

2024:PHHC:144058-DB



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

FAO-5137-2024 (O&M)

Date of decision: 04.11.2024

Randip Singh

....Appellant

Versus

Neha Thakur

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Satpreet Grewal Kapila, Advocate,
for the appellant.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment and decree dated 04.09.2024 passed by the learned Principal Judge, Family Court, Hoshiarpur, whereby the petition under Section 12(1)(b) of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the appellant-husband seeking decree of nullity of marriage, has been dismissed.

2. The brief facts of the case are that the marriage between the parties was solemnized on 12.08.2017, according to Hindu rites at village Bhawnal, Post Office Sariana, Tehsil Mukerian, District Hoshiarpur. No child was born out of the said wedlock. It was averred by the appellant-husband that on 22.08.2017, the respondent-wife suffered epileptic fits and became unconscious. It was a shock for the appellant-husband and his family members because the respondent-wife and her

mother did not inform them with regard to the said ailment before the marriage. When they asked the mother of respondent regarding the said act, she disclosed that the respondent-wife was suffering from the disease of epileptic fits and she was getting treatment from Dr. B.P. Singh at Mukerian, since 2008. As per the appellant-husband, a fraud had been committed upon them by the respondent-wife in connivance with her mother and the middleman. Thereafter, on 23.08.2017, the respondent-wife was medically examined by Dr. Harjit Singh, M.D. (Psychiatry), Civil Hospital, Dasuya and MRI 1.5 Tesla Brain was got done by Dr. Raj Kumar, MD Radio Diagnosis), who confirmed moderate cerebellar atrophy to respondent-wife. On 25.08.2017, mother of respondent-wife took her to the parental home. On the same day, the appellant-husband reported the matter to the police by moving an appropriate application to the D.S.P. Dasuya. It is the case of the appellant-husband that before solemnization of marriage, the factum of the aforesaid disease suffered by the respondent-wife was concealed from him and his family members.

3. Upon notice, the respondent-wife appeared and filed her written statement denying the allegations levelled in the petition. It was denied that the mother of respondent-wife had disclosed the appellant-husband and his family members that she was suffering from the ailment of epileptic fits and that she had been getting treatment from Dr. B.P. Singh, Mukerian since 2008. It was also denied that she was got examined by Dr. Harjit Singh, Civil Hospital, Dasuya and her MRI was conducted. Rather, it

was pleaded that from the very inception of marriage, she had suffered harassment, taunting, teasing and mental cruelty at the hands of the appellant-husband and his family members on account of bringing insufficient dowry. It was specifically pleaded that the appellant-husband had demanded gold ornaments and cash worth Rs.10 lakhs from the respondent-wife and when she showed her inability to fulfill his demands, she was given beatings by the appellant-husband. It was pleaded that on 25.08.2017, the appellant-husband and his family members gave severe beatings to the respondent-wife and thereafter, they turned her out of the matrimonial home. The matter was also reported to the police. Accordingly, a prayer for dismissal of the petition was made.

4. From the pleadings of the parties, the Family Court framed the following issues:-

1. Whether the petitioner is entitled to decree of nullity of marriage? OPP.
2. Whether the disease as claimed by the petitioner has been concealed by respondent before solemnization of marriage from the petitioner? OPP
3. Admittedly, whether the act and conduct of respondent caused cruelty to petitioner and petitioner is entitled for divorce on the ground of cruelty? OPP
4. Whether petition is not maintainable in the present form? OPR.
5. Relief.

5. In evidence, the appellant-husband himself appeared in the witness box as PW-3 and examined Dr. Harjit Singh, Psychiatrist, Civil Hospital, Dasuya, as PW-1, Dr. Hardeep Singh, Radiologist as PW-3 and HC Didar Singh as PW-4. Apart

from this, the appellant-husband tendered into evidence documentary evidence Ex.PA to Ex.PI; Ex.P1, Ex.P2 and Ex.P5. On the other hand, the respondent-wife herself appeared as RW-1 and placed on record copy of FIR bearing No.121 dated 22.08.2018 under Section 498-A, Police Station Dasuya.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the learned Family court dismissed the petition seeking decree of nullity of marriage.

7. Learned counsel for the appellant-husband has vehemently argued that the factum of the respondent-wife suffering from epileptic fits/attack was duly proved before the Family Court by examining PW1 Dr. Harjit Singh, Psychiatrist, Civil Hospital, Dasuya and PW-2 Dr. Hardeep Singh, Radiologist. It is further argued that it has come in the testimony of the said witnesses that the respondent-wife was suffering from the said disease. It is further contended that merely because the said witnesses nowhere stated that the respondent-wife had been suffering from epileptic fits or epilepsy disorder, is no ground to hold that the appellant could not prove on record the factum of the said disease. Still further, it is contended that the respondent-wife had initiated criminal proceedings against the appellant-husband and his family members by way of FIR No.121 dated 22.08.2018, under Sections 498-A and 406 IPC at Police Station, Dasuya, District Hoshiarpur and that in the said proceedings, the appellant and his parents had been acquitted by the trial Court vide its judgment dated 09.02.2023. Thus, it

is contended that in terms of the settled proposition of law, where the criminal prosecution launched by the wife culminates into the acquittal of the husband and his family members, the appellant was entitled to the decree of divorce as prayed for. It is further argued that in her testimony, the respondent-wife admitted that she had been taking medicine for her mental illness even prior to the marriage and thus, there was sufficient evidence on record to hold that the assertions made by the appellant-husband stood proved on record.

8. We have heard the learned counsel for the appellant-husband and have also gone through the impugned judgment and decree passed by the learned Family Court.

9. The only question that arises for consideration before this Court is as follows:-

“Whether the impugned judgment and decree passed by the learned Family Court requires any interference by this Court?”

10. It may be noticed that the appellant-husband had sought a decree of divorce under Section 12(1)(b) of the Act. The ground for the divorce was that the respondent-wife had been suffering from epileptic fits even prior to the marriage and the said fact had been concealed by her. In order to prove the factum of disease suffered by the respondent-wife, the appellant-husband had examined PW-1 Dr. Harjit Singh, Psychiatrist, Civil Hospital, Dasuya. He proved on record the OPD slip Ex.P1. The said witness had examined the MRI report of the respondent-wife, which showed the problem of old infarct with ensuing changes of gliosis in left middle frontal gyrus and it suggested of

‘Moderate Cerebellar Atrophy.’ The said witness had further deposed that he could not comment whether the problem was incurable or not and the same could be described only by the Neurologist. It was further found that the said witness nowhere stated that the respondent-wife had suffered epileptic fits or she was suffering from epilepsy disorder. PW-2 Dr. Hardeep Singh, Radiologist, had produced on record MRI report conducted by Dr. Raj Kumar. On the application of the appellant-husband, a Board of Doctors was constituted by the Senior Medical Officer, Hoshiarpur. The Board of Doctors was consisted of Dr. Raj Kumar, Psychiatrist and Dr. Neha Paul, Medical Specialist. The report of the Board of Doctors was proved on record as Ex.CX. It was found by the learned Family Court that the said Board of Doctors did not notice any significant finding and general physical examination of the respondent-wife was found to be normal. However, the examination of 2D MRI brain of the respondent-wife was suggestive of “diffuse cerebellar and vermian atrophy focal area of encephalomalacia seen with gliosis in left frontal cortex.” The IQ of the respondent-wife was found by the doctors as 98 and the range of normal person IQ is 90-100. Thus, it was found by the learned Family Court that the respondent-wife was never examined by any Neurologist to find out whether she had been suffering from the disease alleged by the appellant. It was yet further found by the learned Family Court that in her cross-examination, the respondent-wife deposed that she was taken to the Doctor on 23.08.2017 and was got checked up from Dr. Harjit Singh, MD (Psychiatry), Civil

Hospital, Dasuya, who had advised her MRI. The said MRI was got done by Dr. Raj Kumar. It was further found that the respondent-wife admitted that she used to take medicine for low BP from her father, who passed away in 2001 and that even at the time of marriage, she used to take the same medicine. She had further admitted that this fact was not disclosed by her to the appellant-husband before or after her marriage with him. Thus, the contention of the counsel for the appellant-husband that the respondent-wife had projected the problem of low BP in order to cover up her epileptic fits, was discarded by the learned Family Court and it was held that as the appellant had sought the decree of nullity on the ground of epilepsy, he was required to prove the same by leading cogent and convincing evidence. It was further found that every seizure disorder or fit was not epilepsy.

11. It was yet further found by the learned Family Court that the parties stayed together only for 13 days and the divorce petition was filed after 3-4 months of the marriage. It was also found that the appellant-husband deposed in his testimony before the Court that he had met the respondent-wife before solemnization of the marriage and that after marriage, the couple had gone to various places, including the parental home of the respondent-wife as well as religious places and that no incident had been quoted by the appellant-husband that he had noticed any abnormality in the respondent-wife. It was further found that the respondent-wife was examined in the Court and the Court also did not notice any abnormality in her activities.

It was further found that though the Court was not a medical expert, yet there was an opportunity to watch the activities and movements of the respondent-wife. The relevant extract from the judgment of the Family Court reads as under:-

“22. From the evidence led on file by the parties, it is proved that the petitioner had opportunity to meet the respondent and know physical and mental condition of the respondent and the petitioner himself admitted this fact in his statement that he had met the respondent before solemnization of marriage. It is also pleaded by the petitioner himself that immediately after the marriage, he along with respondent went to different places including the parental home of the respondent, as well as the religious places. There is no instance quoted by the petitioner that he found some abnormality with the respondent. Even otherwise the respondent was examined in the Court and Court also did not notice any abnormality in her activities. She has given answers very clearly to the questions posed by the lawyer of the petitioner. Concededly, the Court is not a medical expert, but there was an opportunity to watch the activities and movement of the respondent. The respondent has also fulfilled the marital relationship by cohabiting with the petitioner and it is nowhere pleaded by the petitioner that there was no cohabitation between the parties. Thus, the marriage is not vitiated by fraud or concealment of facts as pleaded. The petitioner also failed to prove that there was no cohabitation between the parties. Onus of proof was very heavy on the petitioner, which he failed to discharge. From the facts brought on record, it cannot be held that the respondent had been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and procreation of children. To brand the wife as unfit for marriage and procreation of children on account of her disease, which is not prove, it needs to be established that the disease suffered by her is of such a kind or such an extent that it is impossible for her to lead a normal married life.”

12. As noticed above, the appellant had sought a decree of divorce under Section 12 (1) (b) of the Act. The emphasis of the appellant-husband was on the fact that the respondent-wife had been suffering from epilepsy and she had concealed this fact from him. However, on the basis of the evidence of the Doctors on record, it was found by the learned Family Court that the appellant-husband had failed to prove on record that the respondent-wife was suffering from any such disease. The only disease, which was noticed by the Medical Board was “diffuse cerebellar and vermian atrophy focal area of encephalomalacia seen with gliosis in left frontal cortex.”

13. Still further, the concerned Doctor, in his testimony before the Court, stated that he could not state as to whether the respondent-wife was suffering from epilepsy disorder and the same could only be told by the Neurologist. Admittedly, in the instant case, no Neurologist was examined by the appellant-husband. Moreover, the learned Family Court has also noticed that every kind of seizure disorder is not epilepsy. Yet further, the learned Family Court while examining the respondent-wife as a witness before the Court, did not find any abnormality in her behaviour or activities.

14. It is settled law that a party seeking a decree of nullity of marriage on the grounds as mentioned in the petition, must prove the same by way of leading cogent and convincing evidence. However, in the instant case, as noticed above, the appellant-husband has miserably failed to prove the factum of

incurable disease allegedly being suffered by the respondent-wife.

15. Thus, after careful perusal of the impugned judgment of the learned Family Court, we find that no case is made out to interfere with the findings recorded by it. It could not be shown that any evidence has been misread or not taken into consideration by the learned Family Court while passing the impugned judgment.

16. No other point has been urged.

17. In view of the above, we do not find any illegality or perversity in the findings recorded by the learned Family Court. Accordingly, finding no merit in the present appeal, the same is hereby dismissed

18. All pending applications(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

04.11.2024
Ajay Prasher

-	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
-	<i>Whether reportable:</i>	<i>Yes/No</i>