

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 7843 of 2015
Date of Decision: 09.4.2019

Jitender Soni

.....Appellant

Vs.

Manisha Verma

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. Ranjan Lakhanpal, Advocate
for the appellant.

Mr. Rajesh Arora, Advocate
for the respondent.

HARNARESH SINGH GILL, J.

The present appeal has arisen out of the judgment and decree dated 28.7.2015 passed by the learned District Judge, Family Court, Gurgaon vide which petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (for short '*the Act*'), was dismissed.

The brief facts of the case are that the appellant-husband was married to the respondent according to Hindu rites and ceremonies on 24.11.2008. It was an arranged marriage. No child was born out of the said wedlock. The assertions made by the appellant before the Family Court were that while going to Manali for honeymoon just after 2-3 days of marriage, the respondent tried to jump out of the running taxi and started

shivering and on many occasions she used to talk in foul language and kept herself locked in bathroom for several hours. It was also averred that the respondent-wife would lit lamp at night and many times she used to sleep for 24 hours at a stretch. The appellant-husband approached the parents of the respondent-wife but they extended no help. The appellant gathered information from the neighbours of the respondent-wife that before marriage, the respondent-wife used to remain ill and was suffering from mental disease and had been under treatment since 9.8.2007.

Further stand taken by the appellant was that the respondent never showed any interest in the domestic work and used to make lame excuses to perform her matrimonial duties. The respondent being a short tempered lady, caused mental harassment and torture to the appellant. The respondent-wife left the matrimonial home without the consent of the appellant-husband in September, 2009. Efforts for bringing her back failed. Rather the parents of the respondent had ill-treated the appellant-husband when he made a request to bring her back.

Before the trial Court, the case was contested by the respondent-wife. She denied all the allegations made against her. In the counter allegations, the respondent-wife asserted before the Family Court that it was the appellant and his family, who used to torture her for the demand of dowry. The family of the appellant raised a demand of ₹ 4.00 lakhs despite the fact that the parents of the respondent-wife had already spent ₹ 5.00 lakhs on the marriage. It was also pointed out by the respondent before the Family Court that the appellant-husband had initially filed a divorce petition under Section 13 of the Act which was later on

withdrawn by him. Therefore, a fresh divorce petition could not be presented and was liable to be dismissed. Moreover, because of the ill-treatment, the respondent-wife was constrained to file a petition under the Protection of Women from Domestic Violence Act, 2005 and a petition under Section 125 of the Code of Criminal Procedure, 1973 as well as a complaint under Section 498-A IPC. The respondent-wife had claimed that she was well behaved and had always performed her matrimonial duties properly. It was the appellant and his family members who had often misbehaved with her and she was thrown out of her matrimonial home. The allegations that she was suffering from mental disorder prior to her marriage and her parents had concealed this fact were denied.

On the pleadings, the following issues were framed by the Family Court on 12.2.2014:-

- “1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition ? OPP*
- 2. Relief.”*

In order to prove his case, the appellant stepped into the witness box as PW-1 besides examining Dr. Shivani Aggarwal as PW-2 and Sanjay, Medical Record Keeper as PW-3, who had produced the medical record.

To rebut the case, the respondent-wife stepped into the witness box as RW-1 and had placed on record the documents Ex. R-1 and Ex.-R2.

After hearing learned counsel for the parties and going through the evidence on record, the Family Court has drawn the conclusion that the appellant-husband had failed to prove both the grounds of cruelty and desertion and, thus, the divorce petition was dismissed vide judgment dated

28.7.2015.

We have heard the learned counsel for the parties and have also gone through the records of the case with their assistance.

Learned counsel for the appellant has argued that the respondent is a disrespectful and quarrelsome lady and does not like the relatives to visit them and also becomes angry with the appellant and his family members every second or third day. It has been argued that the respondent has been suffering from “fits” which fact was never disclosed to the appellant and his family members. Even while going to Manali for honeymoon, the respondent tried to jump from the taxi and started shivering. The respondent-wife would use filthy language and keep herself locked in bathroom for several hours. The respondent-wife left the company of the appellant in September and all efforts to bring her back had failed. Rather, the parents of the respondent-wife had insulted the appellant even though he was ready and willing to bring her back.

Learned counsel for the appellant has also argued that the Court below has ignored the testimony of PW2-Dr. Shivani Aggarwal and the medical evidence on record. Thus, he has prayed that the judgment and decree dated 28.7.2015 be set aside.

Per contra, learned counsel for the respondent has submitted that the respondent and her family members had never concealed any fact from the appellant-husband and his family members. The respondent-wife is not suffering from any mental disorder or any disease. Learned counsel has relied upon the statement of Dr. Shivani Aggarwal (PW-2) wherein she stated that the mental health of the respondent-wife did not debar her from

having a healthy relationship with her husband. It has been also argued that rather it is the appellant and his family members, who had maltreated the respondent-wife as she was constantly harassed, humiliated and was beaten in the public. All the allegations of strange and abnormal behaviour were discarded being a concocted story.

After taking into consideration the evidence on record, we do not find any infirmity or illegality in the order passed by the Family Court. We have gone through the statement of PW-2 Dr. Shivani Aggarwal. As per this witness, Manisha Verma-respondent was examined by her on 27.1.2009 and was diagnosed with Psychotic illness and Obsessive Compulsive Disorder (OCD) and the disease was treatable with proper medication and regular follow-up treatment and it is not curable but can be managed.

Merely because the respondent-wife is suffering from Psychotic illness or OCD by itself, is insufficient to prove that she is incapable of having healthy domestic relationship. Thus, the appellant cannot claim divorce on the ground of cruelty on account of her mental illness.

As far as the other allegations of cruelty are concerned, the appellant has made vague and general allegations that the respondent-wife was not performing her matrimonial duties and was rude and used to misbehave with him and his family members. No specific instance has been given by the appellant and the assertions made by him were not corroborated by oral, documentary or medical evidence. There is no evidence on record that the appellant-husband has ever made any complaint or called the relatives to show that he was passing through the abnormal behaviour of his wife. In the present case, the wife has shown her readiness

and willingness to go to her matrimonial home. There is no suicidal action or other violent behaviour which could be found from the record of this case. The multiple litigation between the parties cannot be raised as a ground of cruelty, rather it is the legal right of any of the parties to seek redressal from the competent authority. Resorting to litigation by itself is no reason to infer cruelty unless it can be shown that it was *malafide* or false. It is not the case in the present proceedings.

To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that one spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear” of married life. Cruelty is also a course or conduct of one, which can adversely effect the other spouse. But expression 'cruelty' has not been defined in the Act. None of the ingredients has been pointed out by the appellant/husband in the present case against respondent/wife. But before the conduct can be called cruelty, it must touch a certain pitch of severity which we do not find it in the case in hand.

The Hon'ble Supreme Court of India in ***Kollam Chandra Sekhar versus Kollam Padma Latha 2013 (4) RCR (Civil) 655*** has laid down that if the disease is not of such a nature that it makes the life of husband miserable, the husband is not entitled to seek dissolution of marriage. The Apex Court further observed as under:-

“24. But the illnesses that are called “mental” are kept distinguished from those that ail the “body” in a fundamental way. In “Philosophy and Medicine”, Vol. 5 at page X the learned Editor refers to what distinguishes the two qualitatively:

“Undoubtedly, mental illness is so disvalued because it strikes at the very roots of our personhood. It visits us with uncontrollable fears, obsessions, compulsions, and anxieties....

. . . This is captured in part by the language we use in describing the mentally ill. One is an hysteric, is a neurotic, is an obsessive, is a schizophrenic, is a manic-depressive. On the other hand, one has heart disease, has cancer, has the flu, has malaria, has smallpox...”

The principle laid down by this Court in the aforesaid case with all fours is applicable to the fact situation on hand wherein this Court has rightly referred to [Section 13](#) (1) (iii) of the Act and explanation to the said clause and made certain pertinent observations regarding “unsound mind” or “mental disorder” and the application of the same as grounds for dissolution of marriage. This Court cautioned that [Section 13](#) (1) (iii) of the Act does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage. The High Court in the present case stated that a husband cannot simply abandon his wife because she is suffering from sickness and relied on the evidence of RW-2, Dr. Krishna Murthy, Superintendent, Institute of Mental Health, Hyderabad, wherein it is stated by him that schizophrenia can be put on par with diseases like hypertension and diabetes on the question of treatability meaning that constant medication is required in which event the disease would be under control. The High Court also relied on the evidence of PW-4, Dr. Ravi S. Pandey, Professor and Head of Department of Psychiatry at NIMHANS, Bangalore, who had examined the respondent and stated that the team could not find any evidence suggesting that she has been suffering from schizophrenia at the time of examining her and also stated in his cross-examination that no treatment including drugs were given to her at NIMHANS as they did not find any abnormality in her behaviour. He also stated that it is

true that psychiatrically there is no contra-indication in leading a normal conjugal life. Thus, they gave her a certificate, which is marked as Exh. B-11, based on clinical examination and in the absence of any abnormal behaviour including psychiatric features in the past history of respondent. The High Court has not accepted the finding of fact recorded by the trial court on the contentious issue and further stated that “schizophrenia” does not appear to be such a dangerous disease and it can be controlled by drugs and in the present case, this finding is supported by evidence of RW-2, who has stated in his examination-in-chief that the appellant herein has not made any reference to any of the acts of the respondent that can constitute “schizophrenia” ailment. It is further held by the High Court that there is no positive evidence to show that the respondent has suffered from schizophrenia and even in the case she has suffered from some form of schizophrenia, it cannot be said that she was suffering from such a serious form of the disease that would attract the requirement as provided under [Section 13](#) (1) (iii) of the Act and that it is of such a nature that it would make life of the appellant so miserable that he cannot lead a marital life with her.”

The Division Bench of this Court in ***Sher Singh versus Manju Kanwar 2016 AIR (Punjab) 228***, has held that the husband had failed to place on record any evidence to prove that the wife was suffering from any mental disorder which makes her incapable of performing the marital obligations or that occasional illness, if any, is incurable. Thus, it was observed that the husband was not entitled to get a decree of divorce. The Division Bench has observed as under:-

“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.”

Taking into consideration the facts and circumstances of the present case, we do not find any illegality or infirmity in the well reasoned judgment passed by the Family Court, which may warrant any interference by this Court.

The appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

April 09, 2019
Gurpreet

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No