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(2003) 05 P&H CK 0199

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. 13-M of 1991

Satish Kumar Puri — APPELLANT

Vs

Shashi Bala — RESPONDENT

Date of Decision: May 14, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 144, 2(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 10, 11, 12, 12(1), 13

Citation: (2004) 1 ILR (P&H) 356 : (2003) 3 RCR(Civil) 723

Hon'ble Judges: S.S. Saron, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; Hari Mittal, for the Respondent

Final Decision: Allowed

Judgement

S.S. Saron, J.
The present appeal has been filed against the judgment and decree dated 23rd November, 1990 passed by the learned District Judge, Hoshiarpur, whereby the petition u/s 13(l)(iii) of the Hindu Marriage Act (Act for short) filed by the Appellant Satish Kumar Puri for the grant of divorce has been dismissed.

2. The facts of the case are that the marriage between the parties was solemnized at Hoshiarpur on 7th December, 1984 according to Hindu religious rites. After the marriage, the Appellant found the Respondent to be mentally up set and unfit and suffering from mental disorder. She remained restless and sluggish in the house. He complained to her parents regarding her condition, who posed that she had not slept for days that is why she is restless and she will be alright after few days. In fact, she was mentally deranged and this fact has been concealed from him at the time of marriage. It is stated that the Respondent has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the Appellant cannot reasonably be expected to

live with her. She was mentally ill before her marriage and even now her mental condition is the same. During the time the Respondent lived with the Appellant, she had mental fits and used to loose all her senses and became violent and abusive. She used to beat whosoever came in her way. It was also contended that the eye sight of the Respondent is very weak and had this fact been brought to his notice before marriage, he would not have performed the marriage. It is further stated that the parties had attended a marriage at Delhi and on the way back, they stayed at Chandigarh. The mother of the Respondent was also with them. They left the Appellant at the house where they stayed and the Respondent and her mother went to P.G.I, for treatment. It transpired that she had been getting treatment for mental illness before and after the marriage. Besides, she got herself treated from Dr. Sarbjit Singh from Jalandhar for her mental ailment. She was also treated at Amritsar under a fake name. She was admitted at P.G.I, and got treatment from the Psychiatry Department. This fact was also concealed from the Petitioner. It is stated to be a case of acute maniac excitement. She has been suffering continuously from this disease and has caused mental as well as physical cruelty to the Appellant. The Respondent lived for 10/12 days in the house of the Appellant and thereafter a month or so in the house of her parents and the state of affairs went on till July, 1985 when the parents of the Respondent came and took her to their house. There is no issue out of the wedlock between the parties. On these grounds, the Appellant had prayed for dissolution of the marriage between the parties by a decree of divorce.

3. The Respondent put in appearance and filed her written statement. The material aspects regarding the marriage being solemnized are admitted. However, regarding allegations of her mental condition, it is stated are baseless, false and have been intentionally levelled. It is denied that the Respondent remained restless and sluggish in the house. It is also denied that the Appellant complained to her parents as alleged. It is stated that the Respondent was never mentally deranged nor she ever suffered from any mental illness. It is also denied that while she lived with the Appellant, she had mental fits. It is stated that she never lost her senses, nor she ever became violent, nor abused or gave beatings to others as alleged. There is absolutely no occasion for any apprehension in the mind of the Appellant that his living with the Respondent would be dangerous to his life, limb or health as alleged. It is rather stated that in fact for two months after the marriage, the relations between the parties were very cordial and they resided together and cohabited. Thereafter, they became strained as the parents of the Appellant were not happy with the dowry given by the Respondent''s parents and she used to be taunted on one pretext or the other. On certain occasions the Appellant openly demanded colour television and refrigerator from the parents of the Respondent. The maltreatment by the Appellant and his parents towards the Respondent was quite apparent from the fact that despite promising to take her back he for the reasons best known never came to take her back. It is in May, 1985 that the parents of the Appellant allowed Respondent to go to Delhi to attend the marriage of a near relation. On return the Appellant approached the father of the Respondent and requested that she should be taken to their house. A Panchayat was convened which requested the Appellant to keep the Respondent nicely

at his house but the Appellant openly stated that he was not going to keep the Respondent as his wife as he wanted to marry some other girl and ultimately the Respondent was turned out from the matrimonial home in her wearing clothes only in July, 1985. All articles of dowry were kept by the Appellant. In this manner, it is stated that the Appellant is guilty of cruelty and desertion and was trying to take the benefit of his own wrong by filing the petition for divorce. It was also contended that the petition filed by the Appellant for divorce is a counter blast to a petition u/s 125 Code of Criminal Procedure filed by the Respondent, in which the Appellant had been ordered to pay interim maintenance to her. The allegations of the eye sight of the Respondent being weak are also denied. She is wearing glasses and this fact was known to the Appellant even before marriage. It is denied that the Respondent went for any check up or for any treatment to the P.G.I. as alleged. The Respondent suffered no mental ailment. Therefore, there is no question of getting any treatment. No fact was concealed at the time of the marriage. It is also denied that the Respondent treated the Appellant with cruelty rather the position was otherwise and the Appellant was guilty of cruelty and desertion.

4. Replication was filed by the Appellant in which the averments made in the written statement are denied and those made in the petition for the grant of divorce have been stated to be correct.

5. The learned trial Court on the basis of these pleadings framed the following issues:

(1) Has the Respondent been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder as envisaged in Section 13(l)(iii) of Hindu Marriage Act, 1955? OPP

(2) Has the Respondent treated the Petitioner with cruelty? OPP.

(3) Relief.

6. In support of his case, the Appellant has examined Dr. Rajiv Gupta, Senior Resident, Psychiatary, P.G.I. Chandigarh, as PW-1. In his deposition he stated that the Respondent was admitted to Psychiatry Department of P.G.I, on 20th October, 1983 and she remained admitted continuously till 19th December, 1983. She was diagnosed as a case of catatonia sphizophrenia. He also states that at the time of discharge her condition was moderately improved and thereafter she had been coming to the department for follow up till 31st March, 1986. The photo copies of the relevant entries in the original register have been marked as mark A,B,C,D and E. He himself has attested these copies and those were correct according to original. In spite of best efforts, the case notes pertaining to this case could not be traced out and the record was lost and there was no likelihood of it being traced out in future also. On a specific question as to whether the disease from which the Respondent was suffering permanently curable, he answered that it was difficult for him to reply to this question. However, in spite of recovery some residue

symptoms do remain. In case the patient does not continue with the treatment, the chances of relax (sic. relapse) can occur. In his cross-examination he states that he did not treat Shashi Bala (Respondent) and he has no personal knowledge and that he had made a statement after seeing the Indoor Register which he had brought and from the said entries marked A,B,C,D and E.

7. Shri Balraj Bedi, Psychiatric Social Worker, P.G.I., has been examined as PW-2. He brought the O.P.D. Register containing entry pertaining to the Respondent. The copy of the relevant page was exhibited as Ex. P-I. As per the record, the Respondent was admitted to the Psychiatry Ward of P.G.I, on 20th October, 1983 and was discharged on 19th December, 1983. Thereafter she visited the P.G.I. for follow up treatment till 31st March, 1986. The photostat copies of the relevant entries are Exhibits P-2, P-3, P-4 and P-5. In his cross examination he states that the entries in the register were not in his handwriting nor these were made in his presence. However, the registers were regularly maintained. The details of the disease, the treatment given and other notes, it is stated, are recorded in the file of the patient Shashi Bala (Respondent). However, he had not brought that file as it was not traceable in the P.G.I. It is also stated by this witness that he was not a doctor nor expert in psychiatric diseases and he does not know the Respondent personally about whom the entries were made in the register.

8. Satish Kumar Appellant, appeared as his own witness as PW-3 and he has supported his assertions made in the petition. He has stated that the Respondent suffered from mental fits and during the fits she became violent. He has given account of her misbehaviour with his friends. He also states that on way back from Delhi with the maternal grandmother of Respondent, the Respondent and her mother left him at home saying that they wanted to see someone. They returned in the evening and on opening the attaches-case of the Respondent, he found the card issued by the P.G.I. relating to the Respondent, which was of the Psychiatric Department. He also makes mention that the Respondent had remained admitted in the Psychiatric Department from 20th October, 1983 to 31st March, 1986. Besides, the Respondent lived with him for a total period of one month on differet occasions and mostly she lived with her parents. Mental condition of the Respondent was very bad. He states that he did not demand any dowry as alleged. In cross examination, he states that he had embraced Islam for 2/3 months and thereafter he reconverted himself to Hinduism.

9. The Appellant also examined Dr. Sham Sunder Sharma (PW-4) resident of Hoshiarpur. He states that he knew the parties and that he had gone to the house of the Appellant on 3rd January, 1985 where he noticed the abnormal behaviour of the Respondent. The Appellant has also examined Baldev Singh Bains as PW-5, Shri Fuzail-Ur-Rehman as PW-6 besides Daya Ram Shashtri as PW-7 and closed his evidence. Baldev Singh PW-5 has been examined to show the conduct of the Respondent. He states that according to him the Respondent appeared to be a mental case when he visited their house in January, 1985. Fuzail-Ur-Rehman PW-6 states that the Appellant adopted Islam before him. Thereafter he again moved an application that his name should be cancelled as he

had gone back to his own religion. Daya Ram Shashtri PW-7 states that he re-converted the Appellant to Hindu

10. The Respondent on the other hand, examined herself as RW-1. In her statement she denies that she has any psychiatric disease before or after marriage. She never got herself treated from P.G.I. Chandigarh or from Dr. Sarbjit Singh for any mental disease and the Appellant and his family members demanded television and refrigerator and she was also given beating by the Appellant and turned out her of the house in July, 1985. The dowry articles given to her by her parents were lying at the house of the Appellant. Bal Krishan uncle of the Respondent was examined as RW-2. He states that after marriage the parties pulled on well as husband and wife for two months. Thereafter the Respondent had been claiming that her in laws were demanding colour television and refrigerator. Thereafter in the month of July, 1985 she was turned out of the house by her in-laws. Smt. Sudesh Mehta, Mistress, of Smt. P.D. Arya Mahila Vidyalya Senior Secondary School, Hoshiarpur, has been examined as RW-3. She stated that the Respondent was a student in their school. She merely stated the date of admission of the Respondent to the school was 1st April, 1975 and that she left the school on 12th April, 1977. Ram Parkash Vice President of Municipal Committee, Hoshiarpur, has been examined as RW-4. He deposed that the Respondent is daughter of his younger brother. He has stated that the dispute which arose between the parties was on account of demand of colour television and refrigerator and ultimately the Respondent was turned out of the matrimonial home in July, 1985. The Respondent also examined Smt. Harjinder Kaur as RW-5 and Ramji Dass as RW-6. Harjinder Kaur RW-5 states that she had purchased a plot in Grain Market, Hoshiarpur from Charanjit father of the Respondent for a sum of Rs. 45,000 in the year 1984 and that the entire sale consideration was paid at the time of registration on 23rd May, 1984. Ramji Dass, Sub Divisional Clerk, Shah Nehar Extension, Sub Division No. 3, Hoshiarpur RW-6 states that the Appellant had converted his religion to Islam which fact was also recorded in his service book. The Appellant was recalled for cross-examination and he was cross-examined by the Respondent with regard to the change of his religion and the evidence of the Respondent was closed.

11. On the basis of the material on record, the fact which is to be considered is whether the Respondent 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 Appellant cannot reasonably be expected to live with her so as to entitle the Appellant to the grant of matrimonial relief of divorce in terms of Section 13(l)(iii) of the Act.

12 Section 13(l)(iii) of the Act reads as under:

13. Divorce.--(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--

(i) xx xx xx xx xx xx

(i-a) xx xx xx xx xx xx

(i-b) xx xx xx xx xx xx

(ii) xx xx .xx xx xx xx

(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.

Explaination.--In this clause.

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind psychopathic disorder or any disorder or disability of mind and includes schizophrenia:

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment:

(iv) xx xx xx xx xx xx

(v) xx xx xx xx xx xx

(vi) xx xx xx xx xx xx

(vii) xx xx xx xx xx xx

13. The perusal of the above shows that in order to obtain a matrimonial relief of divorce, it is to be shown by the Petitioner spouse that the Respondent 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 petitioning spouse cannot reasonably be expected to live with the Respondent. Explanation (a) explains the expression mental disorder "to mean mental ailment, psychopathic disorder or any disability of mind and includes schizophrenia." Explanation (b) explains expression "psychopathic disorder" to mean the persistent disorder or disability of mind, which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment.

14. It is in the above context that the material on record is to be examined. The perusal of the document Ex. P-l on record admittedly shows that the Respondent"s name is entered in the P.G.I. Indoor Patient Register and it is also indicated to be a case of catatonia schizophrenia. The other documents on record i.e. Ex. P-2 also shows the name of the Respondent to be recorded in the records of the P.G.I. Hospital, Chandigarh. In Exs. P-3, P-4 and P-5 the name of the Respondent is again mentioned in the receipt register.

Therefore, admittedly the Respondent has been suffering from catatonia sphizophrenia which is mentioned in the records of the P.G.I. Hospital, Chandigarh. Dr. Rajeev Gupta, Senior Resident, Psychiatry Department, P.G.I, has also appeared in the witness box and deposed that the Respondent remained admitted in Psychiatry Department in the P.G.I, continuously from 20th October, 1983 to 19th December, 1983. Despite this material and documents on record, the Respondent in her written statement has categorically denied that she was even admitted in the P.G.I. Hospital, for any kind of mental ailment. Dr. Rajiv Gupta (PW-1) made a statement in Court on 19th April, 1989 regarding the admission and treatment of the Respondent at the P.G.I. Hospital. However, the Respondent while appearing in the witness box on 16th March, 1990 catgorically states: "I never got myself treated from P.G.I. Chandigarh or from Dr. Sarabjit Singh for any mental disease." Dr. Rajiv Gupta has deposed from the records of the P.G.I. Hospital and there is no reason for him to depose falsely. Besides, Shri Balraj Bedi, Psychiatric Social Worker, P.G.I. (PW-2) also stated regarding the treatment of the Respondent at P.G.I. Chandigarh on 20th October, 1983. Despite this the Respondent in her deposition in the Court has categorically stated that she never got herself treated from P.G.I. Chandigarh or from Dr. Sarbjit Singh for any disease. It is, therefore, evident that the Respondent has been concealing her ailment.

15. The question however that arises for consideration is as to whether the ailment of the Respondent of such an extent that the Appellant cannot reasonably be expected to live with her. It is on record that the Respondent was suffering from ailment, which she had been concealing. The statement of Dr. Rajiv Gupta does show that the Respondent was diagnosed as a case of catatonia sphizophrenia! This Court in the case of Darbara Singh v. Sudarshan Kaur 1981 H.L.R. 157 granted divorce to the husband in a case where the Respondent wife was suffering from catatonia sphizophrenia. It was observed that this was psychetic syndrome and patients suffering from such disease can be aggressive. From the material on record in the said case the Appellant was granted matrimonial relief of divorce. In Ram Narain Gupta Vs. Rameshwari Gupta, the Hon"ble Supreme Court emphasised that Section 13(l)(iii) of the Act does not make mere existence of a mental-disorder of the spouse sufficient in law to justify the dissolution of a marriage. The following observations in Ram Narain Gupta"s case (supra) are apposite:

The context in which the ideas of unsoundness of "mind" and "mental-disorder" occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the "mental-disorder". Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would indeed, survive in law.

16. In R. Lakshmi Narayan Vs. Santhi, which was a case of declaring the marriage to be null and void u/s 12(l)(b) read with Section 5(ii)(a) of the Act. It was held that where an annulment of marriage is sought on the ground that spouse was of unsound mind, the

onus of proof lies heavily on Petitioner to establish the case for declaring marriage null and void and that mere fact that spouses had no cohabitation for short period of about a month was not sufficient to brand the wife unfit for marriage and procreation of children on account of mental disorder.

17. In the light of the above circumstances and the position the case in hand may be examined. It may be noticed at the cost of repetition that Dr. Rajiv Gupta (P Wl) has categorically stated that the Respondent was a case of catatonia schizophrenia and that she had remained admitted at the P.G.I. Hospital Psychiatry Department for almost three months and at the time of discharge her condition was moderately improved. Even Shri Balraj Bedi, Psychiatric Social Worker, P.G.I. Chandigarh (PW-2) has deposed regarding treatment given to the Respondent at the Psychiatry Ward. In the face of this material the fact that the Respondent has denied her admission in the P.G.I, would in a way no doubt show that this fact had been concealed by the Respondent from the Appellant. The Appellant in his deposition has given detailed accounts of the erratic behaviour of the Respondent. He. has stated that the Respondent suffered from mental fits and during the fits she became violent. She starts abusing and beating and used to become violent. Baldev and Sham Sunder were his friends and the Respondent had misbehaved with them. She was asked to prepare tea she rebuked the Appellant and refused to prepare tea. Then the tea was prepared by the mother of the Appellant and when the Respondent brought the tea she behaved in such a manner that the tea fell on the floor and on the.clothes of his friend Baldev. The Respondent also misbehaved with his friend Sham Sunder when he visited his house. The parents of the Respondent took her from the house of the Appellant when the Appellant informed them that Respondent was not mentally sound. He also states that in July 1985 the mental condition of the Respondent was very bad and that he informed her parents and card of the Respondent of P.G.I, was also given.

18. To contradict this medical evidence, the Respondent has not produced any expert or anything on record that the evidence of Dr. Rajiv Gupta (PW-1) and that of Balraj Bedi (PW-2) was in any manner false. It is also not in dispute that after the solemnization of the marriage on 7th December, 1984, the parties separated in July, 1985 and during this period also they had lived for very short period. The learned trial Court did not take into account the statement of these two witnesses in view of the fact that the Respondent was not examined by Dr. Rajiv Gupta. It relied upon the judgment in Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, wherein it was held that mere proof of handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document, if the truth of facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or the contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by evidence of those persons who can vouchsafe for the truth of the facts in issue. There is no dispute to the said proposition of law enumerated by the Apex Court. In the said case the question in issue

was in relation to letters written between the parties. In the case in hand Dr. Rajiv Gupta has made his deposition from the records of the Psychiatry Department of the P.G.I. Hospital Chandigarh, wherein she was diagnosed as a case of catatonia schizophrenia and at the time of discharge her condition was moderately improved. This record is maintained in the regular course of natural events in which the common course of official acts has been performed. Therefore, this evidence cannot be brushed aside merely because the author of the documents has not come to depose the facts. Dr. Rajiv Gupta (PW-1) has stated that the Respondent had been coming to their department for follow up and that photostat copies of the relevant entries in the original register had been attested by him and those were correct according to the original. However, despite best efforts the case notes could not be traced and the record was lost and there was no likelihood of its being traced out in future also. Therefore, it is the case notes which are not traceable otherwise the fact that the Respondent is suffering from mental disease stands duly established. However, it is to be seen whether this mental disorder is of to such an extent that the Appellant cannot reasonably be expected to live with the Respondent.

19. The Explanation (a) to Section 13(l)(iii) describes the expression "Mental-disorder" to mean mental illness, arrested or incomplete development of mind, psychopathic disorder or any disorder or disability of mind and includes schizophrenia. Therefore, schizophrenia would come within the ambit of expression "mental disorder" as contemplated by Section 13(l)(iii) of the Act. In Ram Narain Guta"s case (supra) Schizophrenia has been described in the following manner:

Schizophrenia, it is true, is said to be difficult mental-affliction. It is said to be insidious in its onset and has hereditary predisposing factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality. In paranoid-states the victim responds even to fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench from reality and brings about a lowering of the higher mental functions.

"Schizophrenia" is described thus:

"A severe mental disorder (or group of disorders) characterized by a disintegration of the process of thinking, of contract with reality, and of emotional responsiveness, Delusions and hallucinations (especially of voices) are usual features and the patient usually feels that his thoughts, sensations, and actions are controlled by, or shared with, others. He becomes socially withdrawn and loses energy and initiative. The main types of schizophrenia are simple, in which increasing social withdrawal and personal ineffectiveness are the major changes: hebephrenic, which starts in adolescence or young adulthood (see hebephrenia): paranoid, characterized by prominent delusion: and catatonic, with marked motor disturbances (See catatonia).

Schizophrenia commonly but not inevitably--runs a progressive course. The prognosis has been improved in recent years with drugs such as phenothiazines and by vigorous psychological and social management and rehabilitation. There are strong genetic factors in the causations and environmental stress can precipitate illness." (See Concise Medical Dictionary at page 566: Oxford Medical Publications, 1980).

But the point to note and emphasise is that the personality-- disintegration that characterises this illness may be of varving degrees. Not all schizophrenia are characterised by the same intensity of the decease, (sic. disease) F.C. Redlich and Daniel X. Freedman in "The Theory and Practice of Psychiatry" (1966 Edn.) say:

...Some schinzophrenic reactions, which we call psychoses may be relatively mild and transient: others may not interfere too seriously with many aspects of everyday living....

Are the characteristic remissions and relapses expressions of endegenous processes, or are they responses to psychosocial veriables. or both? Some patients recover apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endegenous process: It is just as likely that the spontaneous remission is a response to non-deliberate but none the less favourable psychosocial stimuli other than specific therapeutic activity.

20. Schizophrenia, therefore, is a mental-disorder which also falls within the ambit of expression "mental-disorder" as contained in Explanation (a) to Section 13(l)(iii). In Darbara v. Sudarshan (supra), this Court held that where medical evidence proved that wife suffered from catatonia Schizophrenia, which is a psychiatric syndrome and this was a mental ailment in which the patient got attacks of excitement and can be violent and harmful to hereself and others and that the disease is not curable. It was held that mental disorder existed.

21. In R. Rathinavel Chettiar and Another Vs. V. Sivaraman and Others, this Court held that it was difficult to proceed with a happy and ppareful married life with whom even good communication cannot be" established because after shortwhile, she becomes irrelevant and incoherent and continues to suffer from delusions. It was observed that where there was evidence that she was aggressive and prone to abusing and cursing her husband, neglecting his food, remaining withdrawn and aloof, and sleeping at odd hours and suspecting that her food had been poisoned, were factors which clearly establish the second element of Clause (iii) of Sub-section (1) of Section 13 of the Act, that the mental disorder of the wife was of such a kind and to such an extent that the Respondent could not reasonably be expected to live with her.

22. As already noticed above, Dr. Rajiv Gupta (PW-1) has deposed that the Respondent is a patient of catatonia schizophrenia, which is admittedly mental disorder. The husband has given his statement that Respondent behaved in an odd manner and she preferred to live with her parents. Besides, the Respondent herself while appearing in the

witness-box, in her cross-examination stated that she has two sisters but she does not know their names and she does not know whether they were elder or younger to her. Apart from this the repeated attempts on her part to suppress the fact that she was being treated for her mental ailment at the Psychiatry Department of P.G.I., Chandigarh, is also a factor which shows her conduct of such a character that she indeed is suffering from the said disease and yet wants to suppress the same. It would have been different matter had the Respondent stated that she was suffering from the disease and that with treatment her condition has improved. However, the fact is that she denies the very disease itself. In her writen statement, she denies that she is suffering from any mental disease. When material is produced by the Appellant regarding her treatment at P.G.I., Chandigarh, she still denies the same while appearing as RW-1. In the cross-examination also she initially states that it was incorrect to suggest that her sisters used to bring medicines for her many a time from Dr. Sarbjit Singh from Hoshiarpur. She further states that it was incorrect to suggest that hei sisters were bringing medicines for her from P.G.I., Chandigarh. She then states that. "I did not remain admited in the P.G.I, as indoor patient in October, 1985."

23. It may also be noticed that the standard of proof to claim matrimonial relief on the ground that the Respondent being catatonia schizophrenia to such an extent that the Appellant cannot reasonably be expected to live with her, is not as high as in a case of the proof beyond reasonable doubt. The Court can be satisfied from the preponderance of probabilities. The burden of proof to prove mental disorder though lies on the Appellant, yet the standard of proof is on the preponderance of probabilities. Proof beyond reasonable doubt is not required. Besides, a reading of Section 13(1) (iii) of the Act, as reproduced above, requires that the Respondent 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. Therefore, even intermittent suffering from mental disorder which as per explanation means mental illness, arrested or incomplete development of mind, psychopathic disorder or any disorder or disability of mind and including schizophrenia to be sufficient for the grant of matrimonial relief provided that the Petitioner cannot reasonably be expected to live with the Respondent. From the material on record and the circumstances of the case, I am satisfied that the Appellant has been able to show that the Respondent has been suffering from mental disorder which includes schizophrenia and which is to such an extent that he cannot reasonably be expected to live with the Respondent. Even otherwise it may be noticed that since the solemnization of the marriage on 7th December, 1984 the parties cohabitated only for a month and that too with intervals. Besides, since July, 1985 they are living separately, therefore, there is no chance of them living together. Irretrievable break down of marriage is no ground for divorce. However, when other factors are there, it cannot be taken into account for the grant of matrimonial relief.

24. The question however urged by the learned Counsel for the Respondent is that in case this Court comes to the conclusion that the Respondent is suffering from mental disorder which is to such an extent so as to entitle the Appellant for the grant of divorce, then in that eventuality the Respondent is entitled to the payment of permanent alimony in terms of Section 25 of the Act. The Respondent has filed Civil Misc. Application No. 40 M of 2002 claiming maintenance u/s 24 and 25 of the Act. In the said application the Respondent has claimed maintenance to the extent of Rs. 5,000 per month. The Appellant has filed his reply dated 15th January, 2003 to the said application.

25. In order to appreciate this contention of the Appellant, the provisions of Section 25 of the Act, which provides for permanent alimony may be noticed. The same read as under:

Permanent alimony and maintenance.--(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the Respondent shall pay to the Applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the Applicant as, having regard to the Respondent"s own income and other property, if any, the income and other property of the Applicant the conduct of the parties and other circumstances of the case it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the Respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under Sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party very, modify or rescind any such order in such manner as the court may deem just.

26. The perusal of the above shows that any Court exercising jurisdiction under the Act, may at the time of passing any decree or any time subsequent thereto on application made to it, order the Respondent to pay maintenance to the Applicant for her maintenance and support such gross sum or monthly or periodical sum for a term not exceeding the life time of the Applicant as having regard to the Respondent"s own income and other property, Section 25 of the Act regarding permanent alimony is applicable at the time of passing any decree or at any time subsequent thereto. Decree has been defined in Section 2(2) of theCode of Civil Procedure as follows:

2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard-to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall

be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include--

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.--A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

27. The perusal of the above shows that decree is formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, but does not include any adjudication from which an appeal lies as an appeal from an order or any order of dismissal for default. The Hon"ble Supreme Court in the case of R. Rathinavel Chettiar and Another Vs. V. Sivaraman and Others, held as follows:

Thus a "decree" has to have the following essential elements, namely:

(i) There muat have been an adjudication in a suit

(ii) The adjudication must have determined the rights of the partiss in respect of, or any of the matters in controversy.

(iii) Such determination must be a conclusive determination resulting in a formal expression of the adjudication.

Once the matter in controversy has received judicial determination, the suit results in a decree either in favour of the Plaintiff or in favour of the Defendant.

What is essential is that the matter must have been finally decided so that it becomes conclusive as between the parties to the suit in respect of the subject matter of the suit with reference to which relief is sought. It is at this stage that the rights of the parties are crystalised and unless the decree is reversed, recalled, modified or set aside, the parties cannot be divested of their rights under the decree.

28. Therefore, the decree for divorce being passed in the present case, the Appellant--wife would be entitled to the maintenance u/s 25 of the Act. The Hon"ble Supreme Court in Chand Dhawan v. Jawaharlal Dhawan J.T. 1993 (4) S.C. 22 considered the question whether payment of permanent alimony is admissible without the relationship between the spouses being terminated. In the said case the wife.filed an application for grant of permanent alimony u/s 25 of the Act, after the joint petition for grant of divorce by mutual consent had been dismissed as withdrawn. It was held that in those circumstances, the Applicant was not entitled to permanent alimony. However,

while considering the said question the Hon"ble Supreme Court made the following observations:

...under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated on the pendency of a litigation of the kind envisaged" u/s 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being seized of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfil this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change or alter the order in view of the changed circumstances. Thus the whole exercise is within the gambit of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged u/s 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption.

29. Therefore, in the light of the above observations of the Apex Court, the Appellant--wife is entitled for maintenance. Accordingly, the quantum of permanent alimony to which the wife is entitled to may be considered.

30. The Appellant has, in answer to the claim of the Respondent for maintenance pendente lite, furnished his salary statement along with his reply, filed by way of affidavit dated 15th January, 2003. As per the affidevit, it has been stated that in the month of November, 2002 his gross earning was Rs. 15,950 and after deductions his net pay was Rs. 5650. In respect of month of December, 2002, his gross earning was Rs. 17,624 and gross deductions Rs. 10,572 and his net pay was Rs. 7,052. This income included arrears of Rs. 1,389. It is not in dispute that his basic pay is Rs. 9,500 and he is getting dearness allowance of Rs. 4,940. Besides, the House Rent Allowance of Rs. 1,425 and City Compensatory Allowance of Rs. 120 which is part of the gross earnings. However, he get deductions towards voluntary provident fund to the extent of Rs. 3,539 in November, 2002 and Rs. 3,610 in December, 2002. Besides other deductions towards income tax etc. These statements have been given for the purposes of determining the payment of maintenance to the Respondent. However, it may be noticed that a Division Bench of this Court in case of Usha v. Sudhir Kumar 1974 P.L.R. 195 which was for fixation of quantum of maintenance pendente lite for the Respondent, held that the gross income of a party is to be kept in view only for judging the standard of living. For the

matter of calculating the amount of maintenance the gross income has to be left aside and what is to be taken into account is disposable income. Disposable income is arrived at by deducting from the gross income only such items of expenses over which the husband has no control of any kind such as direct taxes like income tax etc. After the disposable income of the husband has been determined the Court then sets absolute finding as to how much should be reasonable amount for which the wife must get in order to maintain herself. For that the husband"s status and position and expenses etc. are to be kept in view.

31. The Respondent -- wife in her Civil Misc. Application No. 40 M of 2002 filed on 18th November, 2002 and re-filed on 25th November, 2002 has claimed maintenance under Sections 24 and 25 of the Act to the extent of Rs. 5,000 per month. The Appellant in his reply dated 15th January, 2003 to this application, as already noticed above, states that his disposable income is Rs. 5,650 for the month of November, 2002 and Rs. 7,052 in December, 2002 which is due to some arrears having been received. The salary slip shows that the Appellant contributes towards provident fund, voluntary provident fund and welfare fund which are deducted from his salary. These deductions are such over which the Appellant has control and the deductions being made can be reduced. Besides, it may be noticed that the Appellant is Senior Clerk in Punjab State Cooperative Bank, Chandigarh and keeping in view his salary as noticed above and also his disposable income it would be just and expedient that a sum of Rs. 3,000 is fixed as maintenance pendente lite as permanent alimony in terms of Section 25 of the Act which shall be payable by the Appellant to the Respondent from 1st December, 2002 onwards i.e. after the re-filing of the application on 25th November, 2002 and the salary and emoluments of the Appellant shall be a charge for the recovery of maintenance and future maintenance payable to the Respondent.

32. With the above observations, the appeal of the Appellant is allowed and a decree for divorce is passed in favour of the Appellant and the marriage between the parties stands dissolved. However, the Appellant shall pay a sum of Rs. 3,000 p.m. towards permanent alimony of the Respondent from 1st December, 2002 onwards and the recovery of maintenance and future maintenance shall be a charge on his emoluments and salary. There shall no order as to costs.