

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-91-2006

Decided on : 07.09.2015

Angrej Singh

.... Appellant

VERSUS

Sukhwinder Kaur

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
 HON'BLE MS. JUSTICE NAVITA SINGH

Present: **Mr.Akshay Bhan, Senior Advocate, with**
 Mr.G.S.Sandhu, Advocate, for the appellant.

None for the respondent.

RAJIVE BHALLA, J.

The appellant challenges judgment and decree dated 31.01.2006, passed by the Additional District Judge (Adhoc), Fast Track Court, Kurukshetra, dismissing his petition, filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act'), for dissolution of marriage by grant of a decree of divorce.

The appellant filed a petition under Section 13 of the Act, by pleading that parties were married on 09.04.1997, by Anand Karaj ceremonies. A female child Jyoti was born to them on 30.05.1998. The appellant was assured by a sister of the respondent who was married to one Bhagwant Singh ex-sarpanch of Nissing that the respondent is healthy and a good match. After six days of the marriage, the respondent fell down from an attack of epilepsy. The appellant brought this fact to the notice of Bhagwant Singh who had

come alongwith his wife. Both of them took the respondent back without any further comment and then sent her back after some days. The respondent was repeatedly sent back and then returned to the appellant's house. The appellant began to make inquiries and came to know that the respondent used to be treated by Tantrik. A Tabiz was tied around her neck but neither the appellant nor his family members were aware of her medical condition. After about 20 days, the respondent again suffered an attack of epilepsy and fell down receiving injuries from breaking of plates and glasses. She also assaulted the elderly ladies of the house and on some occasions even ran away and had to be brought back. The conduct of the respondent remained unchanged upto 1999. A panchayat was convened and the entire facts were narrated. The respondent was taken to General Hospital, Karnal where the doctors informed the appellant that the fits are incurable and the respondent shall remain of unsound mind as she has been suffering from this ailment since childhood. The appellant, however, continued to bear the mental condition of the respondent and in the meanwhile a child was born to them. On 11.05.2004 at about 5:00 PM, the respondent suffered severe fits and when the appellant returned and wanted to take her to a doctor, the respondent insisted in an insolent manner that she should be taken back to Nissing. The appellant also averred that as the respondent's ailment is incurable and she is of unsound mind, it is not possible for him to live with her. The appellant also pleaded that Balwant Singh,

father of the respondent, lodged a false complaint under Sections 406, 498A, 323, 325 and 506 of the IPC, against the appellant, his old parents and an old aunt but when the true facts were brought to the notice of the police, Balwant Singh and others left the police station. The appellant, thus, pleaded, unsoundness of mind and epilepsy as a ground to infer cruelty, in support of his prayer for dissolution of the marriage.

The respondent-wife filed a written statement, alleging harassment and denied any medical condition much less that she is of unsound mind or that she was taken to a Tantrik etc. as well as other facts and alleged that she was given severe beatings and was medically examined. An MLR was recorded detecting the injuries. The respondent alleged that the petition has been filed as the her parents could not fulfill the demands for dowry etc.

The appellant filed a replication, denying averments in the writ petition and reiterating averments in the petition.

After considering the pleadings, the trial Court framed the following issues: -

- “1. Whether the respondent has been suffering from incurable fits since childhood and will remain of unsound mind? If so to what effect? OPP
2. Whether petitioner has no locus standi to file this petition? OPR
3. Whether petitioner is estopped from filing the petition? OPR
4. Relief.”

The appellant, in his evidence, examined himself as PW1,

Dr.Y.K.Sethi as PW2, Sukhwant Kaur as PW3, Manjeet Kaur as PW4, and closed his evidence.

The respondent examined herself as RW1, Dr. Suresh Kumar as RW2, Ram Dhan Babbar as RW3 and Dr. Prithi Singh as RW4 and thereafter her evidence was closed.

The appellant reiterated his averments in the petition alleging epilepsy and unsound mind of the respondent. PW2 Dr. Y.K.Sethi, deposed that while he was posted as Psychiatric Specialist in General Hospital, Karnal, he examined Sukhwinder Kaur on 16.11.1999. The respondent was suffering from epilepsy and depression since childhood. He prescribed treatment vide OPD slip Ex.P1. PW2 also deposed that the disease is incurable and also produced the treatment card relating to Sukhwinder Kaur.

PW3, Sukhwant Kaur is the mother of the appellant, who has deposed in consonance with averments in the petition particularly with respect to fits and the abnormal behaviour of the respondent etc.

The respondent, on the other hand, examined herself as RW1, denied the allegations levelled against her, alleged severe beatings, harassment for dowry, the elder sister of the appellant, who is mentally ill reside in the house etc.

RW2 is Dr. Suresh Kumar, who proved that he medico-legally examined Sukhwinder Kaur on 12.05.2004 and found the

following injuries: -

- “(1) Abrasion 10 cm x 5 cm. on upper 1/3rd part of left forearm. No fresh bleeding was present.
- (2) Contusion red brown in colour of the size 4.5 cm x 1.5 cm. on mid of extensor aspect of left forearm. Diffuse swelling surrounding the injury was present.
- (3) Abrasion 1 cm x cm on left knee.
- (4) Abrasion 1.5 cm x 1 cm on right knee. No fresh bleeding was present.
- (5) Complaint of headache. However, no external mark of injury was seen.
- (6) Complaining of pain over mid (inter) scapular region on back. However, no external mark of injury was seen.”

RW3 is Ram Dhan Babbar, Handwriting and Fingerprint Expert, who opined that the signatures of Sukhwinder Kaur appearing on Ex.Q1 (the treatment card), do not tally with her admitted signatures.

RW4 is Dr.Prithi Singh, who deposed that Sukhwinder Singh was admitted on 21.09.2005 in the Department of Psychiatry Pt. B.G.Sharma, PGIMS Rohtak and was discharged on 30.09.2005. She was examined by a medical board consisting of Dr.S.C.Bhargav, Dr.Sandeep Sularia and herself. RW4 proved report Ex.RW4/A and stated that there is no evidence that the respondent is suffering from epilepsy.

The trial Court, after considering the pleadings and the aforesaid evidence, dismissed the petition by holding that the appellant has failed to prove that the respondent was of unsound mind or was suffering from an incurable disease like epilepsy. The trial Court rejected the OPD slip Ex.P1 by relying upon the

deposition of RW3 Ram Dhan Babbar, Handwriting and Fingerprint Expert, who deposed that signatures of Sukhwinder Kaur on the OPD slip do not tally with her admitted signatures. The trial Court rejected the deposition of the doctor produced by the appellant by relying upon the report of the medical board Ex.RW4/A, prepared by those doctors from PGIMS, Rohtak who opined that there is no evidence of epilepsy. The trial Court also relied upon an MLR recording that Sukhwinder Kaur had received injuries and in essence concluded that the respondent does not suffer from any mental disorder or such a disease that is incurable so as to entitle the appellant to a decree of divorce.

Counsel for the appellant submits that a perusal of averments in the petition and the evidence adduced by the appellant, both oral and documentary, prove that the respondent was suffering from epilepsy. A perusal of the OPD slip Ex.P1 and the treatment card Ex.P2, duly proved by PW2 Dr.Y.K.Sethi, when read alongwith the depositions that Sukhwinder Kaur suffered from epilepsy and depression since her childhood, has been wrongly discarded by the trial Court particularly as this witness is a doctor from a Government Hospital and has no reason to depose falsely. The rejection of the OPD slip on the ground that Sukhwinder Kaur's signatures do not tally with her admitted signatures, is legally incorrect as even a bare perusal of the signatures reveal that they clearly tally with the signatures of Sukhwinder Kaur. The reliance on report Ex.RW4/A

prepared by a board of doctors from PGIMS, Rohtak, should be rejected particularly in the light of deposition by PW2 Dr.Y.K.Sethi. The oral evidence adduced by the appellant is sufficient to infer a finding of epilepsy and a mental condition so severe as to render impossible the appellant residing with the respondent.

Counsel for the respondent is not present but we have perused the record and as pleaded by the respondent the foundation of the dispute is a demand of dowry, harassment and beating of the respondent. The respondent has also pleaded that she resided with the appellant, gave birth to a girl child, as proof of the fact that there existed a relationship between appellant and the respondent. If the appellant had fallen sick 5-6 days after the marriage, the child would not have been born 14 months after the marriage. The medical board constituted by the PGIMS, Rohtak, has given a clean chit to the respondent, thereby proving that the deposition by the doctor produced by the appellant is incorrect and the OPD slip Ex.P1 is forged. The OPD slip is signed by a doctor and not by a patient, thereby adding further suspicion to the OPD slip Ex.P1.

We have heard counsel for the appellant, perused the impugned judgment and decree and find no reason to grant any relief to the appellant.

As noticed in the preceding paragraphs the appellant's plea for grant of a decree of divorce, is based on a positive assertion that the respondent was suffering from incurable fits since her

childhood and is, therefore, of unsound mind. Apart from the oral evidence produced in support of this assertion, the appellant has produced PW2 Dr.Y.K.Sethi, who deposed that while posted as Psychiatric Specialist in General Hospital, Karnal, he examined the respondent and found that she has been suffering from epilepsy and depression. The witness also deposed that the disease was incurable and the respondent had been suffering since her childhood. The witness also proved OPD slip Ex.P1 and treatment card Ex.P2. The OPD slip has been rightly rejected by the trial Court as a suspicious document as it bears the alleged signatures of the respondent. An OPD slip is generally signed by the doctor and not by a patient. The respondent has produced RW3 Ram Dhan Babbar, Handwriting and Fingerprint Expert, who has deposed that the alleged signatures of Sukhwinder Kaur appearing on Ex.P1 do not tally with her admitted signatures. The appellant has not been able to explain these flaws in the OPD slip Ex.P1 which is the only document produced in support of the plea that the respondent was of unsound mind and was suffering from epilepsy. On the other hand, the respondent has examined RW4 Dr. Prithi Singh, who was a member of the board of doctors constituted by the PGIMS, Rohtak, to examine the respondent on 21.09.2005 and 30.09.2005. RW4 has deposed that there was no evidence of epilepsy or of any other disease and proved report Ex.RW4/1, which records the aforesaid opinion. A perusal of Ex.RW4/1, prepared by a board of doctors, reveals that Sukhwinder

Kaur is not suffering from epilepsy or any such disease. We have no reason to doubt the correctness of the deposition of RW4 Dr.Prithi Singh or the correctness of Ex.RW4/1 and, therefore, have no hesitation in holding that the allegation of epilepsy or unsoundness of mind were levelled by the appellant so as to cover up his misdeeds namely beating the respondents and inflicting injuries upon her as reflected in the deposition by RW2 Dr. Suresh Kumar, who medico-legally examined the respondent and proved a copy of the MLR Ex.R1. The injuries on the person of Sukhwinder Kaur were sought to be explained by the appellant by alleging that during one of the attacks of epilepsy, the respondent fell down, broke the table and glasses etc., thereby suffering injuries. We are constrained to observe that this explanation was apparently put forth so as to build a defence for the injuries on the person of the respondent which as per the respondent were inflicted by the appellant as she was maltreated for failing to fulfill the demands of dowry. The other evidence adduced by the appellant are his oral deposition, deposition by his mother and another witnesses which are self serving statements, contrary to the medical report prepared by the PGIMS, Rohtak.

The appellant having failed to prove that the respondent was suffering from an incurable disease or that she was of unsound mind or that she suffered from epilepsy, the trial Court has rightly rejected the petition for grant of a decree of divorce. It would be appropriate to point out that parties were married on 09.04.1997 and

a female child Jyoti was borne on 30.05.1998 but the parties began residing separately only on 12.05.2004. The parties were, thus, residing together for more than seven years, thereby ruling out, as held by the trial Court, the possibility that the respondent was suffering from such a disease as was incurable or that she was of unsound mind.

In view of what has been recorded hereinabove, we find no reason to accept the appeal and dismiss the same accordingly.

Before parting with the judgment, it would be appropriate to point out that vide order dated 28.01.2008, the appellant was directed to pay maintenance @ Rs.3000/- per month, minus the amount being paid under Section 125 of the Cr.P.C. The appellant has not placed any material on record to prove that he has paid arrears of maintenance. The respondent shall be at liberty to file a petition under Section 28 of the Act, to recover maintenance.

[RAJIVE BHALLA]
JUDGE

07.09.2015
shamsher

[NAVITA SINGH]
JUDGE