

1934
EMPEROR
v.
BACHCHA

named Muhammad Zaki from Fatehpur. We think that in the light of section 103 he ought to have taken some other person in addition to Muhammad Zaki; but an irregularity of this sort can be no bar to the conviction if we are satisfied that the cocaine was in fact found in the possession of the accused. The accused has entirely failed to prove any enmity between himself and the Excise Inspector and nothing whatever has been shown against the credibility of Muhammad Zaki. His evidence and the evidence of the Excise Inspector and Head Constable Kamta Prasad satisfy us that the packet and the match box containing cocaine were recovered in the manner alleged and the accused is, therefore, liable to conviction.

The result of our findings is that we allow this appeal and set aside the order of acquittal. We convict Bachcha under section 14 of the Dangerous Drugs Act and we sentence him to be rigorously imprisoned for four months. If Bachcha is on bail he must surrender to his bail and serve out his sentence.

MATRIMONIAL JURISDICTION

Before Mr. Justice Young

NUGENT (PETITIONER) v. NUGENT (RESPONDENT)*

1934
April, 20

Divorce—Practice—Cross-petitions by husband and wife—Adultery of both parties—Husband's misconduct conducing to wife's adultery—Granting of wife's petition—Discretion of court—Costs.

Where, upon cross-petitions for divorce by the wife and the husband, it appeared that both the husband and the wife were guilty of adultery, but that the husband's continued misconduct and cruel behaviour had at length led to the wife's adultery, it was held that, following the practice in the English courts in such matters, the court could exercise its discretion in favour of the wife's petition, notwithstanding her adultery, where the wilful neglect or misconduct of the husband caused or conduced to that adultery and where, further, there was complete candour and disclosure on the petitioner's part. Accordingly the wife's

*Matrimonial Suit No. 3 of 1934.

petition was granted and the husband's petition was dismissed; but the co-respondent to the husband's petition was ordered to bear a portion of the wife's costs.

Messrs. *H. J. Walford* and *O. M. Chiene*, for the petitioner.

Begum *Faruqi* and Mr. *Vishun Bahadur*, for the respondent.

YOUNG, J.:—In this petition the wife asks the Court to dissolve her marriage with the respondent on the ground of adultery and cruelty. The husband asks that his marriage with his wife should be dissolved on the ground of his wife's adultery. The wife filed a petition in this Court. The husband filed his in Jhansi. The husband's petition has been transferred to this Court, in order that both petitions might be heard together.

The parties are Anglo-Indians domiciled in India, and they have throughout their married life lived in the United Provinces. This Court has, therefore, jurisdiction to hear and decide both the petitions.

The wife, through her counsel, has admitted adultery and invites the Court to exercise its discretion in her favour.

The marriage took place in February, 1925, and there are three children born of the marriage. Within a year of marriage the husband, who is a doctor in the Indian Medical Department, was transferred from Allahabad to Ranikhet. He appears from the very commencement of his married life to have been unable to resist the temptation of other women.

* * * * *

There can be no doubt that Dr. Nugent has been guilty of adultery with more than one woman. There can further be no doubt that at this date, that is, August and September, 1933, he had behaved abominably to his wife and that he wished their relationship to cease and his wife to live apart from him. He said in the box on being questioned as to his proposal of marriage to Miss Lamont that he hoped that his wife might commit

1934

NUGENT

T.

NUGENT

1934

NUGENT
v.
NUGENT

adultery with a man that he knew and that he might then obtain a divorce so that he could marry Miss Lamont.

In October, 1933, the wife met the co-respondent Doutre. She admits that she committed adultery with him some time towards the end of October. From a letter exhibited by the husband it is clear that this adultery took place before the 25th October. I am satisfied, however, that it did not take place before the 10th or 11th of that month.

The evidence in this case, including the letters which have been produced, satisfies me beyond doubt that Dr. Nugent has had adulterous connection with at least two women. The first adultery at Ranikhet in 1926 having been condoned, I cannot take it into consideration. The adultery, however, at Jhansi in 1933 entitles the wife to a decree *nisi*, if it had not been for her admitted adultery with Doutre in October of that year. Cruelty also has been proved. The revolver incident and the husband's general conduct towards his wife is enough.

I am asked to exercise my discretion in the matter of the wife's petition and to excuse her adultery and grant her a decree. There is nothing in the Indian Divorce Act as regards the exercise of the discretion of the court, and in this matter I must follow the practice in the English courts. There is no doubt that the discretion of the court in these matters ought to be used with care. The main consideration is the interest of the community at large. There is one ground, however, on which the discretion of the court is invariably exercised, and that is where the wilful neglect or misconduct of the respondent husband caused or conduced to his wife's adultery. Further, there must be complete candour and disclosure on the part of the petitioner who wishes the court to exercise its discretion in his or her favour. I am satisfied that Mrs. Nugent in this case has made a complete disclosure. Her counsel opened the case by admitting two adulterous connections on her part. The first adultery

1934

 NUGENT
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 NUGENT

committed by her having been condoned by the husband, I am entitled to exercise my discretion on this ground as regards this adultery. In any event, the adultery with Harris was undoubtedly brought on by the habits and conduct of Dr. Nugent.

In my opinion, I must also use my discretion in favour of Mrs. Nugent with regard to the adultery with Doutre. On the documents and the evidence, the husband had determined to get rid of his wife. He wished to marry Miss Lamont. He hoped that the wife would commit adultery in order to enable him to marry Miss Lamont. The wife knew of his connection with Miss Lamont from the letters which she had discovered and her husband's own confession. She did not commit adultery with Doutre until it was clear that her relations with her husband were at an end. Dr. Nugent's continuous attentions to other women and his general behaviour undoubtedly conduced to the adultery by the wife with Doutre. It has been argued on the part of the husband that Mrs. Nugent was no better than her husband. On the other hand, there is no doubt that evil communications corrupt good manners. Mrs. Nugent in spite of the behaviour of her husband had for five years from 1925 to 1930 maintained her good character. She had seen the way her husband behaved with other women, she found that he had eventually completely abandoned her and that he wished to have his freedom, and it is not a matter for wonder that eventually she was tempted by another man.

On these grounds, therefore, I exercise the discretion which is vested in me, and grant the wife a decree *nisi* with costs. She will also have the custody of the three children.

On the question of costs it has been argued by counsel for the husband that the co-respondent to the husband's petition, Doutre, should bear some portion of the costs. Doutre is not represented, but was present in Court. He says that he has already paid Rs.150 to counsel for

1934

NUGENT
v.
NUGENT

Mrs. Nugent. An order *pendente lite* has already been made for the husband to pay to the wife Rs.350 for her costs. It appears to me that Doutre should not go scotfree. I think justice will be met by an order that the husband should pay Rs.250 and Doutre should pay Rs.100 for the wife's costs.

I think the wife also is entitled to alimony, under all the circumstances of this case. The husband's salary is Rs.340 per month and he has free quarters. In the document quoted above he was willing to pay his wife Rs.150 a month in 1930. The education of the children costs Rs.65 a month. The husband must be responsible for Rs.65 a month and pay it direct to the proprietor of the school where the children are. He will further pay the sum of Rs.85 per month to his wife as alimony.

The order therefore is that there will be a decree *nisi* with costs in favour of the wife. The husband's petition is dismissed.

REVISIONAL CRIMINAL

1934
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Before Mr. Justice Bennet
EMPEROR v. DARSU*

Criminal Procedure Code, sections 118, 123, 426—Security for good behaviour—Imprisonment for failure to give security—Computation of period of order—Release on bail pending appeal—Time of such release to be excluded from the period of order.

A person was ordered to furnish security for good behaviour for the period of one year, and as he failed to furnish security he was committed to prison for one year. He filed an appeal, pending which he was released on bail by the appellate court. The appeal was ultimately dismissed. *Held* that the time during which he was released on bail was to be excluded in computing the period of one year. The provision in section 426(3) of the Criminal Procedure Code governed the case; but even if it did not, on the ground that a person imprisoned under section 123 of the Code was not strictly speaking a convicted person, still the general principles of criminal law required that the period

*Criminal Revision No. 212 of 1934, from an order of S. Maitra, Sessions Judge of Ghazipur, dated the 7th of December, 1933.