

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 52 of 2014**

Judgment Reserved On : 05/07/2017

Judgment Passed On : 24/08/2017

- Yogesh Puri Goswami S/o Ashwani Puri Aged About 32 Years R/o Mukta Nagar, Durg, Civil And Revenue Distt. Durg C.G.

---- **Appellant****Versus**

- Smt. Pallavi Goswami W/o Yogesh Puri Goswami Aged About 26 Years R/o Mridukishor Colony, Jabalpur Road, Mandla, Tahsil And District Mandla M.P.

---- **Respondent**

 For Appellant : Shri Sunil Otwani, Advocate.

 For Respondent : Shri C.K. Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

C A V JUDGMENT

The following judgment of the Court was passed by **Prashant Kumar Mishra, J.**

1. The core issue involved in this First Appeal, preferred by the appellant/husband (for brevity 'husband') challenging dismissal of his suit for annulment of marriage, is whether a decree for annulment of marriage under Section 12 (1) (c) of the Hindu

Marriage Act, 1955 (hereinafter referred to as 'the Act') can be allowed on the ground that at the time of and even before marriage the respondent/wife (for brevity 'the wife') was suffering from Schizophrenia, which was concealed from the husband while obtaining his consent for marriage.

2. The parties are Hindus. They were married on 12.12.2009. The suit for annulment of marriage was preferred on 13.09.2010 on the pleading that soon after the marriage the wife was talking strangely, inappropriately and irrelevantly and was always expressing fear of her or husband's death. In course of interaction with wife, the husband became aware that she is suffering from mental disorder and had obtained treatment from some Neurologist of Nagpur. On further enquiry, he found that the wife is suffering from Schizophrenia and her ailment is incurable and the disease is congenital. During her stay with the husband, she was not willing to cohabit or beget the child. On enquiry she informed that she is suffering from Polycystic Ovarian disease in her uterus. It was specifically pleaded that the wife or her relatives never informed before marriage about the wife's mental disorder. It was further specifically averred that when the husband raised the entire issue with wife's father Shri Arvind Goswami, he admitted to the husband that the material fact was concealed in order to marry his

daughter. The husband thus pleaded fraud and misrepresentation while obtaining consent by concealing and misrepresenting the material fact in respect of the wife. His father-in-law wrote a letter on 7.5.2010 admitting all the facts while taking his daughter to Mandla where she is presently residing.

3. The wife denied the fact that she was suffering from Schizophrenia even prior to marriage and she used to talk irrelevant and abnormal things. According to the wife, the husband had met her on 2-3 occasions before marriage and that she has never refused to cohabit or beget the child. She has also denied that her father has admitted in writing about the facts alleged in the complaint. In the later part of the written statement, she states that the said admission of her father was obtained under duress. She has denied that the wife or her parents have committed fraud or misrepresentation in relation to marriage. Contrary to the earlier pleading, the defendant/wife amended the plaint on 17.1.2013 to plead that the husband was informed before marriage that the wife is suffering from Schizophrenia and is obtaining treatment from a doctor at Nagpur and that the disease is not incurable. It was further pleaded that all the papers about her treatment were handed over to the husband even before marriage. She also made allegation about demand of dowry of Rs.10 lakhs with further pleading that when the demand

was not fulfilled, she was ill-treated which reflected on her health, therefore, she was taken to Neurologist whose medicines were responsible for dizziness and unconsciousness.

4. The trial Court framed four material issues for determination as to whether the wife was suffering from Schizophrenia even before marriage; whether she was suffering from Polycystic Ovarian disease of uterus before marriage and whether the said disease of the wife was concealed from the husband before obtaining his consent for marriage and thus the husband was subjected to fraud for obtaining his consent for marriage. The trial Court also framed a question as to whether the husband is entitled for decree of annulment of marriage.
5. On the basis of evidence adduced by the parties, the trial Court found that the wife was suffering from Schizophrenia before marriage and the appellant/husband's consent was obtained by fraud by concealing the wife's disease from him while obtaining his consent for marriage. The trial Court also found that the wife was not suffering from Polycystic Ovarian disease of uterus. The trial Court eventually dismissed the suit for the reason that although the wife was suffering from mental disorder viz. Schizophrenia even before marriage, which was concealed from the husband, yet since

there is no evidence that for the said mental disorder viz. Schizophrenia, she is incapable of procreating the child, therefore, decree of annulment of marriage cannot be granted.

6. In order to find out the legality, validity and correctness of the impugned judgment, few provisions of the Act needs reference:-

“5. Conditions for a Hindu marriage.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

XXXX

XXXX

XXXX

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children,
or

(c) has been subject to recurrent attacks of insanity.

11. Void marriages.- Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

12. Voidable marriages.- (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable

and may be annulled by a decree of nullity on any of the following grounds, namely:-

XXXX

XXXX

XXXX

(b) that the marriage is in contravention of the condition specified in clause (ii) of Section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under Section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(2) Notwithstanding anything contained in Sub-Section (1), no petition for annulling a marriage-

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if-

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

13. Divorce.- (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

XXXX

XXXX

XXXX

(iii) 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 cannot reasonably be expected to live with the respondent.

Explanation – In this clause, -

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of 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, or

(iv) has been suffering from a virulent and incurable form of leprosy; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a

period of seven years or more by those persons who would naturally have heard of it, had that party been alive.”

7. Plain reading of the above quoted provisions would explicit that if any party to the marriage is incapable of giving a valid consent to it in consequence of unsoundness of mind or though capable of giving valid consent has been suffering from mental disorder of such a kind or to such an extent as to unfit for marriage and procreation of children, condition for valid Hindu marriage is not satisfied. However, a marriage solemnized in contravention of the above requirement shall not make the marriage void as it is not enumerated as one of the grounds under Section 11 for declaring a marriage null and void. At the same time, if the consent of the petitioner (who applies to the Court for declaring the marriage a nullity) is obtained by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent, the marriage can be declared a nullity under Section 12 (1)(c) of the Act. A petition under Section 12 (1)(c) of the Act has to be preferred within one year after the fraud has been discovered and the petitioner should not have lived with the other party to the marriage as husband and wife after detection of the fraud.
8. The trial Court has found that the wife was suffering from incurable mental disorder viz. Schizophrenia, therefore, before

proceeding to deal with the law on the subject we shall discuss as to what Schizophrenia is and the nature of the said disease. We feel this to be necessary so that we may understand as to the impact of its disclosure or concealment from the other spouse while seeking his consent for marriage.

9. In the text book of Medicine by Rustom Jal Vakil, Second Edition at page 1482, Schizophrenia is defined as under:-

“Schizophrenia is characterised by a withdrawal from reality, with a tenancy towards antisthetic thinking, flat or incongruous emotional reactions and inconsistent and impulsive behaviour. The patient may show a tendency to maintain false belief, which can not be corrected by reasoning or logic. False perception and hallucinations (mostly auditory) may be present.

The term or word “schizophrenia”, which means a “split personality” was coined by Bleuler (1911) to describe a certain condition of the patient's mind. Previously, the condition was referred to as “dementia praecox”, because such patients, usually young, tend to appear demented through their inability to respond adequately to the environment. However, since the condition is due, not to any detectable abnormalities of the brain, but to a “split from reality”, the term “dementia praecox” is now a days replaced by the scientifically more accurate term “schizophrenia”.

The medical opinion is that there are several types of schizophrenia, of which 'paranoid schizophrenia' is one of the conditions. This type of schizophrenia is explained at page

1485 of the above cited book as under:-

PARANOID SCHIZOPHRENIA

The illness usually begins late in life, between the age of 25 to 35 years. The patient may justify his incapacity to cope with stress by laying the blame on others. He may feel that others are against him and are out to persecute him. He may attribute his failures to the jealousy or “spite” of superiors, associates or colleagues. He may even ascribe the failure of his marriage to an imagined infidelity on the part of the wife. Such delusions are frequently centered round some near relative or friend. The delusions may be logical or bizzare.

He may also have grandiose delusions. Because of his superior intelligence, he may claim to lead his country to victory or the world to prosperity. He may claim to reach the sun, the moon or the stars within a few years. He may claim to be the greatest authority on religion, science or philosophy.”

10. In **Ram Narayan Gupta Vs Smt Rameshwari** {AIR 1988 SC 2260}, Their Lordships extracted in their judgment few experts' medical opinion as mentioned at page 2267 of AIR which read thus:-

“I do not use the word 'schizophrenia’ because I do not think any such disease exists... I know it means widely different things to different people. With a number of other psychiatrists, I hold that the words 'neurosis', 'psychoneurosis', 'psychopathic personality', and the like, are similarly valueless. I do not use them and I try to prevent my students from using them, although the latter effort is almost futile once the psychiatrist discovers how conveniently ambiguous these terms really

are...”

In general, we hold that mental illness should be thought and spoken of less in terms of disease entitles than in terms of personality disorganisation. We can precisely define organisation and disorganization; we cannot precisely define disease.....”

Some assistance also can be had from a Division Bench decision of Calcutta High Court in the case of Pronab Kumar Ghosh, AIR 1975 Cal 109 (113) in paragraph 20 where the text book by Handerson and Gilespi 10th Edition at page 279 has been quoted. In the aforesaid medical book schizophrenia has been described as “an illness of slow insidious” on-set developing over years. Patient's relatives may report strange, odd, inappropriate behaviour. The schizophrenia is a general classification of a kind of mental disorder which has various forms and various degrees depending upon the patient, his heredity and environment. Schizophrenic patient may be of a very serious or of a milder type. So far as the milder type patient is concerned, the medical opinion contained in Davidson's Principles and Practice of Medicine at page 791 is a under:-

“These are more florid manifestations of schizophrenia. Milder signs are less easy to recognise, because they merge into the peculiarties of everyday living. These include instances of unexpected rudeness or tactlessness, abrupt and inexplicable behaviour with a marked withdrawal from ordinary social contacts. Such persons may be considered awkward or unsociable and it is only when they reveal quite bizarre ideas, shout back at their hallucinatory voices, or otherwise behave in a conspicuously strange manner, that one realises that they are not merely eecentric, but mentally ill.”

11. In the teeth of the statutory provisions mentioned hereinabove we shall proceed to refer the law laid down by the Supreme Court and different High Courts as to when a decree on the grounds contained under Section 12 (1)(c) of the Act is permissible when fraud is committed by the respondent by concealing any material fact or circumstance concerning the respondent.
12. In **Babui Panmato Kuer Vs Ram Agya Singh** {AIR 1968 PATNA 190}, it was held that when misrepresentation as to the age of the bridegroom made to the mother who acted as agent and the daughter consented for marriage believing the statement to be true, the consent was held to be vitiated by fraud.
13. In **Smt Asha Srivastava Vs R.K. Srivastava** {AIR 1981 DELHI 253}, it was held that where there was concealment about ailment of Schizophrenia from which the respondent wife suffered, which is the mental illness and the same was incurable according to the expert's opinion, the same would amount to obtaining consent of the respondent by fraud as to any material fact concerning the respondent and the provisions contained in Section 12 (1)(c) of the Act would be attracted.
14. In **Rajinder Singh Vs Smt Pomilla** {AIR 1987 DELHI 285}, the Division Bench of the Delhi High Court found the marriage to be

liable to be annulled when it was found that the husband had not disclosed the factum of his previous marriage to the wife or her relatives at the time of seeking her consent for marriage and thus the said consent was obtained by fraud as to the material fact or circumstance.

15. In **Smt. Alka Sharma Vs Abhinesh Chandra Sharma** {AIR 1991 MADHYA PRADESH 205}, the husband was held entitled for decree of nullity of marriage on the ground under Section 12 (1)(c) of the Act when it was found that his consent was obtained by concealing the fact that the wife is suffering from Schizophrenia.

16. In **Vinita Saxena Vs Pankaj Pandit** {(2006) 3 SCC 778}, the husband was found to be suffering from Schizophrenia. Based on the evidence available in that case, the Supreme Court held that when it is proved by evidence that the respondent is suffering from mental disorder, further ground for grant of divorce on the plea of mental sanity or mental disorder is different than cruelty. Therefore, it is a case of cruelty not based on acts and commission of sensible person but those arising from mental disorder. The Supreme Court eventually affirmed the decree in favour of wife.

17. It is thus fairly well settled that when the respondent is found to be suffering from incurable mental disorder viz. Schizophrenia, it may

amount to cruelty to the spouse applying for divorce and at the same time when such serious disease was not informed to the appellant/husband and it was concealed from him at the time of obtaining his consent for marriage, it furnishes a cause of action for declaring the marriage a nullity under Section 12 (1)(c) of the Act.

18. In the case at hand, there being abundance of evidence on the basis of which the trial Court itself has found that the wife is suffering from Schizophrenia and the said illness was not informed to the husband at the time of obtaining his consent for marriage, it was a fit case for declaring the marriage a nullity under Section 12 (1)(c) of the Act. The trial Judge seems to have unnecessarily impressed by the provisions under Section 5 (ii)(b) of the Act to hold that there being no evidence that the wife is not able to procreate the child, it satisfies the requirement of valid marriage, therefore, it cannot be declared a nullity. It was never the case of the appellant/husband that she was incapable of procreating the child. His case, from the very beginning, is that a fraud was committed upon him by concealing material fact concerning mental disorder viz. Schizophrenia of the wife, therefore, he is entitled for a decree under Section 12 (1)(c) of the Act. The trial Court's reasoning while refusing to grant a decree in favour of the appellant suffers from misreading of legal provisions.

19. In view of the above discussion, the Appeal is allowed. The appellant's suit for declaring the marriage solemnized between the parties on 12.12.2009 to be nullity is allowed and the marriage is hereby declared a nullity.

20. A decree be prepared accordingly.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Arvind Singh Chandel)

Barve

HEADLINES

The material fact of wife suffering from Schizophrenia even before marriage was not disclosed to the husband while obtaining his consent for marriage, therefore, the marriage deserves to be declared a nullity under Section 12 (1)(c) of the Hindu Marriage Act, 1955.