

IN THE FIJI COURT OF APPEAL  
Civil Jurisdiction  
Civil Appeal No. 66 of 1980

Between:

VINEETA d/o Muthu Samy Appellant

and

AMRIT LAL s/o Magan Lal Respondent

Mr. H. Lateef for the Appellant.  
No appearance of the Respondent.

Date of Hearing & Delivery of Judgment: 20th March 1981.

JUDGMENT OF COURT

Gould V.P. (orally).

The appellant petitioned for divorce on the ground that the respondent had wilfully and persistently refused to consummate the marriage. The respondent husband did not appear in the Magistrate's Court, or at any stage of the proceedings, including this appeal.

The evidence given by and for the petitioner clearly showed that the respondent had in fact wilfully and persistently refused consummation. The parties had never lived together and the respondent was clearly responsible for this situation. The learned Magistrate recommended that the prayer of the petition be granted.

The learned Judge in the Supreme Court refused to do this. This arose from words used by the petitioner in evidence, as follows:-

"There was premarital arrangement between us that we should not have sex. There was no conditions attached as to non-consummation."

This receives some explanation and corroboration from the evidence of the petitioner's father, when he said -

"There was no precondition of any nature for the religious ceremony. "

To those conversant with customs in Fiji it will be clear that this is a reference to the fact that many Indian marriages in Fiji are performed in the marriage registry (as this one was) but followed, after an interval, by a religious ceremony.

The magistrate found as a fact, on the evidence, that there was no condition attached to the marriage of the parties that there should not be any sexual relations after they were lawfully married.

The learned Judge on the other hand read the evidence we have quoted as meaning that the parties had made an arrangement that they would not have sex at all after the marriage.

With respect we think that the interpretation of the learned Magistrate, who himself was an Indian and heard the parties personally, is to be preferred. That being so, and there being no other reason why the petition should not be granted, we allow the appeal and remit the case to the courts below for the appropriate orders granting the prayer of the petition/<sup>to</sup>be made.

*[Handwritten signature]*

.....  
Vice President

*[Handwritten signature]*

.....  
Judge of Appeal

*[Handwritten signature]*

.....  
Judge of Appeal