

SOURPIK LEVONIAN (OTHERWISE
CHAKARIAN),

Petitioner,

v.

LEVON LEVONIAN,

Respondent.

(*Matrimonial Petition No. 7/65*)

Matrimonial Causes—Petition for dissolution of marriage on the ground of cruelty—Conduct of respondent amounting to matrimonial cruelty—Injury to health—Decision on custody of child deferred.

The parties were married at the Commissioner's Office, Nicosia, on the 9th September, 1957, under the provisions of the Marriage Law, Cap. 279. On the 3rd October, 1957, the parties went also through a religious ceremony in the Armenian Church, Nicosia, to which both parties belong.

The petitioner wife filed the present petition asking for the dissolution of her civil marriage with the respondent husband, on the ground of cruelty.

The respondent husband who is a Cypriot was duly served on July 7, 1965, with copies of the petition, but he entered no appearance ; and allowed the suit to proceed undefended.

The Court found that cruelty was proved and granted a decree *nisi* for the dissolution of the marriage, on the ground of cruelty, with costs.

Held, (I) on the question of cruelty :

On the evidence before me, I am satisfied that the conduct of the respondent towards the petitioner, over a period of several years prior to the filing, of the petition, amounts to matrimonial cruelty which has caused injury to the wife's health ; and which creates reasonable apprehension of still more injury, if allowed to continue. I, therefore, reach the conclusion that the petitioner is entitled to a decree *nisi* for the dissolution of the marriage, on the ground of cruelty.

(II) on the child's custody :

As regards the prayer for the custody of the child, I do not think that I should proceed to deal with that matter now, upon the scanty material before me on that issue. I feel confident

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that the parties, with the help of their legal advisers, will be able to make proper arrangements in the interests of their child, giving both parents sufficient opportunity to do their parental duty towards the happiness of their young daughter ; and for the cultivation of the proper relations which must exist at all times between the child and both her parents. Failing such arrangements, the matter will have to come to Court for the necessary order.

Decree nisi for the dissolution of the marriage on the ground of cruelty granted.

Cases referred to :

Mantovani v. Mantovani 1962 C.L.R. 336 ;

Elphistone v. Elphistone (1962) 3 W.L.R., 422 (P. 203) ;

Williams v. Williams, C.A. (1963) P. 212 ;

Gollins v. Gollins, C.A. (1964) P. 32 and H.L. (E) (1964) A.C. 644 ;

Noble v. Noble and Ellis (No. 2) (1964) 2 W.L.R. 349, dictum of Scarman J., at p. 351 ;

Saunders v. Saunders (1965) 2 W.L.R. 32 at p. 36 ;

Bond v. Bond (1965) 2 W.L.R. 1008 at p. 1013.

Matrimonial Petition.

Petition by wife for dissolution of her marriage on the ground of cruelty.

Ch. Ioannides, for the petitioner.

Respondent, not appearing.

Cur. adv. vult.

The facts of the case sufficiently appear in the judgment delivered by :

VASSILIADES, J. : This is a wife's petition for dissolution of her civil marriage with the respondent, on the ground of cruelty. The marriage was solemnised at the Commissioner's Office, Nicosia, on the 9th September, 1957, under the Marriage Law, Cap. 279. Some three weeks later, on October 3rd, the parties went also through a religious ceremony in the Armenian Church, of Nicosia, to which both parties belong.

The subject matter of the present proceeding is the marriage which gave them the legal status of husband and wife as from the 9th September, upon completion

of the civil ceremony under the Marriage Law (*Mantovani v. Mantovani* 1962 C.L.R. 336).

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The respondent-husband who is a Cypriot residing at Nicosia, was personally served on July 7, 1965, with duly certified copies of the petition, of the affidavit filed in support, and of the Registrar's notice for entering an appearance in due course. The respondent entered no appearance; and filing no answer to the charges in the petition, allowed the suit to proceed undefended.

The cruelty complained of, is harsh and selfish treatment of the wife with habitual use of "foul, irritating, humiliating and insulting language", coupled with indifference and disregard to her feelings, lack of affection, refusal to speak to her on matters of common interest in their matrimonial relations, and aggressiveness in the presence of other persons, including the parties' own child; and generally ill-treatment which on one occasion culminated in assault by spitting at her face in the presence of the child. Conduct of this kind, extending over a period of several years, undermined her health, the wife complains, causing her long nervous headaches, stomach and heart troubles and a severe breakdown.

The petitioner had a very pathetic story to tell in the witness-box, about her married life, which, however, she stated with restraint and apparent regard to truth. She was supported by her mother who testified that the petitioner at first tried to conceal from her parents the miseries of her married life; and that when the mother spoke to the respondent about it, the latter admitted his misconduct, and on at least two different occasions made solemn promises to change his ways towards his wife. Evidence of aggressiveness on the part of the husband, came also from the housemaid.

On the medical aspect of her case, the petitioner was supported by affidavit-evidence from her uncle, a medical practitioner since 1936, now established in London, who treated her for headaches, chest pains and insomnia with a "marked state of nervousness and anxiety" for the period 1958 to 1961 when he was in Cyprus; and again in December, 1963, and January, 1964, in London, when he found her position worse, her morale "very low", and in a state of "nervous breakdown".

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In a case of this nature, where the Court has before it the version of the one side only, the evidence must be very carefully weighed, with the probability in mind that there may well be a different picture on the other side of the coin. Nevertheless, on the evidence before me, the substance of which I accept, I can have no doubt that this marriage proved a very unhappy and strenuous experience for the petitioner. Most probably, an unfortunate and unhappy marriage for both parties. This state of affairs, however, sad and regrettable as it may be, cannot, by itself, constitute a ground for divorce. I must go into the charge of cruelty, and deal with it according to law.

After *Elphistone v. Elphistone* (1962) 3 W.L.R., 422 (P. 203) and *Williams v. Williams*, C.A. (1963) P. 212, the principles governing the matrimonial charge of cruelty were reviewed in *Gollins v. Gollins* which reached the House of Lords, and is fully reported in C.A. (1964) P. 32 and H.L. (E) (1964) A.C. 644. In *Noble v. Noble and Ellis* (No. 2) decided in July, 1963, where Scarman J., had to consider cruelty charges on both sides, he is reported to have said this : ((1964) 2 W.L.R. 349 at p. 351).

“There are two tests of cruelty as I understand the law now to be. The first is this : is the conduct complained of sufficiently grave and weighty to warrant the description of being cruel? I have no hesitation in reaching the conclusion that the conduct of which this husband complains, was, in the circumstances of this marriage, with their respective temperaments and characters, sufficiently grave and weighty to justify a finding of cruelty, if injury to health, or reasonable apprehension of injury to health, can be proved. The first test is therefore established. The second test, equally important, is : has the conduct complained of caused injury to health or reasonable apprehension of such injury”?

In *Saunders v. Saunders*, about a year later, in July 1964, before a Divisional Court consisting of Sir Joselyn Simon, P. and Scarman J., the former referred to a passage from Lord Pearce’s speech in *Gollins v. Gollins* (*supra*) reading as follows :

“It is impossible to give a comprehensive definition of cruelty, but when reprehensive conduct, or departure from normal standards of conjugal kindness, causes injury to health, or apprehension of it, it is, I think, cruelty, if a reasonable person, after

taking due account of the temperament and all the other particular circumstances, would consider that the conduct complained of is such, that this spouse should not be called on to endure it" ((1965) 2 W. L. R. 32 at p. 36).

And in *Bond v. Bond*, decided at about the same time, (July, 1964) before the same Divisional Court, Scarman J., delivering the judgment of the Court in a case where the Magistrates had declined to receive evidence of earlier acts of cruelty, referred to the observation of Lord Normand in *King v. King* that " the general rule in all questions of cruelty, is that the whole matrimonial relations must be considered " ((1965) 2 W.L.R. 1008 at p. 1013).

I find it unnecessary to go into further detail in the facts of this case. On the evidence before me, I am satisfied that the conduct of the respondent towards the petitioner, over a period of several years prior to the filing, of the petition, amounts to matrimonial cruelty which has caused injury to the wife's health ; and which creates reasonable apprehension of still more injury, if allowed to continue. I, therefore, reach the conclusion that the petitioner is entitled to a decree *nisi* for the dissolution of the marriage, on the ground of cruelty. With costs.

As regards the prayer for the custody of the child, I do not think that I should proceed to deal with that matter now, upon the scanty material before me on that issue. I feel confident that the parties, with the help of their legal advisers, will be able to make proper arrangements in the interests of their child, giving both parents sufficient opportunity to do their parental duty towards the happiness of their young daughter ; and for the cultivation of the proper relations which must exist at all times between the child and both her parents. Failing such arrangement, the matter will have to come to Court for the necessary order.

There will be a decree *nisi*, in the petition, accordingly ; with costs. Certified copy of this judgment to be served on the respondent within 14 days from to-day.

*Decree nisi on the ground of
cruelty granted, with costs.*

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