

Amarjit Kaur Vs Bhupinder Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 11, 2006

Acts Referred: Constitution of India, 1950 " Article 142

Hindu Marriage Act, 1955 " Section 13B, 23

Penal Code, 1860 (IPC) " Section 406, 498A

Citation: (2007) 3 CivCC 229 : (2007) 146 PLR 534 : (2007) 1 RCR(Civil) 834

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Vinod K. Sharma, J.

The petitioner by way of present revision petition has challenged the order dated 1.9.2006 passed by the learned

Additional District Judge, Karnal, vide which the application moved by the petitioner for waiving /condoning the statutory period of six months for

grant of mutual divorce u/s 13-B of the Hindu Marriage Act (for short the "Act") has been declined.

2. The parties were married on 9th April, 2000 according to Hindu rites and ceremonies. However, no issue was born out of the wedlock. Later

on due to indifference in thinking and different attitude, the parties could not adjust with each other and they decided to seek divorce by mutual

consent and filed a joint petition u/s 13-B of the Act for dissolution of marriage on 24th July, 2006. Their statements were recorded on 25th July,

2006 and period of six months was given to rethink about reconciliation. The said six months's period is to expire on 25.1.2007.

3. The petitioner thereafter moved an application alleging therein that the father of the petitioner lodged FIR No. 344 dated 11.8.2000 under

Sections 406 and 498-A of Indian Penal Code in Police Station, Assandh, District Karnal. The said matter was subsequently comprised between

the patties. Thereafter another Criminal Misc. Petition No. 801/M of 2001 titled as Tej Kaur and Ors. v. State of Haryana was filed before this

Court in which proceedings were stayed and, therefore, it was pleaded that the marriage is irretrievably broken and that all the disputes have been

settled by the parties vide compromise dated 17th of July 2006. It was further claimed that there was no hope of reconciliation. Thus a prayer was

made for condoning the period of six months so as to grant a decree of divorce by mutual consent. However, the said application has been

dismissed by the learned Additional District Judge observing that there were chances of reconciliation as the present application was moved after

one month of filing of the petition for divorce and, therefore, it was not appropriate to waive off six months's statutory period. It was further

observed that if the Panchayat can settle the dispute arising out of a criminal case then it can also persuade the parties to live amicably as husband

and wife. It was further held that the period of six months has been provided to the parties to rethink over the matter and settle their dispute.

Therefore, the application was dismissed.

4. Mr. Sanjiv Gupta, learned Counsel for the petitioner by placing reliance on the judgment of the Hon'ble Supreme Court in the case of Anjana

Kishore v. Puneet Kishore, (2002) 10 SCC 194 contended that it was open to the Family Court to dispense with the need of waiting of six

months which is otherwise required by Sub-section (2) of Section 13-B of the Hindu Marriage Act. The operative part of the judgment relevant to

this case reads as under:

In view of the developments which have taken place during the pendency of proceedings in this Court, we decline to transfer the case from the

Family Court at Bandra, Mumbai to the Family Court at Saharanpur. We, however, direct that as agreed to by learned Counsel for the parties, a

joint petition shall be filed by the parties before the Family Court at Bandra, Mumbai for grant of divorce by mutual consent. Terms of compromise

as filed before us shall also accompany the joint petition. An application for curtailment of time for grant of divorce shall also be filed along with the

joint petition. On such application being moved the Family Court, may, dispensing with the need of waiting for six months, which is required

otherwise by Sub-section (2) of Section 13-B of the Hindu Marriage Act, 1955, pass final order on the petition within such time as it may deem fit.

This direction we are making under Article 142 of the Constitution, as looking at the facts and circumstances of the case emerging from pleadings

of the parties and disclosed during the course of hearing, we are satisfied of the need of making such a direction to do complete justice in the case.

The parties shall present themselves before the learned Presiding Officer, Family Court at Bandra, Mumbai on 17.9.2001 when the learned

Presiding Officer shall take further appropriate steps.

5. Learned Counsel for the petitioner thereafter placed reliance on the judgment of the Hon'ble Delhi High Court in the case of Abhay Chauhan v.

Ms. Rachna Singh 2005(4) R.C.R. 820 to contend that a period of six months can be condoned under the following circumstances:

- (a) the maturity and comprehension of the spouses;
- (b) absence of coercion/intimidation/undue influence;
- (c) the duration of the marriage sought to be dissolved.
- (d) absence of any possibility of reconciliation;
- (e) lack of frivolity;
- (f) lack of representation or concealment;
- (g) the age of the spouses and the deleterious effect of the continuance of a sterile marriage on the prospects of re-marriage of the parties.

6. Learned Counsel for the petitioner also referred to the Division Bench judgment of this Court in the case of Gurpinder Kaur Sashi Vs. Ravinder

Singh Sahsi, to contend that even though the waiting period u/s 13-B is mandatory with an object to give a chance of reconciliation provided by the

Legislature. However, in the case where the parties have been litigation since long on issue of divorce itself and there is no more possibility of their

rehabilitation despite intervention of their relations, then period could be condoned. However, in the said judgment, it was noticed that matrimonial

dispute between the parties was pending for more than six months. Learned Counsel for the petitioner also placed reliance on the judgment of this

Court in the case of Smt. Chander Kanta v. Mohinder Partap Dogra 2003 (3) R.C.R. 72 wherein it has been held as under:

9. The admitted position is that the parties lived as husband and wife only for a very brief period i.e. from 19.10.1985 to 31.3.1986 which works

out to about six months only. Thereafter, there has been no resumption of cohabitation rather there has been litigation between them. Now the

parties have mutually decided to dissolve the marriage by a decree of divorce. The question that arises for consideration is whether the waiting

period of six months as provided u/s 13-B(2) of the Act can be dispensed with. A Division Bench of this Court in Krishna Khetarpal Vs. Satish

Lal, held that if the circumstances warrant, the Matrimonial Court can dissolve a marriage by a decree of divorce between the two Hindus on the

basis of compromise entered into between the parties during the pendency of the divorce petition without strictly following the procedure

prescribed by Section 13-B(2) of the Act, but on satisfying itself of not only the requirements of Section 23(1)(c) of the Act, but also of the

specifically applicable Section 23(1)(bb) of the Act. The ratio of said judgment is that during the pendency of a petition the waiting period of six

months can be waived where the parties had been litigating for quite some time and having agreed to separate mutually, it would be futile to

prolong their agony by waiting for a further period of six months before passing the decree of divorce. However, the Court is to satisfy itself that

the requirements of Section 23(1)(bb) and (c) of the Act are complied with. Therefore, the provisions of Section 23(1)(b) and 23(1)(c) of the Act

may be noticed which read as under:

23. Decree in proceedings.- (1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that-

(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and

(c) the petition (not being a petition presented u/s (1) is not presented or prosecuted in collusion with the respondent.

11. In the case in hand, the parties stated on oath that they were entering into the settlement amongst themselves of their own free will and desire

and without any undue pressure or coercion from anybody. The parties have been litigating since 1996 and they have been living separately since

31.3.1986. Therefore, I am satisfied that the consent given by either party is not occasioned by force, fraud or undue influence. In the

circumstances, the parties have not colluded even with each other to file the present petition. Therefore, in my view, the waiting period of six

months before passing a decree, in the facts and circumstances of the case, can be safely dispensed with.

7. In the background of the law referred to above, it would be noticed that in the present case the parties are litigating on the criminal side since

2000 and the matter has been settled by intervention of the Panchayat by way of a compromise between the parties in which it has also been

settled that the parties would get divorce by mutual consent.

8. Mr. Ajit Sihag, learned Counsel appearing for the respondent also admitted that there was no coercion, intimidation or undue influence on the

parties for getting the divorce. It may also be noticed that the marriage between the parties, was performed on 9.4.2000 and the parties till date

have not reconciled themselves and the marriage has been totally broken down. There is no possibility of reconciliation. It may further be noticed that

keeping in view the age of the parties. The continuation of a sterile marriage would have deleterious effect on the prospects of re-marriage of the

parties. Thus it was a case, where the trial Court could have waived off the period of six months so as to enable the parties to settle independently.

9. Accordingly this revision petition is allowed, the impugned order is set aside and the learned Additional District Judge, Karnal, is directed to

proceed with the matter after waiving off the statutory period of six months as fixed u/s 13-B(2) of the Act.