

Punjab-Haryana High Court

Krishna Kumari vs Ashwani Kumar on 19 August, 1996

Equivalent citations: II (1997) DMC 616

Author: S Saksena

Bench: S Saksena

JUDGMENT Sarojnei Saksena, J.

1. Appellant-wife has filed this appeal under Section 28 of the Hindu Marriage Act, 1955 (in short, the Act) against the judgment and decree of the Matrimonial Court by which her divorce petition filed under Section 13 of the Act was dismissed on October 17, 1995.

2. The uncontroverted facts are that the appellant was married to the respondent on September 27, 1990, as per Hindu rites at Ambala City. They lived together till November 26, 1990. Since then they are living separately.

3. In the divorce petition, the appellant-wife pleaded that even on the day of the marriage the behaviour of the respondent towards her was cruel as he demanded Rs. 50,000/- saying that her father has not spent any money on her marriage. After that demand some amount was given to the respondent by the appellant. Once she was pushed from the stairs, thereby she sustained injuries on her foot, but she was not taken to any doctor. Two days thereafter the respondent and his sister came to the parents of the appellant and insulted them. The appellant is working in the Insurance Company. She joined her duty on November 3, 1990. When she returned home late due to Mandal Commission's riots, respondent's family fanned the rumour that she had run away. She was forced by the respondent to take a loan for purchasing a scooter for him. She was mercilessly beaten on November 25, 1990. She tried to lodge a report on November 26, 1990, against the respondent and his family members. She was turned out of the matrimonial home on November 26, 1990. She reached her parental home and on December 4, 1990, she lodged a report against her husband and his mother, which was registered by the police on December 28, 1990. Thus, she claimed divorce on the grounds of cruelty and desertion.

4. Husband-respondent in his reply denied all these allegations of cruelty, desertion, demand of dowry etc. According to him, the appellant herself was not ready to live with the respondent and wanted a divorce. She lodged a false report against him and his mother under Sections 406 and 498-A, IPC.

5. Issues were framed by the Matrimonial Court. Both the parties adduced their evidence.

6. The Matrimonial Court held that the appellant-wife has failed to prove that she was treated with cruelty by the husband -respondent or was deserted by him. Hence her divorce petition was dismissed on October 17, 1995.

7. During the pendency of this appeal, on July 29, 1996, the parties filed a joint petition under Section 13-B of the Act read with Section 151, CPC for converting the proceedings under Section 13 of the Act to proceedings under Section 13-B of the Act. In this petition they have alleged that due to

temperamental differences, they have separated. The appellant-wife filed a petition under Section 13 of the Act, which was dismissed on October 17, 1995. The wife has preferred the aforesaid appeal against that judgment and decree. During the reconciliation proceedings of that appeal, both the parties have arrived at a compromise, which is annexed as Annexure A-1. The parties are living separately since November 26, 1990. There is no issue out of this wedlock between the parties. They have settled that the husband would pay a sum of Rs. 25,000/- to the wife in full and final settlement of all her claims against the husband-respondent.

8. Parties statements were recorded on that very day to verify whether this petition is submitted by them with their free Will and consent, without any force, coercion or undue influence. Both the parties deposed on oath that they have agreed to obtain divorce by mutual consent and they have signed the compromise Annexure A1, after understanding its contents. Wife admitted that she has received Rs. 25,000/- from her husband in full and final settlement of her claims against him. She also admitted that she has got FIR No. 631 registered against the husband on December 28, 1990, under Sections 406/498-A, IPC. She agreed that she would get this FIR quashed by the High Court. Husband has filed Criminal Misc. No. 13269-M of 1996 under Section 482, Cr. P.C. for quashing this FIR.

9. Both the Counsel pray that decree of divorce be granted on the basis of the compromise Annexure A-1 filed by the parties in the Court, in support of which they have already given their statements. They also argued that the parties have entered into this compromise without any undue influence or coercion. They argued that the parties were married on September 27, 1990. They lived together only till November 26, 1990. Since then they are living separately. Many attempts have been made by both the sides for reconciliation. Even when the divorce petition was pending before the Matrimonial Court, an attempt was made for reconciliation, but with no result. After about six years of living separately, they have decided that they should obtain divorce by mutual consent. They also argued that considering the age-group of the parties, it is in their interest if divorce is granted to them immediately instead of waiting for six months, as is required under Section 13-B(2) of the Act. Both the Counsel argued that if divorce is granted to them without losing this time, the parties may enter into a fresh matrimonial alliance and can resettle in their lives. Thus their broken homes can be re-established. In support of their arguments, they have placed reliance on *Sukesh Bhatia v. Anita Bhatia*, 1995(2) HLR 457; *Naveen Bansal v. Seema Bansal*, 1995(2) HLR 529; *Ved Kumari v. Ramesh Chander @ Subash*, 1992(2) HLR 141; *Jai Bhagwan v. Sushila @ Chanda*, 1995(2) HLR 531; *Surinderjit Singh v. Gurdeep Kaur & Anr.*, 1992(2) HLR 218; *Naresh Kumar v. Smt. Sarla*, 1992(2) HLR 449; *Madan Lal v. Smt. Nirmal Kanta @ Lalit*, 1990(1) HLR 168; *K. Omprakash v. K. Nalini*, 1987(2) HLR 230; *Jagroop Singh v. The General Public*, 1981 HLR 269; *Jagmohan Ahuja v. Smt. Sudesh*, 1979 HLR 303; *Smt. Nirmal Devi v. Sat Pal*, 1984 HLR 475.

10. In *Naveen Bansal's* case (*supra*) a Single Bench of this Court granted divorce under Section 13-B of the Act, waiving the period of six months. In that case the wife received Rs. 3 lacs as permanent alimony and agreed to get her complaint quashed, which she lodged under Sections 406/498-A, IPC and under Dowry Prohibition Act.

11. In Ved Kumari's case (supra) another Single Bench of this Court held that the parties are living separately for the last more than one year and there is no likelihood of any reconciliation for their living together. Considering the facts, the Single Bench held that it will be of no use to keep misapplication pending for statutory period of six months as contemplated by Section 13-B(2) of the Act as the litigation between the parties, is pending for a period of over four years and they have not been able to reconcile to live together during this period inspite of efforts of both sides to do so. Hence, period was waived and divorce was granted.

12. In Surinderjit Singh's case (supra) parties were living separately for more than six years. Husband filed a divorce petition, which was dismissed. When his appeal was pending before the High Court, parties filed a petition under Section 13-B of the Act and prayed that the period of six months be waived off. Husband paid Rs. 25,000/- in lumpsum to the wife in full and final satisfaction of her claims. The learned judge held that in his opinion the parties have reached such a stage where their living together has become impossible and it is a broken marriage. It will be in the interest of both the parties if application for grant of divorce by mutual consent is allowed.. Hence the divorce under Section 13-B of the Act was granted, waiving off the period of six months.

13. In Naresh Kumar's case (supra) on identical facts, another Single Bench of this Court allowed the petition under Section 13-B and waived off the period of six months under Section 13-B(2) of the Act. In that case also the parties were living separately for six years. Husband paid Rs. 21,000/- to the wife in respect of her claims.

14. In Smt. Nirmal Devi's and Jagmohan Ahnja's cases (supra) also petition under Section 13-B of the Act was allowed and period was relaxed.

15. A Division Bench of Andhra Pradesh High Court in K. OmParkash's case (supra) held that the provisions of Section 13-B(2) of the Act are directory. There provisions do not fetter on the powers of the Appellate Court to grant instant decree of divorce. The Appellate Court is competent to grant instant decree of divorce without reference to the time limit prescribed under this sub-section. In that case marriage took place between the parties on February 19,1978. Since January, 1980 they were living apart. They observed :

"However, a petition filed for divorce by consent under Section 13-B of the Hindu Marriage Act is required to be kept in abeyance for a minimum period of six months. This is in sharp contrast with a petition for divorce by consent under Special Marriage Act which is liable to be kept in abeyance at least for one year. This liberalising trend of law in the matter of granting divorce by consent cannot be lost sight of by Courts in interpreting that Section. But even the Clause (2) of Section 13-B requires a Court not to pass a decree for divorce before six months of time lapses and after 18 months of time passes from the date of filing of such a petition for divorce by mutual consent. This is the last hope of the Legislature for saving the marriage. The intention of the Legislature is to provide a minimum period of six months for rethinking of the parties. If the above timetable fixed by Section 13-B(2) of the Hindu Marriage Act is applied to the present application made by the parties in this case on 12th July, 1985 we have to adjourn this case till January, 1986 for passing a decree for divorce under that section, notwithstanding the fact that we are of the opinion that there is no

chance of reconciliation between the parties who have been living away from each other for the last 4 Vz years and are today most anxious and ready to obtain such a decree here and now. That situation raises somewhat an important legal question as to the meaning which we should attribute to Section 13-B(2) of the Hindu Marriage Act. That question is whether the Legislature intended to Section 13-B(2) of the Hindu Marriage Act should be treated as mandatory provisions of law or the Legislature intended that section to be treated merely as a directory provisions of law. We have already noticed the language of Section 13-B(2). On first impression it is not impossible to hold Section 13-B(2) to be mandatory. As a mandatory provision of law calls for its pound of flesh and requires to be complied strictly and it is not being satisfied with offerings of mere substantial compliance of its commands, we will have to adjourn this matter for six months and postpone the deliverance to the parties from this deadlock by that period of time. It is well settled proposition of law that a statutory provision though mandatory in form, can yet be treated as directory in substance. The question then arises whether there is anything in the text for Section 13-B(2) or its context or purpose or design that calls for Section 13-B(2) being interpreted as directory. In our opinion, there are weighty reasons warranting the reading of Section 13-B, Clause (2) as directory. In that context, we must first call attention to the design of the law expressed in its liberalising tendency of providing relief to the parties on the basis of their mutual consent from their broken marriages. We must remember that this relief is granted by bringing about a profound alteration in the concept of a Hindu Marriage from that of a sacrament to a contract. By that alteration law has definitely set its fact against forcible perpetuation of the statutory matrimony between unwilling part- ners. Next, we must note that this six months' time fixed by Section 13-B(2) is no rule relating to the jurisdiction of the Court to entertain a petition filed for divorce by consent. That question of jurisdiction is dealt with by Section 13-B(1) of the Act and must be strictly complied with Section 13-B(2) is a part of mere procedure. A procedural provision must be interpreted as a handmaid of justice in order to advance and further the interests of justice and not as a technical rule. Above all we should note that if Section 13-B(2) is read as a mandatory provision and as applicable to the exercise of matrimonial jurisdiction by the Appellate Courts also, Section 13-B(2) becomes totally unworkable. According to the literal reading of Section 13-B(2) the Courts cannot pass consent decree of divorce beyond 18 months' period from the date of its filing."

They further held :

"For all the above reasons, we are of the opinion that Section 13-B(2) of the Hindu Marriage Act should be read as directory only. Section 13-B(2), no doubt cautions the Courts of its duty to fight the last ditch battle to save the marriage; but when the Court is fully satisfied, on the basis of the proved facts, that in the interests of justice of the society and the individuals marriage tie should be put as under immediately. Section 13-B(2) does not impose any fetter on the powers of the Court to grant instant decree of divorce. At any rate, we are clearly of the opinion that the time table fixed by Section 13-B(2) does not apply to an Appellate Court. The great Telugu poet Vemana said that the broken iron can be joined together, but not broken hearts. Parties have been living apart for long and their wedlock has now virtually become a deadlock. Chances of reunion had completely faded away. In these circumstances, we think it just and proper to grant a decree of divorce straightaway. Accordingly, we pass a decree of divorce declaring the marriage between the appellant and the respondent as dissolved with immediate effect."

16. In Madan Lal's case (supra) a Division Bench of this Court also considered such facts. Husband-Madan Lal filed a petition under Section 13 of the Act, which was allowed. Respondent-wife filed an appeal before the High Court, which was allowed by a Single Bench on April 30, 1984. Husband-Madan Lal filed LP A before the Division Bench. During the pendency of the LPA, the parties agreed to obtain a decree of divorce by mutual consent under Section 13-B of the Act, in view of their living separately for a period of 10 years. They filed a joint petition with a prayer that the original divorce petition filed by the husband may be treated as petition under Section 13-B of the Act. They also gave their statements to that effect in the Court. The Division Bench held that since the parties have been litigating since 1980, have not been able to reconcile, it will be futile to allow a period of six months before passing a decree of divorce as provided under Section 13-B(2) in view of the amendment. Thus, the petition under Section 13-B was allowed and period of six months was waived.

17. In Sukesh Bhatia's case (supra) a Division Bench of this Court had an occasion to consider such a situation. In that case the parties were living separately for a long period. The Division Bench held that their marriage is irretrievably broken inspite of all efforts for reconciliation and they have agreed that ex-parte decree of divorce between them be converted into a decree of divorce by mutual consent. Considering these aspects the Division Bench dispensed with the requirement of six months' notice and by its order dated March 1, 1995, converted ex-parte decree of divorce into a decree of divorce by mutual consent on the terms and conditions contained in the agreement of divorce reproduced therein.

18. This very Division Bench again decided such a matter on May 2, 1995, in Jai Bhagwan's case (supra). In that case the parties were married on November 1, 1987. They started living separately since May 14, 1988. Husband filed divorce petition under Section 13 of the Act on August 30, 1990, on the grounds of cruelty and desertion on the part of the respondent-wife. His petition was dismissed on May 3, 1994. His appeal was pending before the High Court. Attempts for reconciliation were made. During the reconciliation proceedings on March 29, 1995, the parties agreed to settle their disputes/claims and dissolve their marriage by a decree of divorce by mutual consent on payment of Rs. one lac to the respondent-wife in full and final settlement of all her claims. The Division Bench held that the parties are residing separately for the last more than half a decade. It is a case of irretrievable broken marriage. Hence it would be consistent in the interest of justice to dispose of the matrimonial dispute expeditiously as envisaged by legislation. They observed :

"We are fully satisfied that for granting the relief of decree of divorce by mutual consent to the parties, there is no impediment/disability, from which the parties suffer. In view of the large number of adjournments given it is obvious that the parties have neither connived nor condoned any act of desertion complained of.

4. Keeping in view the hardship, long protracted litigation inter se the parties and their having placed on the record a compromise deed marked 'X' for decree of divorce by mutual consent, the marriage between the two has become unworkable because of irreconcilable differences. We are satisfied that the parties are entitled to a decree of divorce by mutual consent in terms of

compromise deed mark 'X'."

Resultantly, a decree of divorce by mutual consent in terms of the compromise was granted.

19. Lately, in *Matnta Sabharwal v. Ravinder Kumar Sabharwal*, FAO No. 46- M of 1995, decided on April 22, 1996, a Division Bench of this Court again had an occasion to consider such facts. In that case also the respondent-husband filed a petition under Section 9 of the Act in the Matrimonial Court, which was allowed. Wife filed appeal against that judgment and decree. During the pendency of the appeal, the parties filed a petition under Order 6, Rule 17, CPC praying conversion of petition filed under Section 9 of the Act into a petition under Section 13-B of the Act. In the amendment petition, the parties averred that they are temperamentally different and have mutually agreed to dissolve the marriage. They appended their joint affidavits also in support of the petition. This petition was allowed. They also made a prayer that period provided under Section 13-B(2) of the Act be waived and decree of dissolution of marriage be granted at that very stage. The Division Bench referred to the judgment of the Apex Court in *Sureshta Devi v. Om Parkash*, AIR 1992 S.C. 1904. It also considered the judgments of this Court in *Harcharan Kaur v. Nachhattar Singh*, AIR 1988 P&H 27; *Smt. Krishna Khetarpal v. Satish Lal*, AIR 1987 P&H 191; *Lalit Kumar v. Sushma Sharna*, 1995(1) PLR 255 and *Niranjan Kumar v. Vecna Rani*, 1995(1) All India Hindu Law Reporter 123 (Pb. & Hry.), and held that in view of the above decisions it must be held that the Court cannot pass a decree of divorce before the expiry of six months counted from the date of the presentation of a petition under Section 13-B of the Act. They observed that the above-referred two judgments *Lalit Kumar* and *Niranjan Kumar*, (supra) have to be read as confined to the facts of those cases and cannot be read as laying down any proposition of law regarding interpretation of Section 13-B of the Act. Thus, they held that the period of six months prescribed under Section 13-B(2) of the Act is mandatory and the Court can pass a decree of divorce only after the expiry of the period of six months counted from the date of filing of the petition under Section 13-B(1) of the Act.

20. The facts of *Sureshta Devi's* case (supra) were different. In that case the parties filed a petition under Section 13-B(1) of the Act for obtaining divorce by mutual consent before the Matrimonial Court. Within six days of the presentation of the petition, the wife withdrew her consent. The point arose whether a party can unilaterally withdraw consent. Some orders were passed by the Matrimonial Court—ultimately the petition filed under Section 13-B(1) of the Act was dismissed by the District Judge, but on appeal the High Court of Himachal Pradesh granted divorce decree on the basis of that petition, holding that a spouse who has given consent to a petition for divorce cannot unilaterally, withdraw the consent and such withdrawal, however, would not take away the jurisdiction of the Court to dissolve the marriage by mutual consent, if the consent was otherwise free. The matter went to the Apex Court. The Apex Court held :

"From the analysis of the section, it will be apparent that the filing of the petition with mutual consent does not authorise the Court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum is obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be a party to the joint motion under Sub-section (2). There is nothing in the section

which prevents such course. The section does not provide that if there is a change of mind it should not be by one party alone, but by both."

Their Lordships further observed :

"What is significant in this provision is that there should also be mutual consent when they move the Court with a request to pass a decree of divorce. Secondly, the Court shall be satisfied about the bona fides and the consent of the parties. If there is no mutual consent at the time of the enquiry, the Court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the Court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.

Sub-sec t5 on (2) requires the Court to hear the parties which means both the parties. If one of the parties at that stage says that "I have withdrawn my consent", or "I am not a willing party to the divorce", the Court cannot pass a decree of divorce by mutual consent. If the Court is held to have the power to make a decree solely based on the initial petition, it negates the whole idea of mutuality and consent for divorce. Mutual consent to the divorce is a sine qua non for passing a decree for divorce under Section 13-B."

The Apex Court affirmed the view taken by the Kerala High Court in JFC.I. Mohanan v. Jeejabai, AIR 1988 Kerala 28, by this Court in Harcharan Kaur v. Nachhattar Singh, AIR 1988 Pb and Haryana 27, and by Rajasthan High Court in Santosh Kumari v. Virendra Kumar, AIR 1986 Rajasthan 128, wherein they held that it is open to one of the spouse to withdraw the consent given to the petition at any time before the Court passes a decree of divorce.

21. Thus, it is apparent that whole of the judgment of the Apex Court rests on this premise whether either party can withdraw his or her consent before the petition filed under Section 13-B(1) of the Act is accepted by the Court and in that background the provisions of Sections 13-B(1) and (2) are interpreted and it is held that when a petition is filed before the District Court, the Court is required to wait for six months minimum and 18 months maximum and after holding further enquiry and being satisfied that the parties have given their consent without any fear or undue influence, then to pass a decree of divorce on the basis of mutual consent.

22. If from the facts and circumstances of the case, the Court comes to a conclusion that the marriage is irretrievably broken - it has virtually become a deadlock - and there is hardly any scope for reconciliation or for any other type of rethinking the Court is competent to grant a decree of divorce on the basis of their mutual consent.

23. In Sandhya Rani v. Kalyanram Narayanan, 1994 Supp (2) Supreme Court Cases 588, the Apex Court has again considered such a petition filed by the parties. Their Lordships held :

"....It is not disputed that the parties are living separately for the last more than three years. We have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. The parties have made joint request for mutual

divorce. The written request by the parties has been placed on the record. In order to do complete justice between the parties, we are inclined to grant decree in divorce on the following agreed terms."

Thus, the petition filed under Section 13-B of the Act was allowed and decree of divorce was granted.

24. Section 13-B(l) lays down when a joint petition is laid before the District Judge alleging that they have been living separately for a period of one year or more; that they have not been able to live together and that they have mutually agreed that the marriage be dissolved. This provision is introduced in 1976 by amendment. The purpose of this provision is to give speedy relief to the parties, if for long they are living separately and there is no possibility of their living together, then their just volitional act should be respected and divorce be granted to them.

25. Legislature has contemplated that if by moving such a petition they have knocked the door of the District Judge's Court, it is required that they should be given a reasonable time for reflection and rethinking to consider the pros and cons of divorced life, to take assistance of their relations and friends to make an attempt for their reconciliation. But if the spouses are litigating for the last many years, many futile attempts have already been made by both fine parties to come under the same roof to lead a harmonious, loveable, peaceful marital life, then in the second inning of their litigation, if after being tired of these litigation bouts, they submit to the jurisdiction of the Appellate Court and make a humble prayer that they are living separately for long, they cannot live together, so by their mutual consent they have decided to obtain divorce, if at that juncture, this relief is not granted to them, it means that soul of the provision is sacrificed for the form only.

26. Legislature has given this right to such spouses even when they are living separately for one year or more, but if for years together they are living separate, are not able to rejoin each other, virtually they have already saped their marital tie, they only want a judicial recognition of that. If at that juncture they are made to wait for six months more, they will be forced to carry the pillory of marriage for long six months with no purpose. When they are fed up with their marital disputes and are trying to take their necks out of this noose, this freedom should not be denied to them.

27. Further, while accepting such petitions Court should be vigilant to see that parties have consented freely for mutual divorce. They have not acted under some duress, misrepresentation, force or fraud. In the backdrop of Indian society, which is virtually male dominated, the woman folk is likely to be a prey to all these tactics. But in this case there is no such possibility. The parties were married on September 27,1990. They lived together only upto November 26, 1990. Since then they are living apart. Wife filed petition under Section 13 of the Act on May 22, 1992. She lodged a complaint under Sections 406/498-A, IPC against the husband and she has now accepted Rs. 25,000/- from her husband in full and final settlement of all her claims and has also agreed that her complaint be quashed. Therefore, in my considered view the parties have given their consent freely for obtaining divorce by mutual consent. Thus, it is apparent that there is no violation of the spirit of the statute when marital discord has otherwise been brought to surface in Matrimonial and Criminal Courts both, leaving out any chance of collusion between the parties so as to play a fraud on the statute. Collusion being out of picture and litigation between the parties having remained rife for

more than four years, justifies the grant of divorce to the parties under the spirit of Section 13-B of the Act, though not in accordance with its letter. No Court can shut its eyes to the reality of the situation. These two human beings have wrecked their lives in mutual acrimony. At both the levels i.e. in the Matrimonial Court as well as in this Court efforts for reconciliation were made, but they remained abortive. During those reconciliation proceedings, the parties arrived at this solution with a view to resettle their lives. Now they look to the Court to grant them relief. Under these circumstances, if they are made to wait for six months, that will defeat the spirit of the provision itself. This period of six months is provided to give a chance to the parties for reconciliation, but in this case that chance is lost for they themselves have filed such a petition as their desperate last move to seek peace and harmony in life. In my considered view, it should not be denied to them. Now if they want to break their matrimonial bond right now, they should be allowed to do so.

28. Thus, considering all the facts and circumstances of the case, the petition is allowed. Period of six months is waived and a decree of divorce on the basis of mutual consent is granted to the parties with immediate effect. A copy of the decree be furnished to both the parties free of costs.