

Punjab-Haryana High Court

Smt. Anita vs Har Bhagwan on 21 May, 2003

Equivalent citations: (2004) 136 PLR 643

Author: N Sud

Bench: N Sud

JUDGMENT N.K. Sud, J.

1. Appellant-wife has filed this appeal under Section 28 of the Hindu Marriage Act, 1955 (for short 'the Act') assailing the decree of divorce granted against her under Section 13 of the Act.

2. Respondent-husband had filed a petition under Section 13 of the Act alleging that the appellant was of unsound mind and was suffering from mental disorder of such a kind and to such an extent that he could not reasonably be expected to live with her. She was also charged with having treated him with cruelty and of deserting him.

3. The case set up by the husband was that he was married with the appellant on 30.11.1992 at Sohana, District Gurgaon. They resided together and cohabited till February, 1995. Thereafter, the appellant has been residing at her father's house at Sohana and has not joined him as she prefers to stay there instead of her matrimonial home. In support of the allegations about the mental ailment of the appellant, it was stated that right from the beginning her behaviour was strange. She would suddenly stop taking meals for 2/3 days at a stretch, lock herself in a room, keep on sleeping continuously and would not talk to anyone nor attend to any household work at all. Her father was informed about her behaviour who in turn told that she sometimes suffered from, bouts of depression. He took her to Sohana in the month of February, 1993 and sent her back after a few days. It is further alleged that even thereafter there was no substantial improvement in her mental condition as she did not interact with the family members and used to become unconscious. She would stop talking and start staring in the blank and would not respond despite being called. She was also neglecting the household affairs. During this period, she became pregnant and her father took her to Sohana in the month of October, 1993 for the purpose of delivery. She gave birth to a female child on 20.11.1993. She returned to her matrimonial home with her child in December, 1993. It is alleged that even thereafter there was no improvement in the mental condition of the appellant who used to lock herself in a room for days together without caring to feed herself or the child. Her father took her to Sohana in February, 1994 from where she returned after a month in March, 1994. Thereafter also, has mostly stayed at her parental house at Sohana and returned to the matrimonial home in December, 1994. It is alleged that on 15.1.1995 her condition became serious and she started behaving in a strange manner. She locked herself and her young daughter in a room for two days continuously. She let her daughter cry repeatedly without paying any heed to her. She ultimately opened the door after a lot of persuasion and it was found that she was taking some drugs and tablets. On being confronted, she is stated to have revealed that she had been suffering from mental disorder for many years and had been taking medicines constantly. She is also stated to have admitted that she had been undergoing treatment for mental unsoundness at various places much prior to her marriage and that she had secretly got treatment at Sir Ganga Ram Hospital, New Delhi in February, 1993. The respondent contacted her father and complained to him of not disclosing the appellants' mental condition prior to her marriage. It was further claimed that the father begged

forgiveness and admitted that he had concealed the said fact in order to marry her off. He assured that she was undergoing treatment and was improving slowly. He also assured that in case she does not recover fully, they can obtain divorce by mutual consent. It was with this understanding that the appellant returned to her father's house in February, 1995 and took away all her clothes and ornaments, etc. Thereafter, the respondent and his father kept enquiring about her progress and were told that the treatment was going on. In the month of March, 1996, the respondent along with his father and some other respectable persons of Pataudi claim to have visited Sohana and requested the appellant's father to get her medically examined to see as to whether she had fully recovered or not. Her father wanted the treatment to go on for some more time. Same story is stated to have been repeated on subsequent visits in July, 1996, December, 1996 and February, 1997. The respondent and his father pressed the father of the appellant to obtain the decree of divorce as promised as her mental ailment was incurable. It was claimed that the father of the appellant refused to agree to the divorce unless a sum of Rs. 1 lac was paid to him. Respondent alleged that this demand was highly exorbitant in view of the fact that the marriage had been solemnised in a very simple manner on account of death of his maternal uncle a week prior to the marriage and only 8/10 family members had gone in the marriage party and only clothes and ornaments were given by the father of the appellant as dowry to her which had also been taken away by her. The respondent claimed that on account of these circumstances, he suffered from mental cruelty and had been deserted for more than two years.

4. In the written statement, the appellant denied the allegations. She claimed that she had been turned out of her matrimonial house in February, 1995 for not fulfilling her husband's illegal demands for dowry. She denied that she was suffering from bouts of depression and confined herself in a room. She rather took the stand that her husband and his family members kept her without food for several days and locked her in a room in order to coerce her to fulfil their illegal demand of money and other valuable articles. She claimed that she had not become unconscious on account of her illness but on account of going without food continuously for 2/3 days. She claimed that it was because of the cruel treatment of her in-laws that she became mentally tense and had to be treated at Sir Ganga Ram Hospital. She categorically denied suffering from any mental disease. She further claimed that she was always ready and willing to live with her husband, if she was given due respect, honour and status by them. She also controverted the claim of the husband that the marriage was attended only by 8/10 persons. According to her, there were more than 60 persons at the marriage.

5. The District Judge, Gurgaon vide the impugned judgment and decree dated 7.2.2001 has accepted the allegations of mental illness and cruelty and has granted the decree of divorce on these grounds.

6. Mr. Sudhir Aggarwal, learned counsel for the appellant, stated that a divorce under Section 13(1)(iii) of the Act could not be granted merely on the ground that the appellant had sometimes undergone treatment for mental tension or had sometimes behaved in an abnormal manner. What has to be proved under this provision is that the appellant has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the respondent cannot reasonably be expected to live with the appellant. He pleaded that there was no such finding recorded by the District Judge. He pointed out that in order to resolve the conflicting claims of the parties and to end the controversy, the District Judge had got a

medical board constituted at Pandit B.D. Sharma Post Graduate Institute of Medical Sciences, Rohtak, which examined the appellant and submitted its report (Exh.P1). The Board was of the opinion that the "patient Anita is having moderate mental retardation (1.52)". He further referred to the testimony of Dr. S.C. Bhargav (PW6), one of the members of the Board which sent the report. He pointed out that in his cross-examination, he had clearly stated that the appellant had not shown any features during her stay in the Ward which could suggest that she may turn violent. He further stated that the appellant's living with her child, husband or any other family members would not be dangerous to them. He also stated that mental retardation is not as such an illness but because of low intelligence the patient may have disabilities in many spheres like education, vocation and working. In his re-examination, on a suggestion put by the counsel of the husband, he did not rule out the possibility of the appellant turning violent at a later stage as according to him such occurrence can happen even with a perfect human being with complete I.Q. Counsel for the appellant, therefore, contended that the respondent had failed to prove the ingredients of Clause (iii) of Section 13(1) of the Act.

7. Dealing with the charge of cruelty, the learned counsel contended that merely because the appellant had levelled certain counter charges about demand of money and dowry, does not amount to cruelty. She had not lodged any criminal complaint before any competent court. He contended that where a husband seeks divorce by making unfounded allegations, it is not unusual for the wife to project her grievance in the written statement. For this purpose, he placed reliance on the observations of this Court in *Harjit Singh v. Gurdeep Kaur*, (2001-2)128 P.L.R. 434.

8. Mr. Hari Om Sharma, appearing on behalf of the respondent, supported the judgment of the District Judge. He placed reliance on the decision of this Court in *Smt. Sona v. Karambir*, (1995-2)110 P.L.R. 24, in which divorce was granted to the husband as the wife was found to be a case of mental retardation of moderate range with I.Q. of 38 only. He contended that in the present case also, the appellant was suffering with exactly the same ailment. He also placed reliance on another judgment of this Court in *Vinod Kumar v. Major Surinder Mohan*, 1984 H.L.R. 508, in which divorce has been granted to the husband as the wife was found to be suffering from schizophrenia.

9. In support of his contention that leveling of unfounded charges tantamount to cruelty which is a valid ground for divorce, he placed reliance on the following judgments :-

- i) *Narenddra Kumar Gupta v. Smt. Indu*, 2002(2) R.C.R. (Civil) 32. (Rajasthan High Court);
- ii) *Smt. Kiran Kapoor v. Sh. Surinder Kumar Kapoor*, 1982 H.R.L. 379 (Delhi High Court);
- iii) *Krishna Rai v. Chuni Lal Gulati*, 1981 H.L.R. 16 (Punjab and Haryana High Court); and
- iv) *Shobha Rani v. Madhukar Reddi*, A.I.R. 1988 Supreme Court 121.

10. I have heard of the counsel for the parties and perused the relevant record. I have also gone through the authorities cited before me.

11. The first question for consideration is as to whether the respondent has been able to prove that the appellant suffers from a mental disorder of the kind which entitles him to get his marriage dissolved under Clause (iii) of Section 13(1) of the Act, which read as under:-

"(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent."

A Plain reading of the above provision shows that in order to get the marriage dissolved on this ground, it had to be proved that the appellate has been incurably of unsound mind or that she has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the respondent could not be expected to live with her. On a specific query from the Bench, learned counsel for the respondent conceded that there was no such finding. In the absence of such a finding the requirements of Clause (iii) above cannot be said to have been met. The learned District Judge in order to resolve the controversy, had referred the matter to the Board constituted by a premier medical institute i.e. Pt. B.D. Sharma Post Graduate, Institute of Medical Sciences, Rohtak. All that the Board opined was that the "patient Anita is having moderate mental retardation (1.Q.52)". There is not even a murmur about her being of unsound mind or suffering from any mental ailment or disorder. This fact is further fortified from the statement of Dr. S.C.Bhargav wherein he had categorically stated that the appellant had not shown any features to suggest that she may turn violent. He also testified that moderate retardation is not as such an illness but a case of low intelligence of the patient. He had further stated that the appellants' living with her child, husband or any other family members would not be dangerous to them. It is, therefore, clear that none of the ingredients of the above Clause (iii) of Section 13(1) of the Act are satisfied. In fact, on re-examination, a suggestion was put to Dr. S.C. Bhargav about the possibility of the appellant turning violent at a later stage. In reply, it was stated that the possibility could not be ruled out as this possibility exists even in the case of a perfect human being with complete 1.Q. The respondent cannot draw any support from the decision of this Court in Smt. Sana's case (supra). In that case, a Board of three doctors of the Medical College and Hospital, Rohtak, was constituted which, after admitting the wife in Psychiatric Ward, opined that she fell under Moderate Range of Mental Retardation and her unsoundness of mind was incurable. It was further found that she could not discharge her marital obligations. Dr. P.K. Paliwal, one of the members of the Board, was examined and he categorically stated that her condition is incurable. From her statement also, it was found that she did not know the distinction between the name of her sister-in-law and name of the village and she also admitted that she did not understand what was right and what was wrong. She gave totally incorrect and irrational answers to the questions posed to her. The Court, therefore, observed that her behaviour was abnormal and she was unable to discharge the marital obligations. She had lived with the husband for 3/4 days and even during that period her behaviour was abnormal, The details of abnormal behaviour were admitted by the wife. On the other hand, in the present case, the 1.Q. has been found to be 52 and there is a categorical statement by the doctor that she only has low 1.Q. and does not suffer from any mental ailment much less of in-curable nature. It also stands proved that this condition does not pose any danger to anyone if she starts living with her child and husband or any other family members. Thus, I am of the view that the respondent is not entitled to the decree of divorce under Clause (iii) of Section 13(1) of the Act. The findings of the District Judge

in this behalf are reversed.

12. I am also of the view that no case of cruelty on the part of the appellant has been proved so as to enable the respondent to have the marriage annulled. A perusal of the record shows that the cruelty which had been alleged earlier in the divorce petition related to the behaviour of the appellant connected with her unsoundness of mind. It was only on the basis of the written statement filed by the appellant that a case of cruelty was sought to be made by alleging that unfounded allegation of demand of dowry constituted an act of cruelty. We have to consider this matter in the light of the circumstances of the case. It was a case where the husband had filed a petition levelling serious allegations of unsoundness of mind against the wife. It is on this provocation that in the written statement, the allegations of maltreatment on account of demand for dowry had been levelled. It is not a case where the appellant had filed a criminal complaint against the respondent on such allegations. The observations of this Court in Harjit Singh's case (supra) would squarely support the stand of the appellant. Reference in this behalf may be made to para-17 of the judgment, which reads as under"-

"17. With regards to the litigation filed by the respondent, I can only say that every action has a reaction. If the husband had gone to the extent of seeking divorce from a Hindu wife by making unfounded allegations, why the wife should remain behind. We have seen in our judicial experience that in such like cases criminal litigation under Section 406, IPC, quasi-criminal litigation under Section 125, Cr.P.C. and the petition under Section 9 of the Act, are invariably filed by the wife, when the husband files a petition for divorce."

The case of the appellant is on a much better footing. As already noticed, she had only made allegations in the written statement and had not initiated any criminal litigation on that score with the respondent. When a husband files a petition for divorce on the basis of false allegations, similar reaction from the wife in the written statement is nothing unusual. Thus, the question as to whether the charges levelled in the written statement amount to cruelty or not has to be examined from a human angle. In Sobha Rani's case (supra), the Apex Court observed that in matrimonial cases, the Court is not concerned with ideals in family life. The Court has only to understand the spouses concerned as nature made them and consider their particular grievance. The Court referred to the following observations of Lord Reid in *Gollins v. Gollins*, (1963)2 All.E.R. 966 (972):

"In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman."

The Court also referred to the following observations of Chandrachud, J. (as the then was) in *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*, A.I.R. 1975 S.C. 1534 at p. 1541:-

"The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court, for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

The matter, therefore, has to be examined in this background.

13. None of the authorities relied upon by the learned counsel for the respondents advance his case as the same are clearly distinguishable on facts. In Narendera Kumar Gupta's case (supra), the petition for divorce on the allegations of cruelty was filed by the husband after the wife lodged a report with the police and a case under Section 498-A of the Indian Penal Code was registered against the husband who had to obtain bail. The wife received all her household goods through the police. However, after investigation, the police submitted the final report with the observations that no case had been made out against the husband at all. It was in this context that the husband had alleged cruelty in his divorce petition.

14. In Smt. Kiran Kapoor's case (supra) also, the proceedings under Section 107/150 of the Code of Criminal Procedure had been initiated against the husband at the instance of the wife in which the husband was ultimately discharged. She had also levelled serious allegations about threat to her life from her husband and had submitted a representation of the Lt. Governor as also to some other Government officer and political functionaries.

15. In Krishna Rani's case (supra) as well, the divorce petition had been filed by the husband after a criminal complaint had been filed by the wife and on the basis of the said report, the husband had been arrested and proceedings under Section 107/150 of the Code of Criminal Procedure initiated.

. Reference to the decision of the Apex Court in Shobha Rani's case (supra) is totally misconceived as the Supreme Court was dealing with the question as to whether the demand of dowry amounted to cruelty so as to enable a wife to obtain divorce on this ground. The District Judge appears to have misread the judgment as he has observed that demand of dowry entitles a 'husband' to get decree of divorce.

view of the above, I find that the trial Court has fallen into an error in granting divorce in favour of the respondent on the ground that the appellant is a lady of unsound mind and is guilty of causing mental cruelty to the respondent.

Accordingly, the appeal is allowed and the judgment and decree dated 7.2.2001 is set aside.