

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.C.C. No. 890 of 2000**

S.K. Ram, S/o. S.S. Ram, age 32 years, R/o. Qtr. No.14-B, Street No.5,
Sector No.2, Bhilai Nagar, Tahsil and District – Durg (C.G.)

---- Petitioner**Versus**

Smt. Alveena Ram, W/o. S.K. Ram, age 29 years, R/o. M.I.G. -2/159,
Hudco Colony, Bhilai, Tahsil and District Durg (C.G.)

---- Respondent

For Petitioner-Husband	: Shri P.P. Sahu & Shri R.K. Pali, Advocates
For Respondent-Wife	: None.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice Goutam Bhaduri
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per Deepak Gupta, Chief Justice****12/08/2016**

1. This is a reference under Section 17 of Indian Divorce Act, 1869 for confirmation of the decree of divorce passed by the learned Third Additional District Judge, Durg, declaring the marriage between the parties to be nullity in terms of Section 18 of the Indian Divorce Act, 1869 vide order dated 08.08.2000 passed in Civil Suit No.176-A/99.
2. Admitted facts are that the parties are Christian and governed by Indian Divorce Act.
3. At the outset, it would be pertinent to mention that this divorce petition was filed before the amendment of the Indian Divorce Act, 2001 and in-fact the decree was also passed before the amendment of the Act. Therefore, we are considering the provisions of Indian Divorce Act as it existed at the relevant time.

4. Section 18 of the Indian Divorce Act provides that the husband or wife may present the petition to the District Court or High Court praying that the marriage may be declared null and void on any of the ground mentioned in Section 19, which reads as follows :-

“19. Grounds of decree. – Such decree may be made on any of the following grounds: –

(1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

(2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3) that either party was a lunatic or idiot at the time of the marriage;

(4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the [District] Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.”

5. Bare reading of Section 19 of Indian Divorce Act clearly postulates that a decree for declaring the marriage a nullity can be granted only on four grounds; firstly that the husband was impotent at the time of marriage and at the time of institution of suit; second, where the parties are within the prohibited degrees of consanguinity or affinity; third, where either party was a lunatic or idiot at the time of marriage and fourth, where the husband or wife was married earlier and the spouse from the earlier marriage is alive and that marriage continue to subsist.

6. The husband filed this case only on the ground that wife was suffering from chronic Schizophrenia. This petition was filed on 05.10.1999. Though vague allegations have been made in the suit that wife was suffering from the disease since prior to the marriage but no evidence at all has been led to prove this fact. The only evidence led for proving the fact of Schizophrenia is the statement of PW-3, who states that she examined the wife for the first time on 29.10.1997. The marriage has taken place on 12.06.1996 and the report of the doctor is only from the year October, 1997 onwards. There is no record prior to that date. We are, at this stage, not going into the question whether suffering from Schizophrenia would mean that the person is a lunatic or an idiot. Schizophrenia can be of various levels and various types and every type of Schizophrenia is not sufficient to declare a person to be lunatic or idiot.
7. Be that as it may, in the present case, the husband has even miserably failed to prove that the wife was suffering from Schizophrenia at the time when she got married and therefore, no decree of divorce could have been granted.
8. We therefore, do not confirm the decree of divorce and set-aside the decree of divorce granted by the learned trial Court. We however make it clear that since the Indian Divorce Act was radically amended in the year 2001, if any fresh ground is available to the husband, he may file a new petition which shall be decided in accordance with law.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Goutam Bhaduri)
JUDGE

Sd/-
(P. Sam Koshy)
JUDGE