

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : F.A.O. No. 1358 of 2020

Date of Decision : February 17, 2020

Pooja Appellant
vs.

Sunny Deshwal Respondent

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr. Sandeep K. Sharma, Advocate
for the appellant.

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MEENAKSHI I. MEHTA, J. :

By way of this appeal, the appellant-wife (hereinafter referred to as 'the appellant') has challenged the judgment and decree, as passed by learned Principal Judge, Family Court, Rohtak (hereinafter referred to as 'the Trial Court') on 28.11.2019, whereby the petition, as preferred by the respondent-husband (hereinafter referred to as 'the respondent') under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for seeking dissolution of their marriage, has been allowed.

2. Shorn and short of unnecessary details, the factual matrix, as set-forth by the respondent (as petitioner in divorce petition), is that the marriage between the parties was solemnized on 29.02.2016 as per Hindu Rites and Ceremonies at Rohtak. After their marriage, the behaviour of the

appellant (respondent in the divorce-petition) towards him and his family

members was abnormal and she subjected him to cruelty. She also failed to perform her marital obligations and under the influence of her family members, she made his life hell. She used to leave her matrimonial home and to go to her parental home without his consent. The appellant and her family members also concealed the fact regarding her (appellant) being HIV positive and he came to know about the same only at the time of tests conducted after the pregnancy of the appellant. He had every apprehension he might contract the above-said disease from the appellant. In May 2016, the appellant left her matrimonial home while taking away all her belongings and withdrew from his company.

3. In her written-reply, the appellant contested the claim of the respondent by asserting that the respondent was a drug addict and he used to give her beatings. He and his family members harassed her for demand of dowry. When her father expressed his inability to fulfil the demand of the respondent and his family members for a Xylo Car, she, alongwith her father, was forced to leave her matrimonial home. She was not HIV positive before her marriage and she came to know about this fact only while undergoing the tests during her pregnancy. In fact, the sisters of the respondent were medical students and they used to inject some medicine to her with a used syringe on the pretext of its helping her to gain weight which led to her getting positive for HIV.

4. On the basis of the pleadings of the parties, learned Trial Court framed the following issues :-

dissolution of marriage by decree of divorce as prayed for? OPP

2. Whether the petition is not maintainable in its present form? OPR

3. Whether the petitioner has concealed true and material facts from the Court? OPR

4. Relief."

5. After hearing learned counsel for both the parties and after appraisal of the evidence, as adduced by both the parties on the record in support of their respective contentions, learned Trial Court answered issue no.1 in favour of the respondent. Issues no.2 and 3 were disposed of as having not been pressed during the course of arguments. Resultantly, the divorce petition was allowed and the marriage between the parties was ordered to have stood dissolved.

6. We have heard learned counsel for the appellant in the instant appeal and have also perused the file.

7. Learned counsel for the appellant contended that the appellant came to know about her being HIV positive only at the time of the tests conducted during her pregnancy and in fact, she did not suffer from this disease at the time of her marriage and rather, she contacted the same because of the use of the same syringe thrice a day by the sisters of the respondent, who were medical students, so as to help her to gain weight during her pregnancy and moreover, the appellant was responding to the

treatment being given to her for the said disease and therefore, the

impugned judgment and decree were liable to be set aside.

8. Learned Trial Court has observed in para no.8 of the judgment under challenge that the respondent himself was not HIV positive as was clear from his medical reports whereas, admittedly, the appellant was tested positive for HIV while undergoing the tests during her pregnancy. As mentioned in para 9 of this judgment, Dr. Deepak Jain (PW-4) also made depositions regarding her (appellant's) ailment and the relevant portion thereof is as under :-

“.....Dr. Deepak Jain, PW4 has also stated that according to record, the respondent is HIV positive. He further stated that at present, the patient is in stable condition with CD4 count of 696 with no opportunistic infections and she is presently on ART (Anti Retro Viral Therapy) which means she will remain on treatment. He further mentioned that universal precautions are required to be maintained for continuing relationship by the respondent with her husband. At present, there is no vaccine available for HIV and with ART, the disease can be contained but virus will remain in the body. CD4 count is not an absolute marker for disease

containment because infections can occur at any time and it can vary at any time depending upon various clinical conditions. There will always be a risk of transmitting infection in maintaining physical relations if one of the spouse is HIV positive, if universal precautions are not maintained. He in his cross-examination stated that CD4 count only indicates whether the patient is responding to the therapy or not. The respondent is responding to the treatment. It may however be pointed out that this witness has specifically mentioned that though the respondent is on ART but she will remain on treatment and virus will remain in her body which further means that the continuance of physical relationship between the parties can be harmful to the petitioner.”

9. As regards the contention qua the appellant getting infected with HIV on account of her having been administered the injections by her sisters-in-law with the same syringe, the learned Trial Court has further made the following categoric observations in para no.9 of the judgment :-

“The respondent has raised an allegation that sisters of the petitioner injected some medicine with the same syringe thrice a day due to which she developed this disease. However, it may be pointed out here that respondent has moved an application under Section 319 Cr.P.C. before Ld. Magistrate where FIR no.369 dated 30.09.2016 Police Station Shivaji Colony, Rohtak, is pending. The said application has been decided vide order dated 08.01.2018. In para no.5 of this order Ex.P12, it has been mentioned that the sisters-in-law gave injection which led to allergy and infection. The same version she repeated in her complaint as well as in her statement. However, the court found that there is no corresponding medical to that effect. Practically, if she had ever been subjected to any such incident that any infectious injection had been given, then she must have been treated in hospital or must have consulted a doctor but there was no record to that effect which made the

allegations to be vague statement. The application accordingly stood dismissed. In the present case also, the respondent has not led any evidence that she ever consulted any doctor in that respect, if she developed any allergy or infection. No medical record has been placed on file in this respect. Besides, if the sisters of petitioner had forcibly injected something to the respondent, she must have filed complaint about this, somewhere, but the respondent has not referred that she ever raised any complaint against them which means that only a false allegation has been raised by the respondent against her sisters-in-law. Even otherwise, there was no reason with the sisters of petitioner to inject some infectious substance to the respondent. Thus, considering this plea to be a false plea, same is ignored for the decision of this case.”

10. A Division Bench of this Court, in **FAO-M-324 of 2012** titled **Savitri vs. Jitender**, has upheld the findings of learned Trial Court to the

effect that HIV virus leads to AIDS which is a venereal disease and is sexually transmittable and so is communicable and therefore, the disease squarely falls within the ambit of Section 13(1)(v) of the Act.

11. In P. Ravikumar vs. Malarvizhi @ S. Kokila 2013 (4) RCR (Civil) 1004, the Madras High Court has also observed that where one spouse is suffering from HIV positive, the other spouse is entitled to get the decree of divorce. Similar observations were made by a Division Bench of Bombay High Court in Sunil Lakhotia vs. Pratime Lakhotia 2008(16) RCR (Civil) 27.

12. In view of the facts and circumstances as discussed in the preceding paragraphs, we are of the considered opinion that the findings returned by learned Trial Court do not suffer from any illegality, infirmity or perversity and hence, these do not call for any interference by this Court. Resultantly, the present appeal, being devoid of merit, stands dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

February 17, 2020
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.