strictly speaking, this evidence is only relevant in the present suit as showing that the petitioner at one time had reason to suspect the co-respondent's relations with his wife but as it is admitted that subsequent to the withdrawal of the case, husband and wife again lived together for about a year, any misconduct which may have been charged at the time of the Police case was evidently condoned by the reconciliation.

6. On 21st January 1922 according to the, petitioner and a month later, according to the respondent, a second rupture took place. The petitioner says that his wife left him in order to be free to see the co-respondent. The respondent says, that she was driven out of the house by the violence, abuse and drunken habits of her husband.

7. The petitioner charges that the respondent while living in Woodburn Court committed adultery with the co-respondent between 14th May 1922 and 7th June 1922.

8. The present suit was filed on 1st August 1922 but owing to causes over which apparently the parties had no control it did not come up for hearing although on the board on several occasions, till to-day.

9. It is plain upon the pleadings that the burden of proving the respondents' misconduct is heavily upon the petitioner. As I have already said the withdrawal of the previous charge amounts in law to a condonation of such offence if committed prior to that date. The duty of the petitioner here is to show that on or between the dates specified in the petition, the respondent was guilty of misconduct with the co-respondent and that must be a matter of proof upon evidence which though it may not be direct must at all events be of such a character as would lead the Court to the conclusion that no other inference than that of misconduct can be derived from it.

10. The petitioner in the box very frankly, stated that he himself had no personal knowledge of any misconduct on the part of the respondent; and his information came from two persons whom I understood him to describe as private detectives. The evidence of these two persons, therefore, is, for the petitioner's purpose, of the utmost importance and it is necessary when the interests at stake are so high to scrutinise their statements closely.

11. The first of them is a man named Badri Singh. He was, according to his statement, formerly a durwan. When he came to Calcutta he had no employment. His evidence is that he first came into touch with the petitioner through the petitioner's durwan, a man who comes from the same village as himself. He says that the durwan told him that Watson Saheb wanted a man for some work or other and upon this he called upon Watson who told him that he would engage him to follow the Memsahab, meaning Mrs. Watson, and report to him daily what he saw and for his services he was to get Rs. 25 a month. His position is not that of the "private detective" spoken of by the petitioner. He was simply picked up by the

petitioner's durwan apparently by chance and for no better reason than that the durwan wished, to do him as a co-villager a good turn and find him some employment.

12. Badri Singh says that he only did the work of watching for one month and received pay from the petitioner for two months, and that the petitioner told him that any further reward would depend upon the result of the case.

13. It is, I think, plain that a witness who is paid to get evidence will get evidence, and it is also plain that a witness who has not been paid in full will give such evidence as will ensure, as far as it is possible, that he will be paid in full. It would, therefore, be unsafe to rely upon a witness who has so obvious an interest in manufacturing evidence, whether it be recorded in a notebook or in the presence of an attorney, and repeating such evidence in Court when it is called for.

14. What he says is that on two occasions on the 21st and 22nd May he saw a man enter the respondent's room about midnight and stay there in one case to 4-30 a.m. and in the other case to 5 a.m. He says this man was the co-respondent. He does not say how the co-respondent entered the room on the first occasion, but on the second occasion he says that the co-respondent removed his shoes and climbed up to her room by a spiral staircase outside the house. It is very difficult to believe that he saw anything of the kind. A person who was going to take a risk such as the co-respondent is said to have taken would not be so obvious in his methods; he would be more likely to attract than to escape attention by climbing up a staircase whence he would be visible to every passer by. I think no reliance can be placed upon this witness.

15. The second witness Khan Mahammad. Khan has his shop at the gate of Woodbum Court. He is not quite so fortunate as Badri Singh, because he says that so far as he has had nothing from the petitioner, though he too has his promise that he will be paid by results.

16. Here then is a witness who is in the unhappy position of having to give his evidence not knowing whether he is going to get anything for his trouble or not, but at the same time fully realising that if he does not help the petitioner he will get nothing at all. In this state of mind his testimony will inevitably be coloured to suit the petitioner's case, and to accept evidence of this kind would seem to me to involve a risk which no Court would be justified in taking.

17. The story he tells that he was awakened one night by the respondent tripping over him on her way in and that he saw co-respondent close by does not seem to me probable. He has further stated that on another night he carried her food up to her room and there found the co-respondent with her in his night apparel. This also appears to be equally fantastic. I do not see why a shop-keeper should feel it necessary to act as a table servant or why he should take the trouble to perform this service for her unasked and without expectation of a reward.

18. I feel bound to say that this man did not impress me as a truthful witness.

19. Learned Counsel for the petitioner has relied upon certain statements made by the respondent in her evidence as supporting the testimony given by these witnesses, and he has pointed to the undoubted fact that the respondent has frequently seen corespondent both at Allahabad and in Calcutta. Assuming that the parties have been on friendly terms, it is still a long stage to travel before misconduct can be held to be proved. It is not to be expected that in cases of this kind direct evidence will ordinarily be available, but there ought to be such clear and cogent evidence both as to inclination, opportunity and conduct as to lead to the inevitable inference that the offence has been committed. After giving my best attention to the evidence in the case, I feel bound to say that I do not think the petitioner has succeeded in establishing his case.

20. The result, therefore, is that the petition is dismissed with costs on scale No. 2. So far as the co-respondent is concerned, the petition is dismissed without costs.