

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-2741-2018 (O&M)
Date of decision: 21.02.2022

Dhiraj Jain ...Appellant

Vs.

Shobhini Gupta ...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Dhiraj Jain-appellant, in person.

Mr. Sunil Chadha, Senior Advocate,
with Ms. Swati Verma, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

The present appeal has been filed against the judgment and decree dated 28.02.2018 passed by the Additional Principal Judge, Family Court, Gurugram, whereby petition filed by Shobhini Gupta-petitioner (respondent herein) under Section 13 (1) (ia) of the Hindu Marriage Act seeking dissolution of marriage, has been allowed.

Marriage between the parties was solemnized on 16.04.2013. Out of this wedlock, no child was born. Both appellant and respondent are Government employees. On account of temperamental differences, they could not pull on together. Finally, respondent-wife filed a petition under Section 13 (1) (ia) of the Hindu Marriage Act for dissolution of their marriage on the ground of cruelty and harassment meted out to her. It was stated that the husband (appellant) always misbehaved with the wife and beat her publicly. He used to disturb the mother of petitioner-respondent, who was a diabetic and heart patient, by making phone calls to her. He used

to tell the wife that she could not bear a child. Hence, the petition.

Upon notice, respondent-husband (appellant herein) filed written statement taking preliminary objections with regard to concealment of material facts; petition being false, vexatious and not tenable. On merits, all the allegations levelled by the petitioner-wife were denied and prayer for dismissal of the petition was made.

From the pleadings of the parties, following issues were framed:

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 her case, petitioner-wife herself stepped into the witness box as PW-1 and examined Sanjay Sharma (PW-2), Manisha Sharma (PW-3), Raj Singh (PW-4), Sheela Gupta (PW-5), Surbhi Aggarwal (PW-6), PC Singal (PW-7) and Mohit Malik (PW-8). She also tendered into evidence photographs of marriage Ex.P1 to Ex.P6, identity card of petitioner Ex.P7, copy of email Ex.P8, copy of birth certificate of respondent Ex.P9, admission and discharge slip of petitioner's mother Ex.P10 to Ex.P14, copy of prescription slip Ex.P15, copy of FIR Ex.P16, copy of screen-shots of few answered calls Ex.P17, copy of prescription slip Ex.P18, copy of semen count report of respondent Ex.P19 and copy of signed mutual consent petition Ex.P20.

On the other hand, respondent-husband appeared into the witness box as RW-1 and examined Dr. Urvashi B. Singh, MD, Ph.D., Chief Tuberculosis Section, AIIMS as RW-2.

Family Court, after going through the evidence led by the

parties, allowed the petition and granted divorce to the wife on the following grounds:-

- (i) As per messages, Mark PA, the husband (appellant) was not able to satisfy the mental and sexual needs of the wife (respondent). In the messages/emails, Mark A, he himself admitted regarding his inability to perform sex. All these amounted to mental cruelty.
- (ii) Mr. Sanjay, a friend of husband, had accompanied the parties at the time of their honeymoon. The Family Court observed that once the husband (appellant) had admitted in his written statement that he did not like Mr. Sanjay as his good friend, then why he had gone with Mr. Sanjay and his wife for honeymoon. There was no explanation in this regard. Further, as per the written statement, the husband had admitted that he was a divorcee and previous honeymoon also took place at Manali. So, during this honeymoon trip he remained uncomfortable to fulfill the needs of the wife. It was unbelievable that in case, he was uncomfortable with Manali trip, then why he did not choose another place than Manali for the second honeymoon.
- (iii) The husband was involved in various other litigation with his previous wife, even after getting divorce from her.
- (iv) After the marriage, on the first night, the wife was compelled to sleep in the drawing room and the reason given was that it was a custom in their caste, where the couples were not allowed to sleep together on the first night. This

also amounted to mental cruelty.

(v)The husband had raised a doubt with regard to presence of Mr. Mohit Malik, Advocate, that he was present on each and every occasion. Mr. Mohit Malik appeared as PW-8 and he being an Advocate of long standing, was present in the office of the wife being skilled in Sales Tax cases. With these observations, the allegations levelled upon him were discarded by the Family Court. The mother of the wife was very old and diabetic and her maternal uncle lived at Moradabad. It was observed that there was nothing unnatural, if some reasonable person was made to intervene and tried to resolve the matter.

While allowing the petition, reference was made to the judgments passed in A. Jayachandra vs. Aneel Kaur, 2005 (1) Apex Court Judgments 318 (S.C.), Suman Singh vs. Sanjay Singh, II (2013) DMC 475 (DB) Delhi, K. Srinivas Rao vs. D.A. Deepa, Civil Appeal No.1794 of 2013 (decided on 22.02.2013) and Samar Ghosh vs. Jaya Ghosh, 2007 (2) Apex Court Judgments 154.

Heard.

In the present case, initially an application (CM-23789-CII of 2018) was moved for placing on record two original documents in order to establish procedural lapse while passing the impugned judgment. However, the said application was dismissed vide detailed order dated 13.05.2019. Thereafter, vide order dated 21.05.2019 passed in CMM-303-2018, applicant-husband was directed to pay the amount of Rs.15,000/- per month to the wife towards maintenance *pendente lite*, as she was under suspension.

The matter was referred for mediation, however, no amicable resolution could be arrived at between the parties.

On 19.08.2021, both the parties had appeared virtually. They were directed to appear before this Court physically on 10.09.2021. On the next date i.e. 10.09.2021, an attempt was made to resolve the matter amicably, but the same remained unsuccessful. On 14.10.2021, this Court gave a direction to the appellant to deposit the arrears of maintenance at the rate of Rs.15,000/- per month from the date of filing of the application i.e. 04.12.2018. The total arrears comes to about Rs.5,50,000/-, which has not been paid by the appellant to respondent-wife till date.

Mr. Dhiraj Jain-appellant has appeared virtually today and sought setting aside of the impugned judgment on the following grounds:-

- (i) The family Court, without going into the facts mentioned in the written statements filed by him, has wrongly given a finding that he (appellant) is a chronic litigant.
- (ii) The evidence given by his friend cannot be taken into consideration as before initiation of the proceedings, he was not on positive terms with his friend.
- (iii) The mother of the respondent-wife has deposed against her daughter and stated that he was not making any efforts to marriage work.
- (iv) The wife, in her petition, has not mentioned anything with regard to Mohit Malik and two official colleagues and they have been examined as witnesses beyond pleadings and the judgment given by the Family Court has been made without examining the provisions of Section 23 (1) (A) of the Hindu

Marriage Act, 1955.

The appellant has also referred to the judgments passed by Hon'ble the Supreme Court in Mukhtiar Singh vs. State of Punjab, 1995 AIR 686, Vishnu Dutt Sharma vs. Manju Sharma, Civil Appeal No.1330 of 2009 (decided on 27.02.2009), Swaran Lata Ghosh vs. H.K. Banerjee and another, 1969 AIR 1167. He has also referred to a judgment passed by the Delhi High Court in Naval Kishore Sehgal vs. Gurbachan Sehgal, MAT. APP. (F.C.) 120/2015 (decided on 09.09.2016), on the proposition that irretrievable breakdown of marriage is not a ground to grant the decree of divorce under the Hindu Marriage Act.

Mr. Sunil Chadha, learned senior counsel for the respondent, contends that the husband-appellant, in his cross-examination before the Family Court, had admitted himself that after getting divorce from his first wife-Shikha, he was litigating with her. With respect to the evidence given by his friend, Mr. Chadha refers to the cross-examination of Dr. Sanjay Sharma (PW-2), a friend of appellant-husband, where he admitted that he (PW-2) along with his wife Manisha Sharma (PW-3) had accompanied the parties to their honeymoon. Mr. Chadha, learned senior counsel for the respondent further stated that the grounds taken by the appellant in his written statement have been referred in detail by the Family Court in its judgment. In para 19 of the impugned judgment, the Family Court has observed that as per messages/emails Mark 'A', the husband had admitted regarding his inability to perform sex. In the written statement itself, he had mentioned that he did not like his friend Mr. Sanjay, but on his (appellant's) asking, he had accompanied him along with his wife to the honeymoon.

With regard to the statement given by the mother of respondent-wife i.e.

Sheela Gupta (PW-5), she has not deposed against her daughter in any manner. Finally, he argued that under Section 23 (1) (A) of the Hindu Marriage Act, the husband has not led any evidence to show, how respondent-wife had tried to take advantage of her own wrongs. The divorce has been rightly granted in favour of the wife keeping in view the law laid down in A. Jayachandra vs. Aneel Kaur, 1969 PLJ 516, Chanderkala Trivedi (SMT) vs. Dr. S.P. Trivedi, 1993 (4) SCC 232, Naveen Kohli vs. Neelu Kohli, 2006 (4) SCC 558, Samar Ghosh vs. Jaya Gosh, 2007 (4) SCC 428, K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 226, Smt. Suman vs. Subhash, 2015 (2) RCR (Civil) 267 and Sivasankaran vs. Santhimeenal, 2021 SCC OnLine SC 702.

Heard.

At the outset, with respect to the ground taken by the appellant, reference can be made to his cross-examination, which was conducted on 18.12.2017, relevant portion thereof is reproduced as under:-

“.....I got divorced from my first wife in the year 2008. It is correct to suggest that my first wife did not file any appeal against the divorce decree. Even after passing of divorce decree, my several cases went on with my first wife and her family. I had filed defamation complaint against her and her family members. I also filed a criminal case against them for recovering maintenance amount which had been paid by me to her. My litigation with them is still going on.....”

A perusal of the record of Family Court shows that divorce petition under Section 13 of the Hindu Marriage Act, filed by Smt. Shikha, first wife of appellant-Dhiraj Jain, was allowed vide order dated 09.05.2008. As per the said judgment, marriage of present appellant-Dhiraj Jain was solemnized with his previous wife Shikha on 26.06.2001. However, they separated on 15.11.2001. Thereafter, she filed the aforesaid petition under

Section 13 of the Hindu Marriage Act. At the time of cross-examination of Dhiraj Jain on 18.12.2017, it was admitted by him that litigation with his wife wife was still going on. From the date when he separated from his first wife till 18.12.2017, he was in litigation with her. He had filed a defamation complaint as well as criminal case against her first wife and her family members for recovering the maintenance amount. The said litigation was still going on. However, appellant-Dhiraj Jain has placed on record copy of complaint dated 08.08.2016 Ex.R10, which was made by respondent-wife Shobhini Gupta. She also sent a letter/application dated 08.08.2016 Ex.R11 to the SHO concerned, stating therein that she filed a complaint dated 08.08.2016 Ex.R10 against her husband. She did not want any alimony from her husband and only wanted divorce from him. It was further stated that he (Dhiraj Jain) could keep all her belongings/goods with him. Marriage of the parties was solemnized on 16.04.2013 and they separated in the year 2015. On 18.12.2017 also, the appellant was pursuing his litigation with his first wife. Even he was not ready to give divorce to his second wife Shobhini Gupta (respondent).

During the pendency of this appeal, the respondent-wife had made it clear that she did not want any permanent alimony from her husband. The respondent-wife has placed on record copy of petition under Section 13-B of the Hindu Marriage Act Ex.P20. This petition was filed by the parties jointly in May, 2015. With respect to this petition, the appellant states that the same was got signed by respondent-wife fraudulently.

Another fact, which is evident from the record, is that as per conversation Mark 'PA' between the appellant and the respondent, there was a reference that Dhiraj Jain had been taking steps to get himself

checked from a doctor. The appellant has not denied this conversation Mark 'PA' and in this backdrop, it would be cruel to expect her (respondent -wife) to lead a life of forcible marital relation. Hence, the finding given by the Family Court that the husband (appellant) was a chronic litigant, is not against the facts, which he himself admitted during cross-examination.

The appellant, when cross-examined on 18.11.2017, had admitted that he knows Sanjay Sharma since 1986 and Sunil Mittal since 1988. He admitted that Sanjay Sharma was mediator in their marriage and he had gone to Manali in his (Sanjay's) car. Dr. Sanjay Sharma (PW-2), during his cross-examination, admitted that on the request of appellant himself, he and his wife had accompanied the appellant (Dheeraj Jain) and his wife to their honeymoon. He further stated that he was aware that it was a second marriage of both the parties and still he accompanied them. He had taken them in his own car. Smt. Sheela Gupta (PW-5), who is mother of respondent-Shobhini Gupta, during her cross-examination denied that she used to feel that her daughter was at fault. She advised Shobhini that after sometime, the matter would be cooled down and she should be patient. She further stated that the appellant (Dhiraj Jain) used to say that the marriage would run on his will. There had never been any physical intimacy between the parties from the very beginning. She never said anything against her own daughter. Hence, this is not a ground to set aside the impugned judgment.

Before the Family Court, no evidence was led to show, how the respondent-wife had tried to take advantage of her own wrongs. The Family Court has referred to the messages/emails Mark 'A'. With respect to the evidence of Mohit Malik, it is clear that he being an Advocate, used to visit

the office of respondent with regard to the sales tax and excise work, which she was doing as an officer. He used to meet the respondent-wife on account of official work.

During the pendency of this appeal, an attempt was made for an out of Court settlement, which failed. It was expected that both the parties, being Class-1 officers in their respective departments, would move on in life. However, the appellant was adamant not to grant divorce to the wife and insisted for a patch-up.

Vide order dated 14.10.2021 passed by this Court, a direction was given to the appellant to deposit the arrears at the rate of Rs.15,000/- per month from the date of filing of the application for interim maintenance i.e. 04.12.2018. Interim maintenance was opposed by the appellant on the ground that respondent-wife was a Class-I officer and she could very well look after herself. Reference, at this stage, can be made to the judgment passed in **Minakshi Gaur vs. Chiranjay Gaur**, 2009 AIR (SC), where it has been held that even if, the wife is earning, the husband is bound to maintain her. This aspect is more important keeping in view that the wife was seeking divorce without any permanent alimony and it was the appellant, who had come up in appeal. Moreover, during the pendency of appeal, in case he wanted to patch-up with the wife, then he should also pay maintenance to her. With effect from 04.12.2018, arrears of maintenance came to about Rs.5,50,000/-, which the appellant has not paid till date. The only conclusion can be drawn is that he does not want to maintain his wife being a chronic litigant.

In the present case, the appellant after taking divorce from his first wife in the year 2008, is still litigating with her. With regard to the second

marriage with respondent-Shobhini, which took place on 16.04.2013, they are staying separately since 2015. It has been almost seven (07) years that they are separate. Despite the fact that the respondent-wife does not want any permanent alimony, he (appellant) is litigating with her after she has been granted divorce by the Family Court. In both the cases, after going through the facts, only conclusion can be drawn is that the appellant is a chronic litigant and non payment of arrears of interim maintenance, which comes to Rs.5.5 lakhs, would show that he does not want the respondent-wife to move ahead in life. Judgments referred to by the appellant would be of no help to him. By applying the ratio of the judgment passed in K. Srinivas vs. K. Sunita, 2014 (16) SCC 34 on the facts of the present case, this Court is of the view that the ground of cruelty, clubbed with the total breakdown of marriage, is sufficient to grant divorce to the wife. From the very beginning, marriage between the parties did not work out properly.

Accordingly, in view of the above discussion, this Court is of the view that the respondent-wife has been rightly granted divorce by the Family Court, Gurugram and no ground is made out to interfere therein. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, the present appeal is dismissed. However, the appellant is directed to pay the arrears of interim maintenance to the tune of Rs.5.5 Lakhs to the respondent-wife within a period of 30 days.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

21.02.2022
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No