

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-242-2007

Date of decision: 07.05.2015

Nidhi Goyal

..... Appellant

Vs.

Vinod Goyal

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Argued by: Mr. Raman Mahajan, Advocate
for the appellant.

Mr. Vikas Behl, Sr. Advocate with
Ms. Samiya Singh, Advocate
for the respondent.

RAJ RAHUL GARG.J.

Appellant-wife Nidhi has filed this appeal against the impugned judgment and decree dated 24.07.2007, rendered by Dr. Shiva Sharma, the then Additional District Judge, Panchkula, whereby, the divorce petition filed by the husband Vinod was accepted and the marriage between the parties was dissolved by a decree of divorce on the ground of cruelty.

Brief facts of the case are like this; that the parties were married on 28.06.1998 at Chandigarh. The marriage was a simple marriage and was duly consummated. However, no child was born out of this wedlock. As per respondent-husband, he came to know immediately after the marriage that appellant-wife is suffering from aggressive episode. On enquiry from the father of the appellant-wife, it became clear that she was suffering from aforesaid disease before marriage and was getting treatment from PGI. As per respondent-husband, the aforesaid disease of the appellant-wife was not disclosed to him either before or at the time of marriage. It was alleged that the disease of appellant-wife is incurable and she is of unsound mind. Even

she did not co-operate the husband to have sexual relations with her. Many times she broke the cutlery/crockery of the house without any reason. She also went to the extent of damaging the television set. Once she took phenol and when this fact was brought to the notice of her parents, they stated that there was nothing to worry. It is further the case of the husband that the appellant-wife even does not know the brand names of Cold drinks. In the summer season, she used to sit in the sun for hours together and these acts created doubt in the mind of husband, who after investigation came to know that she was suffering from mental disorder and was getting treatment from PGI. He wanted to have record from PGI but the PGI authorities refused to give details of the treatment/disease suffered by the appellant-wife.

It was further averred that the appellant- wife flatly refused to prepare tea for the relatives of the respondent-husband, whenever they visited them. She openly told that she would not do the household work. She has lowered the prestige of the husband and his family members in the eyes of his relatives and caused great mental agony. When the husband repeatedly complaining about the behavior of the appellant-wife to her parents for 2/3 months, then on the request of parents of the appellant-wife, she was send to their house. At that time, she had taken away all her valuable clothing and ornaments. The respondent-husband had been enquiring about his wife from her parents time and again. He had been taking her to PGI for treatment on various occasions. On 3.8.2003, a 'biradari' Panchayat was convened. Father of the appellant-wife gave assurance to the husband and his family members that the appellant-wife is now completely o.k. from her disease and she could well settle in her

matrimonial home. At this assurance, the husband had taken the appellant-wife to his house but, thereafter, the wife again suffered from the same disease and attempted to strangle herself with her '*duppatta*' and even poured hot milk on her head in aggressive mood. She was taken to General Hospital, Sector-6, Panchkula, where the doctor clearly mentioned that she was suffering from episode of violence and aggression. He also mentioned that the patient had tried to strangle herself, even she did not respond to the questions put to her by the doctor. Then on the advice of doctor, she was admitted in General Hospital, Sector-6 Panchakula on 06.05.2004. In the evening, her parents visited her in the Hospital and then they asked the husband to go home as they would be taking care of the appellant in the Hospital. On their request, the husband had gone to his house. However, the next day, when he came back to the hospital, he was surprised to know that father and brother of the appellant-wife got her discharged from the hospital and had taken her to their house without informing him. Since then, the appellant-wife has been residing with her parents.

Under the above mentioned circumstance, it was pleaded that the life of the husband has become a hell and there is great apprehension in the mind of the husband that it is not safe to live with the wife as husband and wife, as she may cause physical injury to the husband and, thereby, endangering the life. It is also the allegation of the husband that by not disclosing the disease of appellant-wife at the time of marriage, they had cheated him and his family. Lastly, pleading that the husband has not condoned the acts of cruelty of the appellant-wife, the petition for divorce was instituted.

Appellant-wife contested the petition. She denied each allegation of the husband. However, the factum of marriage was admitted. It was denied that the marriage was a simple affair. Manoj, elder brother of the husband was the friend of her paternal uncle Arun Jain. Both the families knew each other. Both the parties met each other on various family functions and were quite familiar with each other. Manoj, approached her parents in the month of June 1998 for the marriage of his younger brother i.e. the petitioner (husband) with her. Parents of the wife agreed to it. At the instance of the parents of the husband that the marriage should take place before 25th birthday of the husband which was to fall on 1st July, 1998, the date of the marriage was settled as 28.06.1998. As per the desire of the parents of the husband, the marriage ceremony was settled at the Hotel Mount View, Sector 10, Chandigarh; and with great pomp and show, the marriage was celebrated. It is further the case of the appellant-wife that at the time of marriage, she was studying in B.A-1 in Government College for Girls, Sector 11 Chandigarh. The question of her getting treatment from PGI before marriage does not arise. It was specifically denied that she is suffering from any disease. She is perfectly normal. She was working as agent of the Oriental Insurance Company and was thus earning. She is holding a valid driving licence and can drive a car. She is a good cook. Both of them visited number of places of tourist interest and there was no complaint of any sort during the initial years of her marriage. However, within a year of marriage, she felt that husband used to spend time thinking unnecessarily. On questioning, he gave evasive replies. However, the behavior of her husband towards her changed considerably and even at one

occasion, he said that he wants to marry some other girl of his choice. That made the appellant-wife depressed for which she had to undergo treatment at PGI, Chandigarh. She denied ever broken cutlery or T.V.Set. Regarding breaking of dish, she explained that she is vegetarian. Her husband insisted her to eat non-vegetarian dish and in the melee the plate on which the non-vegetarian dish was kept, dropped down and broke into pieces. It was further pleaded that she is well aware of the brand names of the cold drinks. She denied having ever sit in the sun during summers. It was pleaded that at one occasion, it was the husband who force her to stand outside in extreme heat. When she started crying only then she was allowed to come inside. On no occasion, she misbehaved with the husband or his family members. She has never thought of lowering the prestige of the husband or his family members. All the ornaments are lying at her matrimonial home. It was pleaded that as to whatever transpired in the Panchayat meeting is not known to her. There was no question of any assurance, as alleged. It was specifically denied that she ever tried to strangle herself. As the husband wanted to create some evidence, therefore, in connivance with the doctor in-charge of the General Hospital, Sector-6, Panchkula, he managed to get a false report. When, as per husband, the treatment was going on in PGI, why was she brought to Sector 6 Hospital, Panchkula. At that time she informed the concerned doctor that nothing was wrong with her but surprisingly, the doctor did not listen to her and instead made certain observations in the report. She was taken to hospital on 06.05.2004, after 6 days, the petition was filed. When the parents of the appellant-wife came to know about the drama being played by the husband, they brought the appellant-wife back

home. They made an attempt to send her back to her matrimonial home but the husband defeated their attempts successfully. It was further pleaded that even the husband raised demand of dowry which her father could not accede to but even at one occasion, the husband managed to convince her to encash the National Savings Certificate amounting to Rs.40,000/- and also made her to withdraw Rs. 1,35,000/- from her saving account lying in the Punjab National Bank, Sector 12-A, Panchkula. But on the refusal of her father, she did not withdraw the aforesaid amount. Under these circumstances dismissal of petition with cost was prayed.

From pleadings of the parties, following issues were framed:-

- (1) Whether the petitioner is entitled to dissolution of marriage and decree of divorce on the ground that he has been treated with cruelty as alleged? OPP*
- (2) Whether the petition is not maintainable? OPR.*
- (3) Relief.*

After taking oral as well as documentary evidence of both the parties and hearing both the sides, the divorce petition instituted by husband Vinod was accepted and decree of divorce was granted in his favour on the point of cruelty.

We have heard Mr. Raman Mahajan, Advocate, for the appellant and Mr. Vikas Behl, Sr. Advocate for the respondent besides appraising the entire material and evidence coming on record.

The main ground on which the divorce claimed by the husband is cruelty. In this case, the husband pleaded that on account of mental illness of appellant-wife, he suffered great mental agony. Vinod (PW-2) tendered in evidence his affidavit Ex.PB and reiterated his case as mentioned in the petition. Short of repetition, I need not to discuss each and every detail

given in the petition as the same has already been mentioned above. The husband has led medical evidence on the file so as to establish that the appellant-wife is a patient of Schizophrenia. She is suffering from mental disorder of such a kind so as to give reasonable apprehension in the mind of the husband that in case, he lives with the wife, his life would be in danger.

Firstly, it was argued by learned counsel for the husband that the wife has been suffering from aggressive episodes even before her marriage. This fact was never told to him by the parents of the appellant-wife either before or at the time of marriage. Not only this, she even did not co-operate him to have sexual relations with her. As such, the appellant-wife has caused mental cruelty to the husband.

On the other hand, it was argued by learned counsel for the appellant-wife that prior to the marriage, she was not suffering from any kind of mental disorder. Elder brother of the husband, was the friend of appellant's uncle Arun Jain. Both families were known to each other. Both the parties met each other on various family functions. On asking of Manoj (brother of husband) about the matrimonial relations of appellant-wife with Vinod, the parents of appellant-wife agreed to that and then the marriage was celebrated with great pomp and show. The appellant-wife was studying in B.A-1 in Government College for Girls, Sector 11 Chandigarh. She also has a driving license and works as an agent of the Oriental Insurance Company. Even after marriage they had gone to various places of tourist interest. All these goes to show that she was having no problem before marriage. Thereafter, within a year of marriage, the appellant-wife felt that the husband used to spent time thinking unnecessarily. As such on her

questioning as to what was in his mind, the husband gave evasive replies. However, after some time the situation changed considerably and at one occasion the husband told her that he wanted to marry some other girl of his choice. These words utterly made appellant-wife upset and only on that account she was depressed and then advised to undergo treatment at PGI, Chandigarh. Thus as per counsel for the appellant-wife, it is only because of husband, the wife had gone under depression and suffered mental illness.

From the above arguments of learned counsel for the appellant-wife, it is evident that within a year of marriage, the appellant-wife felt that husband used to spend time thinking unnecessarily and when wife wanted to know the reason for the same, he gave evasive replies. This goes to show that on account of illness of wife, the husband was upset and must have been thinking what to do in this situation. Apparently, when the wife raised questions, the husband gave evasive replies.

Medical evidence available on the file i.e. record from PGI as well as the statement of doctor S.Chakrabarti (PW-3), establishes on the file that the appellant-wife was suffering from Schizophrenia prior to her marriage. Dr. S.Chakrabarti (PW-3) proved the photocopy of the original record of appellant-wife, as Ex.P8. Notes of the doctor dated 28.01.1999 which is Walk-in Clinic Proforma, Department of Psychiatry, PGIMER, shows duration of illness of appellant-wife as 6 months to 1 year. In this very column, different durations find mention. At no. 4-duration 2 months-6 months is given. Had the disease of appellant-wife been 6 months old on 28.01.1999, the duration would have fallen in column no. 4. Column no.5, indicates duration 6 months to 1 year.

The marriage of the parties took place on 28.06.1998. Thus, on 28.01.1999, if the disease of appellant-wife is mentioned as 6 months to 1 year old, it is evident that she was suffering from this disease prior to her marriage and the husband cannot be considered responsible for causing this disease to appellant-wife.

Dr. S.Chakrabarti (PW-3), gave the past history of the patient in Ex.P8. When the aforesaid history of patient was taken by the doctor, her mother was present. In the column of informant the presence of mother finds mention. As per this history, doctor made a mention that when appellant-wife was admitted in College she had problem in going to college alone, would become anxious when about to go to college and would take nothing before going there and made no friends as such at the college. It was further reported that she was maintaining the same till May 1998 when “she was married off in a hasty manner; which was confirmed on Friday and the marriage was done on Sunday. After the marriage, the patient would not allow her husband to touch her. When explained by the family members, she did budge to the husband's advances and marriage was consummated only after about 15 days”. This further goes to show the mental state of mind of appellant-wife when she was at college and further consummation of marriage after 15 days is again cause of cruelty for the husband. The appellant-wife, even could not tell the date of honeymoon. She clearly stated that it was for 2/3 days and within 6 months after her marriage. This further speaks of the mental condition of the appellant-wife. Her mother stated before the doctor Dr. S.Chakrabarti (PW-3) that appellant-wife feared that she would get pregnant if touched by her brother or sister. She also

stated that the appellant used to confine herself into a room if anyone comes to visit her house. The mother of the appellant further told the doctor that the father of the appellant could not tolerate her behavior when she was brought to her parental home from the hospital and in frustration, he banged his head against a wall. All these acts go to show that the appellant and her family members were well aware of the mental condition of the appellant and on seeing her back home, the father of the appellant could not tolerate coming of her daughter to his house. Even report Ex.P8 shows that while giving family history of the patient, it finds mention that her sister who is the student of B.Com-1 year, does not enjoy good rapport with her. She would make fun of patient. Likewise, about the brother, it was mentioned that he is not close to the patient, make fun. She (appellant) studied in *Hindi* medium whereas her brother and sister studied in English medium school and the appellant also used to feel this discrimination between her and her brother and sister. This fact finds mention in the background given by the doctor in Ex.P8. Not only above, even Dr. S.Chakrabarti (PW-3), who is a doctor from PGI, Chandigarh, mentioned in detail in report Ex.P8 past history and family of the appellant which is as under :-

“ The doctors at the PGI mentioned in their report about the past history and family of the respondent and described their relation, age, education qualification and characteristics as under:-

Father:- 39 Y, +1, Businessman, occasional alcohol, ill-tempered, Patient dreads him.

Mother:- 37 Y, +1, Housewife healthy, affectionate.

Sister:- 19 Y, B.Com. 1 student, does not enjoy good rapport. Would make fun of patient.

Brother:- 15 Y, IX student, healthy, Not close to patient make fun.

It would be apposite to set down such portion of report Ex.P-8, as is germane to the present controversy:-

.... remained the same. Shown at CMC given some medication, improved but irritability continued..... Adjustment disorder, mixed anxiety depression.... Shown marked improvement..... stopped taking food but when brought back to parents house she took food. Then her father became angry and shouted and banged his head in the wall, patient became aloof, would not respond to call, sitting at one place remaining engrossed in her thoughts, would not tell her thoughts to any one. Patient seem to be smiling to herself and also muttering but denied any voices etc. and at times would gestures as if writing on the walls and gesturing in the air. Would voiceher apprehensions that something sinister was going around her and that her SIL was against her, would avoid working with her in the kitchen. Occasionally abused her.”

Background Hx:- Patient is eldest of 3 sibs, her father has been an irritable, strict and ill tempered person and would beat up children on slightest provocation. Patient has always been introvert child, did not interest with the family members and would prefer to sit alone in her room, listening to music and would not take any interest in household work and would attend the work only when she needed so much. As she attained menarche, she started to think that any contact with males would make her pregnant, she would avoid contact with any of he male relatives and would withdraw to her room if anyone came to visit her house. “ Patient would also think that she had been

discriminated against as compared to her sister, who had studied in English medium school; and she was studying in a Hindi Medium School. When admitted in college, she had problems in going to college alone. Would become anxious when about go to college and would take nothing before going there and made no friends as such at the College.

“ She was maintaining the same till May 98 when she was married off in a hasty manner; which was confirmed on Friday and the marriage was done on Sunday. After marriage the patient would not allow her husband to touch her. When explained by the family members she did budge to the husband's advances but consummated only after about 15 days. She would remain secluded in her room most of the time, not interacting with the visitors. When told so would get irritated. Her sleep was noticed to be disturbed and according to her husband, she would appear awake whenever he saw her in the night and would get up frequently at night. No early morning awakenings. She would appear aloof, sad and on enquiry would say; “mera man nahi lagta”. She was frequently left at her parents” place which she did not like and would about at the in-laws off/on and 2/3 times, she went out of the house in rage. Her appetite was markedly reduced and last few kgs, but her interest in watching T.V. music continued as before, Once she attempted suicide. She took a few naphthalene balls and later told her husband by herself although those were old and there was no adverse effect”.

Dr. Parbhat Sood (PW-1), Medical Officer, General Hospital,

Sector-6, Panchkula, is another doctor who treated the appellant. He

deposed that on 05.04.2004, the husband of appellant brought her in the

OPD. He prescribed investigations. Copies of the reports are Mark1 to Mark 6. The same were given to the attendant of the patient. He further deposed that in his notes, he had mentioned the history given by the husband and then what the patient told him. The husband had given the facts in detail in writing also to him which are attached to his notes in the record. He started the treatment and got some investigations done. Thereafter, the appellant used to visit him for follow up treatment. On 06.05.2004, she was again brought by her husband to the hospital reporting that she had poured hot milk on herself and had been talking of committing suicide. So admission of the patient in the hospital was advised by him. She was admitted in the hospital but later on, on the request of her father and brother she was discharged from the hospital. This doctor diagnosed the appellant as suffering from Schizophrenia. Even as per Ex.P8, PGI doctor also diagnosed her a patient of Schizophrenia. He proved the patient data as Ex.P1, admission record Ex.P2 and the prescription slips Ex.P3 to P6.

Thus from the statement of this doctor as well as the medical evidence available on the file, it is established on the file that the appellant is the patient of Schizophrenia and is suffering from mental disorder.

On the other hand, learned counsel for the appellant contended that as per Section 13 (1) (iii) of the Hindu Marriage Act, divorce can only be granted if the spouse has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner-husband cannot reasonably be expected to live with the wife. Explanation 'A' of the aforementioned provisions of law speaks about as to what is the “mental disorder”. It says

that the mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes Schizophrenia. Explanation 'B' speaks about the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality or intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.

It is the case in which the husband has sought a decree of divorce on the ground of cruelty i.e. under Section 13 (1) (ia) and not under Section 13 (1) (iii); giving details of conduct of appellant on account of her mental illness. The husband has made out a case that the appellant has been suffering from mental disorder of such a kind that it is not expected of the husband to live with the appellant.

On the other hand it was argued by learned counsel for the appellant that PW-1 and PW-3 both the doctors deposed during the course of their cross-examination that if Schizophrenia patient takes proper medication, they can live a normal life. PW-3 deposed that the patient with Schizophrenia exhibits both periods of normal or abnormal behavior. In case, the illness is very severe patient is unable to lead a normal life. But otherwise normal life is still possible. The illness of appellant (Nidhi Goyal) is treatable. Further referring the judgment i.e. **Kollam Chandra Sekhar Vs Kollam Padma Latha, JT 2013 (12) SC, 554,** it was contended that the Schizophrenia is a treatable, manageable disease, which can be put on par with hypertension and diabetes. Schizophrenia is not a dangerous disease. It

can be controlled by drugs. Further by referring judgement ***Darshan Gupta Vs. Radhika Gupta, JT 2013 (10) SC 98,*** it was contended that if medical reports showing improvement in the mental quality of the patient and also exhibiting normal and adequate emotional response then it is not possible to accept the ground of mental disorder under Section 13 (1) (iii) of Hindu Marriage Act.

To controvert the above discussed oral as well medical evidence, appellant-Nidhi, herself appeared as RW-1. In her cross-examination, she admitted that she has been taking treatment from PGI for her illness since 1999. She further stated that she takes one tablet of 10 mg. a day. She further deposed that whenever she get depressed, she share her feelings with her mother. She categorically stated that she has been suffering from Psychopidia. Thus, she admitted her mental illness. None of the parents of Nidhi appeared as witness to support her case even the appellant did not choose to examine any doctor who could come and depose in her favour regarding her illness. Dr. S.Chakrabarti (PW-3), who is doctor from PGI, has given the background, family history and history of the patient as told to him by mother . This doctor cannot give the manipulated version. He is from very prestigious institute of Medical Sciences. On 18.03.1999, the history given by the doctor was on the basis of what was told to him by patient herself, by her husband Vinod and by mother Kusum Jain. In that history, it finds mention that there was sadness of mood. Even I.Q was given as 81. PW-3 deposed that her intelligence was low average. Thus this is the case based on evidence that appellant stayed at her parents house for about 5 years or more than that i.e. the maximum time; was not having any interest

in household work; was not happy to meet the relatives of both the sides; used to like to stay alone in the room; took phenol *naphthalene* ball; many times broke cutlery/crockery of the house; damaged the T.V.set without any reason; does not know the brand names of cold drinks rather identifies the same with the help of their colours; refusal to do household work; attempted to strangle herself with her own 'duppatta'; poured hot milk on her head in aggressive mood and even much more details have been given by husband to the doctor of Sector-6, Hospital, Panchkula, with his own hands as Mark 'A' which is attached with Ex.P1. Even detailed history given by both the doctors clearly indicate the type of illness with which appellant is suffering and her saying that she wants to die, would certainly make the living of husband with her impossible as he would always have danger to his life as well to the life of appellant-wife as she may not do something unfortunate with herself. In this situation, the authorities cited as **Pankaj Mahajan Vs. Dimple alias Kajal, (2011), 12 Supreme Court Cases 1 and Vinita Saxena Vs. Pankaj Pandit, (2006) 3 Supreme Court Cases, 778,** fully supported the case of the husband to the extent that appellant-wife has caused cruelty to the husband for which he is entitled to decree of divorce.

For the reasons recorded above, findings no merit in this appeal, it is ordered to be dismissed.

Decree sheet be prepared accordingly.

(M. JEYAPPAUL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

07.05.2015
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