

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-293-2013 (O&M)

Reserved on 6.3.2018

Pronounced on 5.4.2018

Nisha alias Renuka

.....*Appellant*

Versus

Rakesh Kumar

....*Respondent*

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. Raghav Goel, Advocate for the appellant.

Mr. M.L. Sarin, Sr. Advocate with
Mr. Nitin Sarin, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The appellant-wife Smt. Nisha @ Renuka has filed this appeal challenging judgment and decree dated 29.8.2013 passed by the Court of learned Additional District Judge, Sirsa vide which a petition filed by respondent-husband Rakesh Kumar under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as '*the Act*') has been accepted and the marriage between the parties has been dissolved by passing a decree of divorce.
2. The case set up by respondent-husband, as per his petition under Section 13 of the Act, is that the marriage between the parties was solemnized on 13.2.2007

at Dabwali as per Hindu rites and ceremonies and they resided together at village Lohgarh in Tehsil Dabwali and a male child was born out of the wedlock on 30.12.2007. It is averred that after marriage, the appellant-wife came to matrimonial home and stayed for two days and during her stay she displayed behaviour of unsoundness of mind and then went to her parental home on 18.2.2007 and returned in the first week of March 2007. It is averred that after marriage, the respondent-husband discovered that the appellant-wife is a patient of chronic disease i.e. Bio Polar Affective Disorder or Manic Depressive Illness (M.D.I.) which is associated with Schizophrenia, and that she was under treatment of Dr. Bir Singh Yadav at Hisar. It is averred that after delivery of child on 30.12.2007, the appellant-wife became irritable, sleepless, demanding and did not take care of the child and used to ask for colourful dresses, ornaments and her mood became erratic. It is also averred that on 23.4.2008, the respondent-husband dropped the appellant-wife at her parental home at Jamalpur, Tehsil Hansi and since then she has been residing there with her parents. The respondent-husband thus set up a case that the appellant-wife was suffering from mental disorder of such a kind that the petitioner is not expected to live with her and that she had also threatened to commit suicide.

3. The appellant-wife in reply to the petition under Section 13 of the Act denied that she was suffering from any mental disorder as alleged by the petitioner. She denied having ever attempted to commit suicide. The appellant-wife took a stand that in fact the behaviour of the respondent-husband and of his mother was arrogant and that her mother-in-law was obstinate and greedy type of person and had been harassing, humiliating, taunting, beating and torturing her

for want of more dowry and that she had been turned out from her matrimonial home on 9.6.2009.

4. The respondent-husband filed replication denying the stand taken by the appellant-wife, while reiterating the averments made in the petition. The parties were put to proof on the following issues:-

i. Whether the respondent has been suffering continuously/intermittently from mental disorder, as alleged?

OPP

ii. Whether the petitioner is entitled for a decree of divorce by getting his marriage with respondent dissolved on the ground of mental and physical cruelty? OPR

iii. Whether the petitioner is entitled for a decree of divorce on the ground of desertion? OPP

iv. Whether the petitioner has no locus-standi to file this petition? OPR

v. Whether the petitioner has not come in the Court with clean hands and is not entitled to any relief? OPR

vi. Relief.

5. The respondent-husband examined PW-1 Dr. Dharmender Jyani, PW-2 Dr. Bir Singh Yadav, PW-4 Sukh Dayal, PW-5 Kishori Lal, PW-6 Devi Dayal and himself stepped into witness box as PW-3. The appellant-wife examined RW-1 Dr. Hitesh Khurana, RW-2 Balwant Mehta, RW-3 Sushil Kumar and herself stepped into witness box as RW-4.

6. Upon considering the evidence led by the parties, the learned lower Court returned its findings on issues No.1 to 3 in favour of the respondent-husband holding therein that the appellant-wife is suffering from mental disorder and had subjected the respondent-husband to mental and physical cruelty. Issues No.4 and 5 were decided against the respondent-husband and consequently the marriage was ordered to be dissolved vide impugned judgment and decree dated 29.8.2013. Aggrieved with the same, the appellant-wife has filed the present appeal.
7. The learned counsel for the appellant-wife while assailing the impugned judgment and decree has *inter alia* submitted that the learned lower Court has not appreciated the evidence in the correct prospective and reached at an erroneous conclusion that the appellant-wife was suffering from an incurable mental disorder, whereas a board of doctors which had examined the appellant-wife, under orders of the Court, had given its report to the contrary.
8. On the other hand, the learned counsel for the respondent-husband, while referring to the medical evidence led by him as well as by the appellant-wife, has submitted that the medical evidence clearly establishes mental disorder of the appellant-wife and it is evident that such mental disorder is incurable and that in these circumstances, no infirmity can be found in the impugned judgment and decree dissolving marriage of the parties in view of provisions of Section 13 (1)(iii) of the Act.
9. We have considered rival submissions addressed before this Court and have also perused record of the case.
10. The case mainly hinges on the question as to whether the appellant-wife is

afflicted with a mental disorder of such a kind that it cannot be expected of the respondent-husband to cohabit with her. The respondent-husband, while in witness box, stated in tune with the averments made in the petition to the effect that his wife is a patient of chronic disease i.e Bio Polar Affective Disorder or Manic Depressive Illness (M.D.I.). He stated that on 19.1.2008, his father took the appellant-wife to Jyani De-Addiction, Sex and General Hospital, Mandi Dabwali for treatment. He further stated that even on 14.5.2008, when the appellant-wife suffered from mental disorder, she was again got treated from Dr. Jyani from 14.5.2008 to 30.6.2008 but she did not improve. He stated that thereafter they took her to Dr. Harvinder Singh at Patiala on 14.7.2008.

11. The respondent-husband examined PW-1 Dr. Dharmender Jyani, who stated that on 19.1.2008, he had examined the appellant-wife, who was talking out of context, was irritable with insomnia. The respondent-husband examined PW-2 Dr. Bir Singh Yadav, Director, Shanti Mission Hospital, Model Town Hisar, who stated that the appellant-wife was admitted in his hospital on 19.1.2007 with diagnosis of depressive disorder and psychotic features (aggression with suicidal tendencies), and that she remained in their hospital till 26.1.2007 and was discharged on partial improvement. She had been advised regular follow up in OPD. He further deposed that she was again admitted in their hospital on 28.3.2008 till 1.4.2008. He stated that the chronic illness can be life long.
12. As against the aforesaid evidence, the appellant-wife apart from herself stepping into witness box, has led medical evidence as well in the shape of testimony of RW-1 Dr. Hitesh Khurana. It may here be mentioned that the

learned lower Court on 17.2.2012 had passed an order directing medical examination of the appellant-wife, to be conducted by Head of Psychiatric Department, PGIMS, Rohtak through a board of doctors to ascertain regarding her ailment. The order dated 17.2.2012 reads as under:-

*“Present: Shri L.D. Mehta, counsel for petitioner.
Shri B.N. Batla, counsel for respondent.*

Rakesh petitioner has stated that his wife Nisha is suffering from mental disorder i.e. Bipolar disease and hence, he does not want to keep Nisha as his wife in the matrimonial home. Nisha has stated that she is not suffering from any mental disease and if it so, she is ready to get herself examined from the Psychiatric Department, PGIMS, Rohtak. Heard. At this juncture, if it is the bone of contention between the spouse, then Nisha is directed to be medically examined by Psychiatric Department, PGIMS, Rohtak. The Head of Psychiatric Department, PGIMS, Rohtak is directed to medically examine Nisha wife of Rakesh Kumar through the board to ascertain as to whether she is suffering from any mental disorder or not.

*Sd/-
(Dr. Neelima Shangla)
ADJ, Sirsa 17.2.2012”*

13. Pursuant to the aforesaid order, the appellant-wife was examined by a Medical Board comprising three doctors of the Department of Psychiatric, PGIMS, Rohtak. The appellant-wife was kept admitted in PGIMS, Rohtak for one week i.e. from 29.2.2012 to 6.3.2012 under observation of the Medical Board, which opined that the appellant-wife was currently not suffering from any mental disorder. The report dated 6.3.2012 (Ex.RW1/B) reads as follows:-

“Department of Psychiatry, Pt. B.D. Sharma, PGIMS, Rohtak.

No.Psy/12/5/5

Dated: 6/3/12

To

*The Medical Superintendent,
Pt. B.D. Sharma, PGIMS, Rohtak.*

Sub: Medical report of Nisha Rani w/o Sh. Rakesh Kumar.

Kindly refer to your letter No.PGIMS/MB/12/859 dated 29.02.12 on the subject noted above.

Mrs. Nisha Rani w/o Sh. Rakesh Kumar remained admitted in the Psychiatry ward OPD No.3600/12 and CR No.24944 from 29.02.12 to 06.03.12 under the observation of medical board of the following doctors:

1. *Dr. Hitesh Khurana*
2. *Dr. Priti Singh*
3. *Dr. Vinod Kumar.*

The board is of the opinion that patient Nisha Rani w/o Rakesh Kumar has an IQ=86 and currently not suffering from any mental disorder.

This is for your information and necessary action please.

<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>
<i>Dr. Hitesh</i>	<i>Dr. Priti</i>	<i>Dr. Vinod Kumar,</i>
<i>Professor</i>	<i>Professor</i>	<i>Sr. Resident</i>
<i>Deptt. of Psychiatry</i>	<i>Deptt. of Psychiatry</i>	<i>Deptt. of Psychiatry</i>
<i>PGIMS, Rohtak</i>	<i>PGIMS, Rohtak</i>	<i>PGIMS, Rohtak”</i>

14. The appellant-wife examined Dr. Hitesh Khurana, Professor, Department of Psychiatric, PGIMS, Rohtak, one of the members of the Medical Board, to prove the aforesaid report. The aforesaid doctor was cross-examined on behalf of the respondent-husband. The cross-examination for the sake of ready reference is reproduced below in entirety:-

“No mechanical like MRI test was conducted on the patient as there was no necessity. Our observations are based on clinical examination test. It is correct that bipolar disorder is the Inentar disease. It is correct that bipolar disorder is treatable but not curable and it relapses often. This order subsides with the help of antipsychotic medicines, moods stabilizer. Occasionally, it subsides spontaneously. With medication, we can achieve Lucid interval for a pretty long time. It is correct that during depressive episode of this disease, the person can have suicidal tendency and during manic episode, the person can be aggressive for no reason. It may or may not be genetic. It is correct that if the patient had been taking medicines for a long time, her condition in the hospital may be normal. It is correct that there are scientific test (chromatography) to know that the patient has taken medicines during the period of examination. Since the provision of this test is not available in the college, no mechanical test to negate the intake of the medicine was conducted. Hence, we submitted our report on the basis of clinical observations. I am M.D. Psychiatry. I do not have any idea whether the patient had taken medicines before her examination. The patient can take medicines if prescribed by some Psychiatrist. It is incorrect to suggest that the conclusion arrived at by the board is wrong. It is correct that normal I.Q. is 90 and above. Nisha had I.Q. below normal. It is incorrect to suggest that the observations of the board are not scientific”.

15. A perusal of the aforesaid report Ex.RW1/B of the Medical Board as well as testimony of RW-1 Dr. Hitesh Khurana shows that the appellant-wife, pursuant to directions issued by the lower Court, was admitted in PGIMS,

Rohtak, where she remained under observation for one week under the Board of doctors of Department of Psychiatric, PGIMS, Rohtak and who opined that Nisha Rani had an IQ=86 and currently not suffering from any mental disorder. In fact RW-1 Dr. Hitesh Khurana categorically stated that during the entire week i.e. from 29.2.2012 to 6.3.2012, when the appellant-wife remained admitted, there was no mental retardation/disorder.

16. The learned counsel for the respondent-husband has, however, attempted to assail the report of the Medical Board on the ground that RW-1 Dr. Hitesh Khurana during his cross-examination had stated that the ailment was treatable but not curable and relapsed. The learned counsel for the respondent-husband has also referred to the testimonies of PW-1 Dr. Dharmender Jyani, who stated that he had examined the appellant-wife on 19.1.2008 and she was talking out of context and was irritable in behaviour with insomnia.
17. However, PW-1 during his examination-in-chief itself, while describing the ailment, he stated that she remained under his treatment w.e.f. 19.1.2008 to 30.6.2008 and had started showing improvement and the medicine was progressively reduced. During cross-examination, he stated that the patient was kept on mild doze of sedative for three months which was tapered and stopped. He also stated that if the patient takes medicines regularly, the number of episodes may decrease in future.
18. The learned counsel for the respondent-husband has also referred to testimony of PW-2 Dr. Bir Singh Yadav, who has stated that the appellant was first admitted in his hospital on 19.1.2007 with diagnosis of depressive disorder with psychotic features and she was treated with anti-depressants and anti-

psychotic and the patient improved partially and was discharged with advise to follow up regularly in OPD. He has further stated that she was again admitted on 31.7.2007 and was discharged on 3.8.2007 and thereafter she was again admitted on 28.3.2008 till 1.4.2008. He stated that thereafter the patient came for follow up on 5.4.2008. He described the ailment as bipolar disorder with predominantly manic depression. He stated that since it is a chronic illness, the relapses and re-occurrences are very common. He has, however, stated that illness of depression is treatable.

19. In order to appreciate the medical evidence led by both the parties in context of the grounds set up in the petition for divorce, it is apposite to bear in mind the provisions of Section 13(1)(iii) of the Act, which for the sake of ready reference are reproduced below:-

“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—*

xxx xxx xxx

- (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]*

xxx xxxx xxxxx”

20. While examining the evidence in context of the aforesaid provisions, we do find that the two private doctors examined by the respondent-husband, have both stated that the appellant-wife had been examined by them and she was found to be having mental ailment. PW-1 Dr. Dharmender Jyani in his statement has stated about the diagnosis of illness of the appellant-wife as follows:-

“Differential diagnosis

- 1. Case of post partum psychosis (Psychiatry illness, develops after delivery of a child within six months.*
- 2. If the past history is positive then diagnoses is bipolar affective disorder current episode mania without Psychotic symptoms.”*

21. Similarly, PW-2 Dr. Bir Singh Yadav has also stated that the appellant-wife was diagnosed as a case of post partum psychosis and he further stated that it is a case of bipolar disorder. However, PW-1 has stated that if the patient takes medicines regularly, the number of relapses may decrease. Both the said doctors have stated that there are relapses and re-occurrences of the illness.

PW-1 Dr. Dharmender Jyani has, in fact, specifically stated that if the patient takes medicines regularly, the number of episodes or relapses may decrease in future.

22. It is interesting to note that pursuant to directions of the Court, the appellant-wife was kept admitted for a week in PGIMS, Rohtak, where the appellant-wife did not display any sign of mental retardation or disorder during the entire week. It was specifically opined by the Medical Board that she was currently not suffering from any mental disorder. RW-1 Dr. Hitesh Khurana, during cross-examination, while stating that the bipolar disorder is treatable and not curable, explained about the disorder as follows:-

“It is correct that bipolar disorder is treatable but not curable and it relapses often. This disorder subsides with the help of antipsychotic medicines, moods stabilizer. Occasionally, it subsides spontaneously. With medication, we can achieve Lucid interval for a pretty long time.”

23. This Court does not find any reason to discard or doubt the veracity or opinion of RW-1 Dr. Hitesh Khurana, a member of the Medical Board of the PGIMS, Rohtak which is a reputed institute in the region and the Medical Board was comprised of three professors of Psychiatric Department, who have categorically opined that the appellant-wife when kept under observation for one week at PGIMS, Rohtak was at that time not suffering from any mental disorder. Even if it is accepted that the appellant-wife had suffered from post partum psychosis after pregnancy or even had relapses, it is evident from opinion of doctors that such ailment can be controlled with proper treatment and care. The very fact that during the entire week when she was kept under

observation is evidence of the fact that the appellant-wife at best can be a case where she has some phases/attacks of such ailment but the same are treatable.

24. Under such circumstances, the husband is expected to provide the best of the treatments to the appellant-wife and to ensure that the circumstances and the atmosphere at home is kept absolutely cordial as such psychiatric ailments are often triggered or aggravated by hostile, irritable environment in which the patient remains.
25. It will not be out of place to mention that the marriage had been consummated. It is also admitted by the respondent-husband that after marriage they went to Shimla, Kullu and Manali for honeymoon. The parties were blessed with a male child as well. It will also be not out of place to mention that both husband and wife appeared before this Court on 6.3.2018, when efforts were again made to bring about some compromise. During the brief interaction with the wife, she did not display any sign of abnormality.
26. As such we are unable to affirm the findings of the learned lower Court to the effect that the appellant-wife is suffering from mental disorder of an extent that the respondent-husband can not reasonably be expected to live with the appellant-wife. There is no such convincing evidence on record to show that the appellant-wife had treated the respondent-husband with cruelty or had deserted him without any justifiable cause. Consequently, the findings of the learned lower Court on issues No.1 to 3 cannot sustain and are hereby reversed.
27. As a consequence of the reversal of the findings on issues No.1 to 3, the impugned judgment can not sustain and deserves to be set aside. The appeal

merits acceptance and is hereby accepted. The impugned judgment and decree are hereby set aside and the petition under Section 13 of the Act filed by the husband stands dismissed. The appeal stands accepted accordingly.

28. Parties are left to bear their own costs. Decree-sheet be drawn accordingly.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

5.4.2018
pankaj

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No