

(1942) 02 AHC CK 0019
In the Allahabad High Court
Case No : Matrimonial Suit No. 4 of 1941

William Percy Bowman

APPELLANT

Vs

Harriet Dorothy Bowman

RESPONDENT

Date of Decision : 06-02-1942

Acts Referred:

Citation : (1942) 02 AHC CK 0019

Hon'ble Judges : Braund, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Braund, J.—This is an application in a matter under the Indian and Colonial Divorce Jurisdiction Act which raises a point of importance.

2. The husband has petitioned for a decree for dissolution of his marriage with his wife who is the Respondent. The ground is the alleged adultery by the wife with an unknown man. The only allegation contained in the plaint with relation to the alleged adultery is in paragraph 9 which says, in effect, that the Petitioner has received a letter from his wife in which she has confessed that she is now pregnant by a man who is not the Petitioner. A copy of that letter has been filed with the petition. The letter also says that the Respondent refuses to disclose the name of the father of the child.

3. In the petition itself by the last line of the relief the Petitioner asks to "be allowed to proceed with the suit without making the adulterer a co-Respondent". No separate application has been made to dispense with the adulterer as a co-Respondent and presumably, the Petitioner is relying on being granted that indulgence at the trial itself. This, in my view, is both contrary to law and contrary to the public interest.

4. The relevant section is Section 11 of the Indian Divorce Act which may be taken for this purpose to apply to this case. This section makes it obligatory on a husband when he petitions for dissolution of marriage on the ground of adultery

to make the alleged adulterer a co-Respondent, unless he is excused from doing so on one of three grounds. The section excuses him from doing this when his wife is leading the life of a prostitute and also when the alleged adulterer is dead. The third case in which he can be excused is when the name of the alleged adulterer is unknown to the Petitioner, although he has made due efforts to discover it. When the legislature enacted that the co-Respondent must be made a party to divorce proceedings at the instance of the husband, it did so for a very good reason, in order to prevent any form of collusive divorce. It is, therefore, not a mere formality to dispense with the presence of the co-Respondent. But the legislature has also recognised that in certain specific cases it may be impossible to know who he is I entirely agree, with respect, with what fell from a learned Judge of the Calcutta High Court in precisely similar circumstances in the case of *Cox v. Cox* (1910) 45 Cal. 525 when he said:

...It seems to me to be a matter of grave public importance that a person should not be allowed to proceed in a Court for the dissolution of his marriage without having observed all the safeguards imposed by the law to prevent the chance of connivance or collusion....

5. In the present case all there is, is a mere letter written by the wife to the husband in which she refused to divulge the name of the co-Respondent. There is no evidence whatever that the Petitioner has made the slightest effort to discover who the co-Respondent is.

6. The matter does not quite end there because it has been established both by the practice of English Courts and by a long series of cases that until leave to dispense with the presence of the co-Respondent has actually been obtained, the suit cannot proceed. It is not sufficient to apply for leave at the trial. A formal application has to be made before the trial and it has to be supported by proper evidence that the conditions of Section 11 of the Act have been complied with.

7. For these reasons I cannot treat the present suit as being in a fit condition to proceed to trial and I cannot, therefore, settle any issues in it. All I can do at this stage is to adjourn the settlement of issues for a period of six weeks, in order to enable a proper application to be made.