No. II of 1929 was extended to the areas of the erstwhile State of PEPSU after its merger in the present Punjab State in 1956 and this means that section 113 of the Pepsu Ordinance No. X of 2005 B.K. could not have had the effect of extending this Act to those areas in 1948 as has been argued by the counsel for the plaintiff.

(16) For reasons given above, the appeal is accepted, the judgment and decree of the Court of first appeal are set aside and those of the trial Court are restored. The suit of the plaintiffs (sisters' sons) is decreed with costs throughout.

P. C. Pandit, J.—I agree.

K.S.K.

REVISIONAL CRIMINAL

Before S. S. Sandhawalia, J.

TEJA SINGH,—*Petitioner*

versus

SATYA AND OTHERS,—*Respondents.*

Criminal Revision No. 108 of 1968

November 13, 1969.

Hindu Marriage Act (XXV of 1955)—Section 13—Hindu Marriage solemnised in India—Whether can be validly annulled by a foreign decree of divorce—Conformity with the provisions of section 13—Whether necessary—Relationship of husband and wife—Whether dissolved by such decree—Private International Law—Domicile of a wife—Whether follows that of the husband even in cases of desertion and judicial separation.

Held, that so long as the marriage subsists, the domicile of the husband is the governing factor and the derivative domicile of the wife must necessarily follow that of her husband. The exclusive jurisdiction for the dissolution of marriage vests in the Court where the parties are domiciled and the *lex-domicili* would govern such proceedings which are accorded recognition by the comity of nations. A marriage solemnised in India can be validly annulled by a decree of divorce granted by a Court of foreign country, provided the domicile of the husband is in that country. The conformity with the provisions of Hindu Marriage Act and the grounds given herein for divorce is not necessary. The decree of divorce granted by the

Courts of a foreign country has to be recognised in India also and the relationship of husband and wife must be taken to have been dissolved in accordance with that decree. (Para 13)

Held, that during continuance of the bond of marriage, the domicile of the wife invariably follows that of her husband. Sometime this doctrine does operate harshly against a deserted wife who may be confronted with distressing and formidable problem, but the principle is absolute and applies even in case of desertion and that of judicially separated wife.

(Paras 6 and 7)

Petition under Section 439 Criminal Procedure Code for revision of the order of Shri Jagwant Singh, Additional Sessions Judge, Jullundur, dated 15th June, 1968, affirming that of Mrs. Bakhshish Kaur, Judicial Magistrate Ist Class, Jullundur, dated 17th December, 1966, ordering Teja Singh (now petitioner) to make a monthly allowance of Rs. 500 for the maintenance of his wife and two children, i.e., Rs. 300 for the wife and Rs. 200 for the children from the date of institution of the proceedings under section 488, Criminal Procedure Code.

BHAGIRATH DASS, S. K. HEERAJI AND B. K. JHINGAN, ADVOCATES, for the petitioner.

J. L. GUPTA, ADVOCATE, for the respondent.

JUDGMENT

SANDHAWALIA, J.—Whether a Hindu Marriage solemnised within this country can be validly annulled by a decree of divorce granted by a foreign Court is the question that falls for determination in this revision petition.

(2) The proceedings arise out of a petition under section 488, Criminal Procedure Code, moved by the respondent-wife Satya on the 22nd of April, 1965, claiming maintenance on behalf of herself and her two minor children against her husband Teja Singh. It was averred therein that the marriage between the parties took place according to Sikh rites on the 1st of July, 1955, in Basti Guzan at Jullundur. Two children were born of the wedlock in the year 1956 and 1958. Towards the end of the year 1958, the petitioner-husband planned to go to U.S.A. to secure a Doctorate in the Forestery and accordingly left for the United States on the 23rd of January, 1959. He is said to have joined the University in the State of New York and spend more than five years for obtaining higher education there

and subsequently had secured employment in the States and was said to be receiving a salary of about Rs. 2,500 per mensem. During this long period it was alleged that he had wholly refused and neglected to maintain the respondent-wife and her two children.

(3) The petitioner in his reply whilst controverting the allegations made in the petition primarily pleaded that prior to the institution of the petition, the respondent had moved and secured a decree of divorce on the 30th of December, 1964, against the petitioner in accordance with law from the Second Judicial District Court of the State of Nevada in the United States and thus the bond of marriage stood dissolved and the petitioner was not liable to pay any maintenance to the respondent-wife. Objections regarding the jurisdiction of the Magistrate's Court at Jullundur to take cognizance of the matter were also taken and agitated but as these have not been pressed in this Court, I deem it unnecessary to refer to them. The Judicial Magistrate, 1st Class, Jullundur by her order, dated the 17th of December, 1966, held that the Court had territorial jurisdiction; the annulment of marriage can only be done under the Hindu Marriage Act; that the decree granted by the Court of the State of Nevada contravened sections 19 and 2 of the Hindu Marriage Act, and the respondent-wife not being a party to the divorce proceedings, the decree granted by the Court in the United States was not binding between the husband and the wife. Accordingly maintenance at the rate of Rs. 300 for the respondent-wife and Rs. 100 for each of the minor children was directed. A revision petition against the said order was also dismissed by the Additional Sessions Judge, Jullundur, who held that as the marriage between the parties had been performed in India, according to Hindu rites, the same could be annulled only according to the provisions of the Hindu Marriage Act and therefore the decree of divorce of the foreign Court was not of binding nature between the parties.

(4) Mr. Bhagirath Dass in support of this petition did not challenge the concurrent findings of the Courts below that the Magistrate's Court at Jullundur had jurisdiction to take cognizance of the application under section 488, Criminal Procedure Code. The primary contention that has been pressed by him is that the decree of divorce granted by the 2nd Judicial District Court of the State of Nevada in the United States of America to the petitioner husband was binding between the parties and not having been challenged by way of appeal

was now of absolute validity. On this premises it was contended that the bond of husband and wife did not subsist between the parties and consequently the liability of the petitioner-husband to maintain his wife had ceased. In the course of the argument learned counsel for both the parties conceded their inability to cite binding precedent, or for that matter any Indian authority on the point. The issue has thus to be examined in the wake of the general principles of Private International Law.

(5) It was first rightly contended by the learned counsel for the petitioner that at the crucial time of the commencement of the proceedings for divorce before the Court in Nevada, the petitioner was domiciled within that State in United States of America. Indeed it was the case of the respondent-wife herself in her application before the Magistrate that the petitioner had left for United States of America in January, 1959, and has eversince remained abroad. After having studied in an American University for the Doctorate in Forestery, the petitioner is averred to have secured employment in U.S.A. and refused to return to India. In the written statement filed on behalf of the petitioner also it is the case that he had joined the University in New York and after about a year he had migrated to the Uttah State University where he studied and subsequently is resident within the States. These facts, therefore, disclosed that during a period of well-nigh more than seven years the petitioner was resident in the United States with the requisite intention to make it his permanent home. There appears thus the necessary synthesis of the factum and the animus, which lies at the root of the concept of domicile. This finds express mention in Exhibit R.W.7/10 the Decree of Court of Nevada in the following terms:—

> "That for more than six weeks preceding the commencement of this action, the plaintiff was, and now is, a *bona fide* resident of and domiciled in the Country of Washoe, State of Nevada with the intent to make the State of Nevada his home for an indefinite period of time, and that he has been actually, physically and corporeally present in said Country and State for more than six weeks."

Indeed the fact of the petitioner having been domiciled in the State of Nevada in U.S.A. has not been the subject of any serious challenge in the Courts below nor has the learned counsel for the respondent assailed this aspect of the petitioner's case before me. We hence

proceed on the virtually admitted premises that the petitioner was domiciled within the foreign jurisdiction of the Court in Nevada at the commencement of the action for divorce.

(6) A faint contention was sought to be raised on behalf of the respondent-wife that though her husband was domiciled in the United States of America she herself had never left the shores of India at any stage and thus continued to retain her Indian Nationality and domicile. It is well-settled that nationality and domicile are different concepts and in the present case the issue of nationality does not enter and we are concerned wholly with the domicile of the parties. In effect what was sought to be contended on behalf of the respondent-wife was that during the subsistance of the marriage she had retained a domicile different from her husband, namely, an Indian domicile and hence both husband and wife were never domiciled in the United States so as to give jurisdiction to the foreign Court. The trial Court also seems to have been influenced by the fact that as the wife had not been shown to be permanently settled or domiciled in the State of Nevada, therefore the decree granted by the Court in the United States was not binding between them. This submission despite the persistence with which it was advanced is patently untenable in view of the settled proposition of Private International Law. It is axiomatic that during the continuance of the bond of marriage the domicile of the wife invariably follows that of her husband. Lately in his well-known work on Divorce and Matrimonial Causes (Fourteen Edition at page 54) states the law on the point as follows:—

> "The husband's actual and the wife's legal domicile are *prima facie* one, wherever the wife may be personally resident. By a valid marriage the domicile of the wife becomes that of the husband, and the fact that a married couple are living apart under a separation agreement, or a husband has deserted his wife, does not render her free to choose a domicile apart from him."

Similarly professor Cheshire in his celebrated work on Private International Law (Seventh Edition at page 332) states the legal position in no uncertain terms with reference to the jurisdiction of English Courts in a similar situation—

> "Since a wife takes the domicile of her husband upon marriage, the sole question in each case is whether the husband is domiciled in England at the time of the suit. Nothing else

is relevant. The nationality of the parties, their residence, their submission to the jurisdiction, their former domicile, or the fact that they were domiciled elsewhere when the misconduct upon which the suit is founded occurred—none of these is pertinent to the existence of jurisdiction."

Again referring to the authoritative pronouncement of the Privy Council in *Le Mesurier* v. *Le Mesurier*, (1) it is stated—

"That case decided that domicile, in the true and full sense of the term, of the husband at the time of the suit is the sole test of jurisdiction. With such domicile the Court has jurisdiction over a foreigner as well as over a British subject; without such domicile it has no jurisdiction, even though the parties are British subjects."

(7) It was then strenuously contended on behalf of the respondent wife that by the time the proceedings were instituted for divorce in the Court at Nevada, the marriage between the parties had virtually broken up and the petitioner had deserted the respondent-wife for more than five years. It was contended that in such a situation the domicile of the deserted or separated wife could not follow that of her husband against her will or in the absence of any voluntary act on her part to submit to the jurisdiction of the foreign court. Undoubtedly, the doctrine that the domicile of the wife follows that of the husband, does operate harshly against a deserted wife who as in the present case may be confronted with a distressing and formidable problem. As such a wife retains the domicile of her husband, her only remedy lies in the country where her husband may be domiciled even by choice. This may be at that other end of the world and it may become extremely difficult nay impossible for her to seek her remedy in a Court so far distant. It was probably to alleviate such gross hardship that Lord Cranworth in *Dolphin* v. *Robins*, (2) initiated what has been termed 'a humane heresy' that there might be exceptional cases departing from the general rule. However all doubts regarding the absolute nature of the principle that the domicile of the wife follows that of her husband even in case of desertion and that of a judicially separated wife have been set at rest by the unequivocal statement of the law by the Privy Council in *Attorney General for Alberta* v. *Cook*, (3). Lord Merrivale in an exhaustive

(1) 1895 A.C. 517.
(2) (1859), H.L. Cases 390, 418.
(3) 1926 A.C. 444.

judgment after referring to all the earlier case law on the point observed as follows in the context of such a submission :—

> "The contention that husband and wife may be domiciled apart and may resort to different jurisdictions and different codes of law to seek thereunder dissolution of the marriage between them appears to challenge directly the rule laid down in *Le-Mesurier* v. *Le-Mesurier*, (1), and affirmed in the House of Lords in *Lord Advocate* v. *Jaffrey*, (4), that matrimonial status is governed by the law of domicile of the parties."

and again referring expressly to a case of a judicially separated wife—

> "The contention that a wife judicially separated from her husband is given choice of a new domicile is contrary to the general principle on which the unity of domicile of the married pair depends; divorce a *mensa et thoro* gave no such right; and the statute of 1857 was not framed with that intention and does not affect that purpose."

(8) Lord Merrivale also expressly followed the earlier observations of Lord Shaw in *Lord Advocate* v. *Jaffrey* (4)—

> "I see the greatest difficulty in any invasion of the principle which appears to me to be fundamental—namely, that that unity which the marriage signifies is regulated by one domicile and one domicile only, i.e., that of the husband."

The view of the law taken in *Attorney General for Alberta* v. *Cook*, (3) has been upheld by the House of Lords in *Salvesen or von Lorang* v. *Administrator of Austrain Property*, (5). In the present case, the respondent-wife continued to have the domicile of a married woman, i.e. a derivative domicile being the domicile of her husband. When the domicile of her husband changed derivative result changed, and the wife's domicile was changed from Indian to American. In conformity with the enunciation of law above, it, therefore, follows that the legal domicile of the respondent-wife at the time of the commencement of the divorce proceedings in Nevada was that of her husband, and, therefore, the common domicile of both must in the

(4) (1921)1 A.C. 146.
(5) (1927) A.C. 641.

eye of law be deemed within the State of Nevada in the United States of America.

(9) Once it is held that the common domicile of the parties was within the State of Nevada in the United States of America, two incidents necessarily flow therefrom. Firstly that the Court of domicile alone would have matrimonial jurisdiction in a suit for dissolution of marriage and secondly it would be the lex domicile which would govern the matrimonial matter before such a Court.

(10) As regards the first proposition, it now seems to be beyond all dispute that the domicile of the husband at the time of the suit for divorce is the sole test for the purpose of giving jurisdiction to the matrimonial Court. Whatever doubt there might have existed has long been laid to rest by the decision of the Privy Council in *Le Mesurier* v. *Le. Mesurier*, (1), where Lord Watson after an exhaustive consideration of the case law on the point concluded as follows :—

> "Their Lordships have in these circumstances, and upon these considerations, come to the conclusion that, according to international law, the domicile for the time being of the married pair affords the only true test of jurisdiction to dissolve their marriage."

This view has been consistently adhered to in subsequent authorities including *Lord Advocate* v. *Jaffrey and others,* (4), *Attorney-General for Alberta* v. *Reata E. Cook* (3) and re-affirmed by the House of Lords in *Salvesen or Von Lorang* v. *Administrator of Austrian Property* (5), in the following terms :—

> "In the judgment in *Le Mesurier* v. *Le Mesurier* (1) the modern doctrine of domicile as the true test prevails unrestrainedly."

In the words of Lord Phillimore—"Indeed this matter is now set at rest. Since the opinions expressed in the cases of *Le Mesurier* v. *Le Mesurier* (1) and the *Lord Advocate* v. *Jaffrey* (4) and the decision of the Privy Council in *Attorney-General for Albert* v. Cook, (3) it is established that the law of England recognizes the competence and the exclusive competence of the Court of the domicile to decree dissolution of a marriage."

(11) Proceeding on the premises that the Court of domicile would have exclusive jurisdiction in regard to proceedings for the dissolution of marriage, what remains to be considered is as to what law would govern such proceedings before the Court. As such a proceeding pertains to the status of the parties, it seems to be equally well accepted that the lex-domicile would govern the proceedings for the decree of divorce. Reference in this connection may again be made to the succinct statement of the law by Professor Cheshire in the following statement :—

> "Not only does English law recognize a decree of divorce granted by the courts of the foreign domicile of the parties, but it also recognizes that, even in the case of a marriage contracted in England between British subjects, the decree is governed exclusively by the law of that domicile. Thus the validity of a divorce obtained in the country of domicile is not affected by the fact that it was granted for some cause, such as insulting behaviour or violent and ungovernable temper, which is inadequate by English law."

The principle behind this view that the lex-domicile should govern all matters of status, and hence the matrimonial jurisdiction has been well stated by Sir Gorell Barnes in *Beter* v. *Bater*, (6). The learned Judge after referring to *Harvey* v. *Farnie*, (7) observed as follows:—

> "I think myself that that has become at the present day almost certain clear law, and it is based upon the simple proposition that if this country recognizes the right of a foreign tribunal to dissolve a marriage of two persons who were at the time domiciled in that foreign country, it must also recognize that their marriage may be dissolved according to the law of that foreign country, even though that law would dissolve a marriage for a lesser cause than would dissolve it in this country. Absurd results would follow if that were not so, because by the law of the domicile they would cease to be husband and wife, and yet if they returned to this country they would be husband and wife. That is not convenient, nor is it logic, and I think if they were *bona fide* and properly domiciled in the country where it takes place it is a good divorce."

(6) 1906 Probate Division 209.
(7) (1880) 5 P.D. 153.

This view again finds reiteration in *Meger* v. *Meger* (8), where Sir Boyd Merriman, P. and Langton, J., held that the decree of a foreign Court was valid and binding throughout the world and the justices were not concerned with the question whether the grounds of divorce were recognized in England or not.

(12) I would wish to refer only to two authorities clearly laying down the principle that a decree of divorce granted by the Court of *domicile* according to lex-domicili accorded recognition by the Courts of another country as well. The first is a decision of the House of Lords in *Salvesen's case* (5), where it has been laid down that a decree of nullity of marriage pronounced by a Court of competent jurisdiction, whatever be the ground of the decree, is a judgment determining status and is equivalent to a judgment in rem. It was laid down that where the parties are domiciled in a foreign country a decree of nullity of marriage pronounced by a competent Court of that country will, in the absence of fraud or collusion, be recognized as binding and conclusive by the Courts of England and Scotland, unless it offends against British notions of substantial justice. There is then the succinct statement by Karminski, J., in *Breen* v. *Breen*, (9), in the following terms:—

> "The principle of recognising the validity of a decree pronounced by the Court of the domicile has been long established, and indeed forms an essential part of the comity of nations."

(13) In the present case the trial Court had made a stray remark that the wife was not a party to the divorce proceedings and hence these were not binding on her. This remark runs counter to the record. It has not been contended before me on behalf of the respondent that she was unaware of the divorce proceeding in the Court of Nevada. In fact it cannot be so contended in view of Exhibit R. 1, which shows that the respondent-wife is fully aware of these proceedings and,—*vide* R. 1 had made very detailed objections to the grant of the divorce petition, filed by Teja Singh in that Court.

(14) In the ultimate analysis, therefore, it follows that so long as the marriage subsists, the domicile of the husband is governing factor

(8) (1936) 3 All England Law Reports 130.
(9) (1961)3 All England Law Reports 225.

and the derivative domicile of the wife must necessarily follow that of her husband. Further that the exclusive jurisdiction for the dissolution of mariage vests in the Court where the parties are domiciled and the *lex-domicili* would govern such proceedings which are accorded recognition by the comity of nations. Neither on principle nor on precedent has the learned counsel for the respondent been able to sustain his submission that a marriage solemnised in this country cannot be dissolved except in conformity with the provisions of the Hindu Marriage Act and the grounds given therein for divorce or that the same can be done only by the Courts of this country. In deed I cannot but notice that despite the far-reaching importance of the issue involved, Mr. J. L. Gupta did not or was unable to cite a single case in support of the proposition canvassed by him. It is thus that the decree of divorce granted by the Courts in Nevada has to be recognized as valid and binding between the parties by the Court in this country also and the relationship of husband and wife between the petitioner and the respondent must be taken to have been dissolved in accordance with that decree.

(15) The learned counsel for the petitioner has then rightly placed reliance on the provisions of section 41 of the Indian Evidence Act, 1872, to the effect that a final judgment, order or decree of a competent Court in exercise of probate, matrimonial, admiralty or insolvency jurisdiction are relevant and as such a judgment, order or decree is conclusive proof that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease. Along with this, particular reliance was placed on section 44 of the Indian Evidence Act which is in the following terms:—

> "Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under-sections 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion."

In the present case there is not a hint of a suggestion that the decree of divorce was obtained by the petitioner either by fraud or collusion. What is significant is that through the *bona fides* of the domicile of the petitioner in Nevada which might well have been made the subject of a challenge have not at all been assailed either in the

Courts below or in the arguments in this Court. Not a word has been suggested that the petitioner's residence or domicile in the State of Nevada and U.S.A., was otherwise than *bona fide*. That being so the only possible attack on the validity of the decree of divorce has not even been suggested and the competency of the Court to deliver the said judgment and decree has not been assailed on this ground. In view of the provisions above-said there is no other option but to hold in face of the decree of divorce that the marriage of the petitioner to the respondent stands dissolved and consequently he would not be liable under the provisions of section 488, Criminal Procedure Code, to maintain the respondents. The matter may also be viewed from another angle. The jurisdiction under section 488, Criminal Procedure Code, is in the nature of a summary jurisdiction for the grant of maintenance and the Criminal Court cannot possibly go behind a valid judgment and decree granted by a competent civil Court. Consequently the order of the trial Court granting maintenance to the respondent-wife cannot be sustained and is hereby set aside.

(16) Mr. Bhagirath Das the learned counsel for the petitioner very fairly conceded that as regards the liability to maintain the children of the marriage the same would not be affected and he did not challenge that part of the order. In the result the grant of maintenance to the two minor children of the respondent is sustained but the order of maintenance in her favour is set aside.

K.S.K.

CIVIL MISCELLANEOUS

Before P. C. Jain, J.

SHEO RAM SARPANCH,—*Petitioner.*

Versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 1845 of 1969

November 14, 1969.

Punjab Gram Panchayat Act (IV of 1953)—Sections 17 and 113—Punjab Gram Panchayat Rules (1965)—Rule 9(1)(b)—Whether applicable to temporary labourers of the Panchayat—Sarpanch employing his relation as temporary labourer—Whether violates Rule 9(1)(b)—Section 113—Whether applicable to the ordinary meetings of the Gram Sabha.