

## APPELLATE CIVIL.

*Before Sir Stanley Batchelor, Kt., Ag. Chief Justice and Mr. Justice Shah.*

1916.

August 29.

EUSTACE CHARLES PALMER (ORIGINAL PETITIONER), APPELLANT v. CARMELINE MARY PALMER AND ANOTHER (ORIGINAL OPPONENTS), RESPONDENTS.\*

*Indian Divorce Act (IV of 1869), section 14—Husband and Wife—Dissolution of marriage—Misconduct of husband petitioner—Grave and unexplained delay in filing petition—Discretion of the District Judge—High Court's power to interfere with the discretion.*

The petitioner, who was the husband, prayed for a dissolution of the marriage on the ground of his wife's adultery. The District Judge, exercising the discretion confided to him under section 14 of the Indian Divorce Act, 1869, refused to grant a decree *nisi* in view of the following circumstances: (1) that there was grave and unexplained delay before any complaint was made by the husband as regards his wife's abandonment of him; (2) that both husband and wife had combined to withhold facts from the Court; (3) that husband had been guilty not of an isolated act, but of a persistent course of adultery.

*Held*, that it was impossible for the High Court as a Court of Appeal to say that the District Judge's discretion was wrongly or improperly exercised adversely to the petitioner.

FIRST appeal against the decision of S. J. Murphy, District Judge of Khandesh, in miscellaneous Application No. 21 of 1915.

This was a petition for the dissolution of marriage, brought by the husband against his wife on the ground of the latter's adultery. The parties were married on the 2nd February 1913 and lived together till the 20th December 1913 when the wife left the petitioner's house and never returned. He made inquiries about her but getting no reply did nothing more till May 1915 when he heard she was living with co-respondent as his wife at Bhusaval.

\* First Appeal No. 31 of 1916.

The opponent stated that she was unhappy with the petitioner and so left him. Going first to some friends at Surát, she later came to Bhusaval where she passed as Miss Deunis. She there met the co-respondent and married him in October 1914.

The co-respondent admitted the above facts and said that he was introduced to the opponent as Miss Deunis and did not know that she had been married.

The District Judge observed that the petitioner made no real attempt to trace his wife and bring her back, and within four months of her departure, himself began an improper intimacy with a girl Dias, a relative of his and had a child by her. Both husband and wife combined to withhold true facts from the Court. In view of all these circumstances, the Judge refused to grant a decree *nisi* and dismissed the application.

The petitioner appealed to the High Court.

*Patwardhan* with *D. C. Virkar*, for the appellant :—The lower Court has not properly exercised the discretion under section 14 of the Indian Divorce Act, 1869. The appellant did all he could to find out where the wife had gone. According to the finding of the lower Court his intimacy with Miss Dias commenced nearly four months after the wife had left him. Although in matters of discretion each case has to be decided on its own merit, I submit the case of *Schofield v. Schofield* <sup>(1)</sup> is very similar to the present case and the course followed in that case should be adopted here.

No appearance for the respondents.

BATCHELOR, Ag. C. J. :—This is an appeal from a decision of the learned District Judge of Khandesh under the Indian Divorce Act (IV of 1869). The petitioner, who was the husband, prayed for a decree for a

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dissolution of the marriage on the ground of his wife's adultery with the second opponent, Augustus Gidley. It was not denied, and the learned Judge has found it proved, that the adultery alleged did in fact take place. But exercising the discretion confided to him under section 14 of the Act, the learned Judge, in view of all the circumstances, has come to the conclusion that he ought to refuse to grant a decree *nisi*. The question before us now is whether we should interfere with that exercise of the learned Judge's discretion. In the first place, there is this to be said that the discretion is primarily the District Judge's and not ours, nor are we, as I understand it, entitled to interfere merely because on a nice balance of the conflicting arguments, it might seem to us that, if the matter lay originally in our hands, our decision would be the other way. It is certain that before exercising his discretion in this particular manner, the learned Judge gave full consideration to the facts and circumstances upon which his discretion had to be exercised. Having regard to those facts and circumstances, it seems to me impossible to say that we should now be warranted in reversing his order. Mr. Patwardhan has said everything on behalf of his client, the husband, that could reasonably be said, and has called our attention to Sir Samuel Evans's decision in *Schofield v. Schofield*.<sup>(1)</sup> The facts in *Schofield's case* do, no doubt, bear a certain superficial resemblance to those with which we are concerned, but the resemblance is only superficial. There the finding of fact was that the husband had committed only an isolated act of adultery which resulted in the birth of the child, and that act appears to have been committed after the wife had left the husband. Moreover, Sir Samuel Evans's own words supply the strongest caveat against accepting this decision as authoritative in any case where the facts

are not precisely similar. For the learned President observed in his judgment: "It is a strange case: it is a case unlike any other which I have heard." Here so far from all the circumstances pleading in excuse of the erring husband, we have it, first, that there was grave, and in my opinion, unexplained delay before any complaint was made by the husband as regards his wife's abandonment of him; secondly, as the District Judge observes, it is patent on this record that both the husband and the wife have combined to withhold facts from the Court, and that by no means all the truth has been disclosed, and lastly, it is apparent that the husband has been guilty, not of an isolated act, but of a persistent course of adultery with the girl Dias. Speaking for myself, I have little hesitation in drawing the inference that the improper intimacy with the girl Dias began when Dias was a visitor at the appellant's house, while the appellant's wife was yet living with him. Upon these facts it seems to me impossible for us, as a Court of appeal, to say that the District Judge's discretion has been wrongly or improperly exercised adversely to the petitioner. The appeal, therefore, must be dismissed.

SHAH, J.:—I entirely agree.

*Decree confirmed.*

J. G. R.

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