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

FAO-M-322-2018 (O&M)

Date of Decision: 28.05.2024

HARSIMAR KAUR

...Appellant

Versus

TEJINDER SINGH @ MINTU

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present:- Mr. Sanjay Luthra, Advocate and
Mr. H.P.S. Dhawan, Advocate for appellant.

Mr. R.B.S. Chahal, Advocate and
Mr. G.S. Dhaliwal, Advocate for respondent.

SUDHIR SINGH, J.

The challenge in the present appeal is to the judgment and decree dated 12.09.2018 passed by learned Additional District Judge, Amritsar, whereby the petition under Section 12 of Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') filed by the respondent-husband has been allowed and marriage between the parties has been declared to be null and void by a decree of nullity.

2. The respondent-husband had filed the aforesaid petition, *inter alia*, asserting therein that the marriage between him and appellant-wife was solemnized on 20.04.2015 according to Sikh rites and that no child was born out of the said wedlock. It was further stated that the parents of the appellant-wife did not disclose that the

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appellant-wife was suffering from attacks of insanity and that on the very first night of the marriage, she got perplexed and her eyes became still due to her abnormality. It was further stated that the marriage could not be consummated and that after a short period, it came to light that the appellant-wife was taking heavy doses of medicines and when asked about it, she had disclosed that the same were meant for headache. It was further the case of the respondent-husband that the appellant-wife left the matrimonial house on 23.06.2015 at midnight and she could only be located with a great difficulty at the Golden Temple, Amritsar and again she repeated such act on 24.06.2015 at 05:00 PM, while leaving for Gurudwara Shaheedan Sahib. It was, thus, pleaded that such kind of abnormal behavior on the part of the appellant-wife had caused mental torture to the respondent-husband. It was further the case of the respondent-husband that the appellant-wife left matrimonial home on her own on 26.06.2015, and since then she had been living in her parental house. It was further alleged that the appellant-wife had lodged a false complaint with the police against the respondent-husband and his family members, but during the investigation it was found by the police that the appellant-wife was mentally sick and did not possess sound faculty of mind. It was further alleged that before marriage the appellant-wife remained under treatment in Uppal Neuro Hospital, Amritsar and her medical history disclosed that she was still suffering from an incurable disease.

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3. Upon notice, the respondent-wife appeared and filed her written statement, denying the allegations contained in the petition. However, it was asserted that the petition under Section 12 of the Act filed by the respondent-husband was a counterblast to the proceedings initiated by the appellant-wife under Section 125 Cr.P.C. and also under Section 12 of Protection of Women from Domestic Violence Act, 2005. It was further asserted that the appellant-wife was fit and fine and was not suffering from any ailment as was apparent from the fitness certificate dated 10.09.2015, issued by the Govt. Medical Officer. The appellant-wife had further levelled the allegations of demand of dowry against the respondent-husband and his family members.

4. On the basis of the pleadings of the parties, the following issued were framed by the learned Trial Court:

“1. Whether the marriage between the parties is voidable and liable to be declared as nullity under Section 12 of HMA?OPP

2. Whether the present petition is not legally maintainable? OPR

3 Relief.”

5. In evidence, the respondent-husband examined Parvinder Kaur as PW-1, Ramesh Kumar as PW-2 Daljit Singh as PW-3 and he himself stepped into witness box as PW-4, besides examine Dr. V. Subbalakshmi Kota as PW-5, Dr. Savinder Singh as PW-6 Dr. B.L.Goyal as PW-7, Rajesh Kumar as PW-8 and ASI Resham Singh as PW-9. On the other hand, the appellant-wife examined Jaspal Singh

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as RW-1 and she herself stepped into witness box as RW-2 and had also examined HC Major Singh as RW-3, Kulwinder Singh as RW-3, Surinder Singh as RW-4, Veeran Wali as RW-5 and Inderjit Singh as RW-6. She also led documentary evidence Ex.R36/A/1 to Ex. RW36/A3, Ex.R14 to Ex.R45. In rebuttal evidence, the respondent-husband tendered into evidence Ex.Z1 to Z4.

6. The learned Trial Court, after considering the rival contentions and the evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel appearing for the appellant-wife has vehemently contended that the learned Trial Court has failed to take into consideration that the petition under Section 12 of the Act filed by the respondent was a counterblast to the proceedings initiated by the appellant-wife under Section 125 Cr.P.C. and Section 12 of Domestic Violence Act. It is further submitted that the appellant-wife has led sufficient evidence on record that she was neither suffering from any ailments before the marriage nor after it, but the learned Trial court came to a wrong conclusion that the appellant-wife was suffering from insanity. It is further contended that PW-4 in his cross-examination avoided to give specific answer to the questions put to him asking about his marriage proposal, interaction with the appellant-wife and her family members before the marriage and afterwards during Ring Ceremony, Sagan Ceremony and other marriage functions. It is further argued that the distance between the houses of the parties was only about 50 meters in same street i.e. Gali

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Guru Nanak, Katra Karam Singh, Amritsar and they had been living together since their childhood and under such circumstances, it is not believable that the respondent-husband would not be knowing about the mental status of the appellant-wife. It is further argued that even if for the sake of arguments the factum of ailment of the appellant-wife is conceded, then also the petition under Section 12 of the Act filed by the respondent was not maintainable as the respondent-husband had been aware of the condition of the appellant-wife since her childhood and there was no substance in his plea that he came to know about it for the first time after the marriage of the parties. Accordingly, a prayer for setting aside the impugned judgment and decree has been made.

8. On the other hand, the learned counsel appearing for the respondent-husband, while defending the impugned judgment and decree, has contended that the appellant-wife is suffering from an incurable disease and, therefore, based on the evidence of the medical experts, examined by the respondent-husband, the learned trial Court has rightly declared the marriage between the parties as null and void. He has placed reliance upon a Division Bench judgment of this Court in Ajay Mehara Vs. Gauri, 2023(1) Law Herald (P&H) 504, to contend that appellant-wife is suffering from the mental ailment, which is though treatable yet not curable and it is to remain throughout the life of the appellant-wife and she cannot get rid of it.

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9. We have heard the learned counsel for the parties and have also gone through the impugned judgment and decree passed by learned Trial Court.

10. The issue that requires consideration by this Court is whether the impugned judgment and decree passed by the learned Trial Court, requires any interference.

11. As is discernable from the impugned judgment, the learned Trial Court found that though the appellant-wife had pleaded that her ailment was due to wrong medicines, yet she did not examine any medical expert in support of her plea. It was further found that on the basis of testimony of PW-5 Dr. V. Subbalakshmi Kota, PW-6 Dr. Savinder Singh, PW-7 Dr. B.L.Goyal, it was proved on record that the appellant-wife had been suffering from BPAD (Bipolar Affective Disorder Mania) (first episode) and OCD (Obsessive Compulsive Disorder). The relevant extracts from the judgment of the learned Trial Court, would read as under:-

“ 78. As far as allegations of the petitioner regarding mental condition of the respondent are concerned, as already discussed in preceding para in detail that the petitioner had examined three Doctors i.e. Dr. V. Subbalakshmi Kota as PW5, Dr. Savinder Singh as PW6, Dr. B.L.Goyal as PW7 who clearly proved that the respondent has been suffering from BPAD (Bipolar Affective Disorder Mania) (first episode) and OCD (Obsessive Compulsive Disorder). Even it has been clearly opined by medical experts that in such diseases patient usually becomes violent, abusive over active over talkative, cheerful etc. in Bipolar Affective Disorder Mania and in Obsessive Compulsive Disorder, patient usually shows recurrent intrusive thoughts which are irrational in

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nature. The patient, who suffers from Bipolar disease may become harmful to himself when they have manic episode. It had also been opined that these diseases are mostly of genetic in nature. The said diseases are not curable but only treatable.”

12. It was further found by the learned Trial Court that the ailment which the appellant-wife was suffering from was genetic in nature and in her testimony, she had admitted regarding taking of treatment from Doctor Uppal Neuro Hospital, and Mental Hospital, Amritsar, prior to her marriage with the respondent. It was, thus, found that the appellant-wife and her parents did not disclose the factum of ailment of the appellant-wife to the respondent-husband. Accordingly, the marriage between the parties was declared voidable and the same was annulled by a decree of nullity on this ground.

13. It was the stand of the respondent-husband that marriage between the parties was not consummated. The said fact was not disputed by the appellant-wife. The marriage between the parties was solemnized on 20.04.2015 and the divorce petition was filed on 02.12.2015 i.e. within one year of his coming to know about the ailment being suffered by the appellant-wife.

In ***R. Lakshmi Narayan v. Santhi***, (2001) 4 SCC 688, the Hon’ble Supreme Court, while examining the concept of voidable marriage, has held as under:-

“9. Section 5 provides that a marriage may be solemnized between any two Hindus if the conditions specified in the section are fulfilled. Amongst the other conditions stated therein in clause (ii) it is laid down that at

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the time of marriage neither party is incapable of giving a valid consent to it in consequence of unsoundness of mind or though capable of giving a valid consent, has been suffering from a mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children. The clause lays down as one of the conditions for a Hindu marriage that neither party must be suffering from unsoundness of mind, mental disorder, insanity or epilepsy and Section 12(1)(b) refers that any marriage shall be voidable and may be annulled if the marriage is in contravention of the condition specified in clause (ii) of Section 5. On a plain reading of the said provision it is manifest that the conditions prescribed in that section, if established, disentitles the party to a valid marriage. The marriage is not per se void but voidable under the clause. Such conditions in the very nature of things call for strict standard of proof. The onus of proof is very heavy on the party who approaches the court for breaking a marriage already solemnized.

10. An objection to a marriage on the ground of mental incapacity must depend on a question of degree of the defect in order to rebut the validity of a marriage which has in fact taken place. As noted earlier, the onus of bringing a case under this clause lies heavily on the petitioner who seeks annulment of the marriage on the ground of unsoundness of mind or mental disorder. The court will examine the matter with all possible care and anxiety.

11. Bearing in mind the principles which flow from a fair reading of the statutory provisions noted above we proceed to examine whether the appellant has succeeded in establishing the case for declaring the marriage null and void on the ground of mental incapacity of his wife at the time of marriage. Even accepting the findings recorded by the first appellate court which decided the case in favour of the appellant as correct then the position that emerges is that the respondent had been under treatment for some mental problem before the marriage;

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and that there was no cohabitation between the parties during the period of about one month during which they stayed together. On these findings can it be held that a case for declaring the marriage to be invalid under Section 12(1)(b) read with Section 5(ii)(b) has been established? It is not the case of the appellant that the respondent was incapable of giving valid consent to the marriage in consequence of unsoundness of mind at the time of marriage. From the facts found by the appellate court it cannot be held that the respondent has been suffering from a mental disorder of such a kind or to such an extent as to be unfit for marriage and procreation of children. To draw such an inference merely from the fact that the spouses had no cohabitation for a short period of about a month, is neither reasonable nor permissible. To brand the wife as unfit for marriage and procreation of children on account of the mental disorder it needs to be established that the ailment suffered by her is of such a kind or to such an extent that it is impossible for her to lead a normal married life. This is the requirement of the law as appears on a fair reading of the statutory provisions. The appellate court has also not specifically given such a finding. Merely giving a finding that the respondent was suffering from some mental disorder and she did not have cohabitation with her husband during the period they stayed together is not sufficient to comply with the condition prescribed under Section 5(ii)(b) of the Act. We deem it relevant to note here that the observations in the judgment of the trial court about the physical and mental condition of the respondent which have been noted earlier indicate the position that the requirements of Section 5(ii)(b) are far from satisfied from the materials placed by the appellant. In the circumstances the High Court cannot be faulted for having dismissed the petition filed by the appellant under Section 12(1)(b) read with Section 5(ii)(b) of the Act. The judgment of the High Court is no doubt far from satisfactory. The High Court has not formulated any question of law in the judgment which is a mandatory requirement under Section 100 CPC. The

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High Court has also not considered the relevant aspects of the matter other than fraud and misrepresentation about the mental condition of the respondent on the part of her parents at the time of the marriage. We have considered the submission made by learned counsel for the appellant to remit the matter to the High Court for fresh disposal. We however, in the facts as above, do not feel it expedient to do so. Our attention has not been drawn to any material on record which, if considered, would have tilted the balance in favour of the appellant. It is our considered view that on the facts and circumstances of the case and the materials placed on record, this is not a fit case for interfering with the judgment of the High Court in exercise of jurisdiction under Article 136 of the Constitution.”

14. If the facts of the present case are examined in the light of the law laid down by the Hon’ble Supreme Court in ***R. Lakshmi Narayan’s case (supra)***, it is to be seen whether the respondent-husband had been able to prove the mental incapacity of the appellant-wife. As noticed above, by way of medical evidence in the form of the testimony of three Doctors i.e. PW5-Dr. V. Subbalakshmi Kota; PW6-Dr. Savinder Singh and PW7-Dr. B.L.Goyal, it was proved on record that the appellant-wife was suffering from BPAD (Bipolar Affective Disorder Mania) (first episode) and OCD (Obsessive Compulsive Disorder). In their testimony before the Court, the said Doctors had clearly opined that in such kind of disease, the patient usually becomes violent, abusive overactive, over talkative, cheerful etc. It was further deposed by them that in Bipolar Affective Disorder Mania and in Obsessive Compulsive Disorder, the patient usually shows recurrent intrusive thoughts which are irrational in nature. It

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was further deposed by them that said disease is incurable, but treatable.

15. On the other hand, the appellant-wife did not lead any evidence to counter or disprove the evidence led by the respondent-husband.

16. Still further, another issue which arises before this Court is as to whether after having come to know about the ailment of the appellant-wife, the respondent-husband had cohabited with the appellant-wife. As per the stand of the respondent-husband, the marriage was never consummated. The said assertions were neither refuted nor controverted by the appellant-wife. This leaves us to conclude that having come to know about the ailment being suffered by the appellant-wife, the respondent-husband had filed the petition under Section 12 of the Act and there was neither any condonation nor any acquiescence on his part, regarding the concealment of the mental ailment of the appellant-wife. Nothing has come on record that prior to the marriage of parties, either the appellant-wife or her parents had ever disclosed the factum of the appellant's ailments to the respondent-husband or his family members.

17. The cases regarding nullity of marriage, requires strict proof. In the instant case, the burden of proof was on the respondent-husband and by leading the evidence of the medical experts, he has

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been able to prove that the appellant-wife was suffering from an incurable disease.

18. We, thus, find that the findings recorded by the learned Trial Court, do not suffer from any patent illegality or perversity. Therefore, there is no scope for any interference in the impugned judgment and decree.

19. No other point has been urged.

20. Resultantly, the instant appeal fails and the issue for consideration before this Court is decided in negative.

21. All pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

28.05.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No