
(1987) 01 P&H CK 0086

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters patent Appeal No. 774 of 1984 and Civil Miscellaneous No. 3896 of 1986

Surjit Singh		APPELLANT
	Vs	
Joginder Kaur		RESPONDENT

Date of Decision: Jan. 13, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 151
- Hindu Marriage Act, 1955 - Section 13(1), 13B, 13B(2)

Hon'ble Judges: H.N. Seth, C.J; Ujagar Singh, J

Bench: Division Bench

Judgement

Ujagar Singh, J.

Surjit Singh, present appellant filed this petition u/s 13(1)(iii) of the Hindu Marriage Act, 1955 for dissolution of his marriage with the respondent alleging that the parties were married on 3rd December, 1978 according to "Anand Karaj" ceremony and thereafter they lived as husband and wife at Ludhiana and a son was born out of their wedlock on 3rd April, 1980 at Jalandhar, who is alive and is with the respondent he further alleged that the respondent being incurably of unsound mind or at least has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent, he could not reasonably be expected to live with her. The respondent-wife resisted the petition. The Matrimonial Court after appreciating the evidence produced by the parties decided that the mental disorder of the respondent was of intermittent type and was of such a kind and to such an extent that the appellant could not reasonably be expected to live with her and with these findings a decree of divorce by dissolution of marriage was passed.

2. The respondent-wife filed F.A.O. No. 194-M of 1982 and it came up for hearing before the learned Single Judge. The learned Single Judge found it extremely difficult to rely on the statements of witnesses to return a verdict of insanity or unsoundness of mind of the respondent and about the tape recording of a conversation between the parties being in

question answer from leaving an impression as if the lady, whose voice was recorded was subjected to some sort of examination and the whole conversation being in one continuous running form was disbelieved. So far as the medical evidence was concerned, the learned Judge found their evidence far from all the standard or requirement to record a conclusion that the respondent has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the appellant-husband either cannot reasonably be expected to live with her. Ultimately the appeal was allowed and the judgment and decree of the Matrimonial Court was set aside dismissing the petition of the appellant.

3. In this L.P.A. the appellant has challenged the findings of the learned Single Judge. During the pendency of this L.P.A. an application was filed on 28th September, 1986 jointly by the parties seeking an amendment of the original petition under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 so as to convert the original application into a petition u/s 13-B of the Hindu Marriage Act for a divorce by mutual consent. This application came up for hearing on 7th October, 1986 when it was adjourned to 21st October, 1986 at the request of the Learned Counsel for the parties. On that date this Court directed both the parties to appear on 24th November, 1986 but this case could not be taken up before 7th January, 1987. Statements of both the parties have been recorded and we feel satisfied from the joint petition under the said Section by both the parties as well as from their statements that the parties have been living separately for a period of about six years and they have not been able to live together. We are further satisfied that they have mutually agreed that the marriage should be dissolved. This amended petition relates back to the date of the original petition, and therefore, a requirement of Sub-section (2) of Section 13-B of the Hindu Marriage Act, 1955 is satisfied. We are further satisfied that they have mutually agreed that the marriage should be dissolved. This amended petition relates back to the date of the original petition, and therefore, a requirement of Sub-section (2) of Section 13-B of the Hindu Marriage Act, 1955 is satisfied. We are further satisfied that the consent for mutual divorce has not been obtained by force, fraud or undue influence. We therefore, accept this L.P.A. Judgment of the learned Single Judge is automatically set aside and the parties are granted divorce. No cost.