

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**FAO-M-102-2008 (O&M)
Date of Decision: 26.07.2016.**

Sher Singh

....Appellant.

VERSUS

Manju Kanwar

....Respondent.

**CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. J.P. Sharma, Advocate for the appellant.

Mr. N.S. Shekhawat, Advocate with
Mr. Zorawar Singh, Advocate for the respondent.

SNEH PRASHAR, J.

This appeal is directed against the judgment and decree dated 19th March, 2008 by virtue of which the petition under Section 13 of the Hindu Marriage Act, 1955 (for short, “the Act”) filed by appellant-husband Sher Singh against his wife-respondent Manju Kanwar for dissolution of their marriage was dismissed.

The facts which need reference are as under:-

Appellant-petitioner Sher Singh was married to respondent-Manju Kanwar on 09.05.2005 in village Pilod according to Hindu rites and ceremonies. After marriage, she resided at her matrimonial home with the appellant in village Shyampur. As per averments of the appellant, after marriage the respondent stayed at her matrimonial home only for one day and during that period the marriage was not consummated, rather the

respondent behaved like an insane person. When her brother came to take her, he was informed about her behaviour, on which he told him (appellant) that the respondent had never done any work at her parental home and now gradually she would learn doing household work.

The appellant pleaded that 3-4 times he went and brought the respondent to the matrimonial home and on each occasion she stayed with him for five days or maximum for ten days. However, the marriage could not be consummated despite efforts from his side as there was no response from her. She would also not do any household work and would throw the utensils when in the kitchen. On being assigned any work, she would start weeping and would tore her clothes. She even threw the bedding and tried to put the same on fire. She had some mental disorder and he had been married to her by fraud.

It was further pleaded by the appellant that he got the respondent treated from Pilani hospital but she could not be cured. The doctor informed him that she was a mentally challenged person and the disease was incurable. She would become unconscious and sometimes would go to the street and raise shouts. If anyone tried to make her understand, she would try to beat that person. On 12.04.2004, when he was not present at home, the respondent took all the jewellery given to her by his family and went to her parental home without informing him or his family members.

On the above grounds, the appellant sought dissolution of his marriage with the respondent by a decree of divorce.

The respondent contested the petition. In the written statement

appellant and pleaded that their marriage was consummated and they had been living as husband and wife. After marriage, when she went to her parental home, the appellant and his family demanded more dowry from them. She was harassed and maltreated as she was unable to fulfill their demand. The petitioner was working in Hero Honda Company and as and when he used to come home, he used to give her beatings. A criminal complaint under Sections 498-A, 406 and 323 of the Indian Penal Code was filed by her against the appellant in the Court of Judicial Magistrate Ist Class, Pilod (Rajasthan).

The respondent assertively submitted that she is hale and hearty, well behaved and of a sound mind. She is proficient in kitchen work. She and her parents did not conceal anything from the appellant. He saw her prior to marriage and it was only after he was satisfied that the marriage was solemnized. Raising legal objections with regard to maintainability of the petition, cause of action and concealment of facts etc. by the petitioner, she prayed for dismissal of the petition.

On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence in support of their respective contentions. Considering the evidence and the arguments addressed, learned trial Court, dismissed the petition.

Feeling aggrieved by the judgment and decree dated 19.03.2008, the appellant preferred the instant appeal.

We have heard the submissions made by Mr. J.P. Sharma, learned counsel for the appellant and Mr. N.S. Shekhawat, learned counsel for the respondent.

The main ground on which the appellant sought dissolution of

his marriage with the respondent appears to be that she was suffering from some mental disorder which is incurable and because of which she had been behaving like an insane person. It was also his allegation that the respondent had stayed with him at the matrimonial home only for short terms and despite efforts by him the marriage could not be consummated as there was no response from her side which caused mental cruelty to him.

Learned counsel for the appellant argued that the allegation of the appellant that the respondent suffered from some mental disease and behaved like a psychiatric person was supported by PW2 Jhalu Ram, PW3 Mahabir Singh, PW4 Keshar Singh and PW5 Balu Singh, who are all residents of the same vicinity in which the house of the appellant is situated. They all consistently deposed that the respondent came to the matrimonial home only 5-6 times for short durations and during that period she used to behave like an insane person. She threw utensils and other articles of the house and attempted to put the bedding on fire and often came out of the house and raised hue and cry in the street. She also misbehaved with the family members.

Referring to the statement of PW6 Dr. Raj Kumar Tanwar, learned counsel for the appellant pointed out that the respondent was examined by him on 19.11.2003. He stated that as per his diagnosis she was suffering from hysterical fits. She was put on medication and she attended the hospital for follow up treatment. The original prescription slip Ex.PW6/A, follow up prescription slips Ex.PW6/B and ECG strip Ex.PW6/C were proved by him. Likewise, PW7 Dr. Narender Verma, Consultant Physician Birla Sarvajanic Hospital, Pilani testified that the

psychogenic seizure and was discharged on 10.07.2003. He added that at the time of discharge, the respondent was referred for CT scan of brain and was asked to come again with the report but she did not turn up. He proved the discharge card Ex.PW7/A and prescription slip Ex.PW7/B. Learned counsel contended that the medical evidence corroborated the version of the appellant that the respondent was suffering from some serious mental disorder prior to her marriage with him. Her act and conduct was also that of an insane person which caused severe mental pain and suffering to the appellant and on the said ground he is entitled to dissolution of their marriage.

We find no force in the argument of learned counsel for the appellant. In his pleadings, the appellant did not mention in clear and clean words the disease, if any, from which the respondent was suffering. His entire allegations were casual and general in nature. Not a single specific incident and names of witnesses to that incident could be narrated by the appellant, when the respondent had behaved like an insane person. There is no medical evidence to prove that the respondent was insane or was suffering from any mental disorder. PW7 Dr. Narender Verma did not state that the respondent was mentally ill. He only stated that the respondent was admitted in his hospital with the problem of psychogenic seizure for which he treated her and she was discharged after three days. It was not his statement that psychogenic seizure was a mental illness or was an incurable disease. He also did not produce the case history. As regards, PW6 Dr. Raj Kumar Tanwar, he was simply a medical practitioner having BAMS degree. Though he stated that as per his diagnosis the respondent was suffering from hysterical fits but the diagnosis by him was a sheer guess because he

was neither a medical expert nor an expert in psychiatry. He did not possess any degree or training in that particular field. The parentage or husband's name of 'Manju Devi' was not mentioned on the prescription slips Ex.PW6/A and Ex.PW6/B proved by him. For that reason, the documents could also not be connected to the respondent also.

The appellant alleged that the respondent was mentally ill but he admitted that he did not get her checked up from any mental hospital. As far as the witnesses examined by the appellant are concerned, the testimony of none of them is of much help to him. They may have deposed on the line the appellant wanted them to, but during cross-examination either of them could hardly state about the illness, if any, of the respondent. PW4 Keshar Singh stated that the respondent behaved in a normal way but only sometimes due to illness she would sleep continuously for long time or would continue to cry. PW5 Balu Singh admitted that Manju (respondent) while in normal condition used to prepare meals, wash clothes for the family and her mother-in-law used to appreciate her work. The appellant too stated that the respondent is a laborious lady and had been doing all household work, but only when she would be under the influence of disease she would not work. Refusal to do household work sometimes or sleep for long time could not be termed as mental illness.

The respondent appeared in the witness box. She made statement on oath and was also subjected to lengthy cross-examination by the appellant, but nothing such could be derived from her which could indicate that she was suffering from any mental disease. She and all the witnesses examined by her affirmed that she is a healthy and normal lady.

B.D.K. Hospital, Jhunjhunu, Rajasthan deposed that on 28.02.2007 the respondent was examined by a medical board of which he was a member. The Board found her fit for discharge of her duties. The certificate issued by the Board Ex.RX was produced by the witness.

It was held by Hon'ble Apex Court in *Ram Narain Gupta vs. Smt. Rameshwari Gupta, 1988(4) SCC 247; Kollam Chandra Sekhar vs. Kollam Padma Latha, 2014(1) SCC 225* that mere branding of a spouse as mentally ill/ insane/ schizophrenic will not suffice. Degree of mental disorder of a spouse must be proved to be such that the petitioner spouse cannot reasonably be expected to live with the other. Also the normal wear and tear of married life does not amount to cruelty.

Evidently, no positive medical evidence was brought on record that the respondent-wife was suffering from ailment of hysterical fits or any incurable unsoundness of mind. Even if she had some mental ailment, it was not of such a nature that it would make the life of appellant-husband so miserable that he cannot lead a marital life with her. Clause (iii) of Section 13(1) of the Act has two elements necessarily to be proved to get a decree of divorce, one that the spouse other than the complainant spouse is of unsound mind or is intermittently suffering from schizophrenic or mental disorder; second that the disease is of such a kind and of such an extent that the complaining spouse cannot reasonably be expected to live with the other spouse. Even one element of that clause is sufficient to grant a decree of divorce. But in the case in hand, there is absolutely no evidence of the appellant to prove that the respondent is suffering from any mental disorder which makes her incapable of performing marital obligations or that the occasional illness, if any, is incurable.

In the above premise, there being no merit in the appeal, we hereby dismiss the same.

(M. Jeyapaul)
Judge

(Sneh Prashar)
Judge

26.07.2016
jitender

Whether speaking/ reasoned	:	Yes
Whether Reportable	:	Yes