

**(2004) 08 MP CK 0073**  
**Madhya Pradesh High Court**  
**Case No:** First Appeal No. 81 of 2001

Smt. Shanta Deb

APPELLANT

Vs

Indraneel Deb

RESPONDENT

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**Date of Decision:** Aug. 2, 2004

**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 12(1)

**Citation:** (2005) 1 J LJ 219 : (2004) 3 MPHT 518 : (2004) 3 MPLJ 609

**Hon'ble Judges:** Shantanu Kemkar, J

**Bench:** Single Bench

**Advocate:** S.A. Khan, for the Appellant; K.N. Agrawal and Hansa Agrawal, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Shantanu Kemkar, J.

This appeal has been filed by the appellant/wife u/s 28 of the Hindu Marriage Act, 1955 against the judgment and decree dated 17-1-2001, passed in Civil Suit No. 386-A/98 by IVth Additional District Judge, Jabalpur annulling the marriage between the parties u/s 12(1)(c) of the Hindu Marriage Act, 1955 (hereinafter referred to as "Act").

Shortly stated the facts are that the respondent/husband had filed a petition seeking decree of nullity of his marriage with appellant, by invoking provisions of Section 12(1) (b) and (c) of the Act on the ground that his consent for the marriage was obtained by fraud as the appellant/wife has been and is still suffering from schizophrenia and is unfit for marriage and procreation of children.

Admittedly the parties are Bengali Hindus and married according to Hindu Rites on 21-1-1998 at Bilaspur. After the marriage the parties came to Jabalpur on 25th January, 1998. On 31-1-98 appellant/wife went to her parental house at Bilaspur and

came back to her matrimonial house on 3-2-98 and lived up to 7-2-98. Again on 7-2-98 she left with her father for Bilaspur since then she is at Bilaspur with her parents. There is no issue out of the wedlock.

The allegation of the respondent/husband in the petition filed before the Trial Court is that the appellant/wife and her family members concealed the fact that she was subjected to recurrent attacks of insanity during the marriage negotiations hence the consent of the respondent was obtained by fraud. The behaviour and conduct of the appellant was unusual and erratic. During her short stay she acted like children and also used to talk irrelevant. The details of the erratic behaviours are given in the petition and also in the impugned judgment which are not stated herein detail, but shall be dealt with at the appropriate stage. According to the respondent his relative Dr. B.K. Guha (P.W. 6) observed her behaviour and found it to be abnormal so she was sent to Dr. Mrs. Nili Guha who prescribed to her anti depression medicines. On 3-2-98 she was taken to Dr. P.K. Joel (P.W. 5) for psychiatric check-up. Dr. Joel advised that the appellant was under acute psychotic attack and suffered from acute "schizophrenia" like psychotic disorder. According to the respondent the appellant had old history of mental disorder. Had this fact been revealed to him that the appellant is a patient of schizophrenia the respondent would not have consented for marriage thus consent has been obtained by fraud.

The appellant denying the averments of the respondent in her reply submitted that the allegations about her abnormal behaviour are totally false and are concocted. It has been stated that she was never medically checked up by Dr. Mrs. Guha. On the other hand she alleged that she was tortured and harassed by family members of the respondent for bringing less dowry in the marriage.

The Trial Court on the basis of above averments framed as many as six issues. So far as the issue relating to Section 12(1)(b), the Trial Court decided the same against the respondent. However, the issue about Section 12(1)(c), the Trial Court decreed the suit by holding that the appellant was having history of schizophrenia since 1983 and this was not made known to the respondent and his parents at the time of settlement of marriage and had this fact disclosed to him at the time of marriage he would not have agreed for marriage. The Trial Court accordingly held that this concealment was wilful and was about material fact that the appellant was having history of mental illness which clearly amounts to fraud and hence decreed the suit u/s 12(1)(c) of the Act. However, since the Trial Court refused to grant decree u/s 12(1)(b) of the Act, the respondent by filing cross-objection has challenged the judgment whereby decree has been refused u/s 12(1)(b).

Heard Shri S.A. Khan, learned Counsel for the appellant and Shri K.N. Agrawal, learned Counsel for the respondent. Perused record.

In order to appreciate the controversy it would be apposite to reproduce Section 12(1) (b) and (c) of the Act which reads as under:--

"Section 12(1) Voidable Marriage.-- Any marriage solemnized, whether before or after commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely :--

(a) that.....

(b) that the marriage is in contravention of the condition specified in Clause (ii) of Section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required u/s 5, as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978], the consent of such guardian was obtained by force (or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent); or

(d) that ....."

Section 5 of the Act would also be relevant and is also reproduced :

"5. Conditions for Hindu Marriage.-- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:--

(i) .....

(ii) at the time of the marriage, neither party,--

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been....."

Respondent's case before the Trial Court was that the appellant has been and is still suffering from mental disorder as "schizophrenia". The term schizophrenia has been considered and explained in the case of [Smt. Alka Sharma Vs. Abhinesh Chandra Sharma](#), . Referring to the Text Book of Medicine by Rustol Jal Vakeel, published by the Association of Physicians of India, Edition 1973, page No. 1482, the definition and Clinical Features of schizophrenia may be summarized as under:--

Definition:

Schizophrenia is characterised by a withdrawal from reality, with a tendency towards autistic thinking, flat or incongruous emotional reactions and inconsistent and impulsive behaviour. The patient may show a tendency to maintain false beliefs, which can not be corrected by reasoning or logic. False perception and hallucinations (mostly auditory) may be present.

The term or word "Schizophrenia" which means a "split personality", was coined by Bleuer (1911) to describe a certain condition of the patient's mind. Previously, the condition was referred to as "dementia praecox", because such patients, usually young tend to appear demented through their inability to respond adequately to the environment. However, since the condition is due, not to any detectable abnormalities of the brain, but a "split from reality", the term "dementia praecox" is now a days replaced by the scientifically more accurate term "schizophrenia".

Clinical features :

The illness usually begins in the 15 to 25 years age group, although the onset may be much earlier or much later. It may be precipitated by some emotional stress, such as failure in an examination, frustration in a love affair, financial loss in business, professional difficulties or the demise of a near relative or friend. In many cases, there is no apparent cause for the onset of the disease.

The onset is usually insidious or gradual. A shy and reserved person becomes more shy, avoids mixing with people, prefers to be left alone and shows a tendency to pass his time in day dreams. Gradually, the patient loses all interest in work and social contacts. He may display odd behaviour or certain peculiarities, such as staring out of the window at the sky all day, or may suddenly take to obscure fields, including philosophy, astrology or the study of mystical phenomena. On questioning he usually attributes his behaviour to fear of being criticised in school, college, office or home, or being avoided or ignored by people. Along with this lack of interest in worldly affairs, there is an associated lack of feeling of not being unduly influenced by pleasure or pain. On the other hand, without any apparent cause, the patient may smile, giggle or laugh and when questioned about the same he may try to justify his peculiar behaviour.

The characteristic features of this disease are : (a) A decreasing interest in outside world. (b) Increasing interest in one's self, own thoughts, bodily symptoms and the past. (c) A tendency to restrict thinking to one's own inner urges (autistic thinking). (d) Disturbances of emotional reaction, with lack of emotional response (flatness) or incongruity. (e) Disturbances of perception with hallucinations (mainly auditory or visual). (f) Impulsive & inconsistent behaviour and mannerisms. It must be noted that all these features need not be present in all cases of schizophrenia.

Disturbance of Thinking :

Because of, increasing withdrawal from reality, the patient's thinking appears aimless, illogical and inconsistent. He may become preoccupied with some mental-physical concept or might jump from subject to subject. Sexual rumination is common. He may show a tendency to so-called blocking while talking, stopping suddenly and then after a time resuming the conversation, but with an entirely different theme. During an interview, instead of replying to the questions asked, he may talk about something totally irrelevant. At times, his talk is just a jumble or

mixture of words. He may also claim that his thoughts are controlled and his thinking interrupted by external agencies.

Delusions are quite common and are either generalised or localised to certain individuals, such as the father, mother, wife, husband or a person in authority. They may be bizarre, persecutory or grandiose or a combination of these forms.

**Disturbances of Emotion :**

The patient either shows no emotional response to pleasant or unpleasant stimuli (emotional flatness) or more often displays emotional incongruity. Incongruity may be between the stimulus and the response or between the content of thought and the accompanying emotional reaction. The patient may cry or laugh without reason and may give an irrational explanation for the same. At times, persistent unexplained anxiety (anxiety) is also a feature.

**Disturbance of Perception :**

The patient's break with his environment and his pre-occupation with his own thoughts may be so great, that his "unreal world" may appear for more real to him than reality itself. He may display false perceptions and hallucinations. While auditory and visual hallucinations are common, tactile, olfactory and gustatory hallucinations are rare.

**Disturbance of Behaviour :**

As the patient does not see any need for adjustment, his behaviour tends to be impulsive and associated with mannerisms. He may either walk up and down an aisle for no apparent reason or maintain an awkward rigid posture (flexibilitas cerea) for hours. He may behave like an automaton, be negativistic or show outbursts of temper or excitement without provocation.

So far as correctness of the finding of the Trial Court rejecting the respondent's case seeking decree on the ground u/s 12(1)(b) of the Act the evidence led by the parties pertaining to this issue is being scanned. In order to prove his case respondent examined himself (P. W. 1), his brother Parthasarathi (P.W. 2), Mother Rubi (P.W. 3), Mrs. Banani Sen Gupta (P.W. 4), Dr. P.K. Joel (P.W. 5), Dr. Vijit Guha (P.W. 6). In rebuttal the appellant/wife examined herself (D.W. 1) and S.P. Mukhopadhyaya (D.W. 2).

The respondent (P.W. 1) has deposed that the marriage was settled through advertisement in news paper, he had no time to observe the behaviour of appellant. However in his cross-examination he has admitted that his parents had visited the appellant's house and they approved her, thereafter he also visited her house with his mother and the appellant was shown to him and he also talked with her. He also admitted that he had talked with the appellant on telephone from Mumbai. His first visit was in the month of April, 1997 and the marriage took place on 21-1-1998. From

the aforesaid evidence, I find that the Trial Court has committed no error in holding that the respondent had sufficient opportunity to satisfy himself regarding fitness of the appellant for marriage.

In order to prove the abnormal behaviour of the appellant during marriage ceremonies respondent (P.W. 1) has deposed that at the time of "Bidai" the appellant was not looking towards camera when the photographer was taking snaps. He further deposed that the appellant has not wept while leaving her parental house. To my mind this behaviour on the part of appellant can not be said to be abnormal. The respondent has not filed any photograph in order to establish his aforesaid allegations. The appellant being an educated person if she has not wept during her "Bidai" the same can not be said to be an abnormal behaviour. The other abnormality pointed out by the respondent is that during the marriage reception when they were sitting on the stage the appellant told him that her saree was opened. Respondent's aunt who was present there told to her that her saree is properly tucked even then the appellant insisted for going to room, later her saree was found properly tucked and thus her apprehension was false. It is pertinent to mention that the respondent has not examined her aunt in whose presence the appellant told him that her saree has opened. There is no suggestion about this in her cross-examination on this point. In my considered view even if the appellant has expressed her fear about her saree being opened this can not be termed as abnormal behaviour.

The respondent has also deposed that there was no sexual intercourse between them on their "suhagrat". This allegation has categorically been refuted by the appellant and there is no cross-examination by the respondent on this point. The appellant and the respondent were sleeping in one room from 26-1-98 to 30-1-98 so the Trial Court, in my view has rightly drawn the presumption that the marriage was duly consummated. In the next morning of their "suhagrat", as per the respondent, in spite of there being servant the appellant insisted for washing her clothes herself as according to her, maid servant may do "Jadu Tona" this again can not to be said to be abnormal behaviour looking to the fact that she was residing prior to marriage at Bilaspur. In that area normally it is believed that ladies like maid servant do Jadu Tona on newly married ladies. The other abnormality which is alleged by witnesses Parthasarathi (P.W. 2), Ruby (P.W. 3) and Banani Sen Gupta (P.W. 4) in short is that she was not having like a newly wedded daughter in law. When she visited the house of Banani Sen Gupta (P.W. 4) she started eating seemed potato bhazia even before the same were fully served and her sister in law had not started eating. All these allegations are levelled by the stereo type evidence of these witnesses and the same, in my opinion also are not material as has been rightly held by the Trial Court.

In support of his case, to prove the appellant was suffering from mental disorder of such kind or to such extent as to be not fit for marriage, the respondent examined Dr. Joel (P.W. 5). In his prescription (Ex. P-19) Dr. Joel (P.W. 5) has recorded the

disease of appellant as F-23 which according to the medical terminology is acute and transient psychotic disorders. The original prescription (Ex. P-19) has not been filed, its photocopy has been filed. It is worthwhile to notice that on the first day of examination, in his prescription (Ex. P-19), Dr. Joel (P.W. 5) mentioned the disease of the appellant as category F-23. Admittedly, Dr. Joel is colleague of respondent's maternal uncle Dr. P.K Guha (P.W. 6) in Medical College, Jabalpur. In his evidence Dr. Joel could not tell what questions he asked to the appellant and what she replied. It is also not disputed that the appellant was not shown again to Dr. Joel as advised in Ex. P-19 and Ex. P-20. Though in the petition there is an averment that the appellant was again shown to Dr. Joel on 6-2-98 but Dr. Joel has denied this. It has come in his evidence that when the appellant was examined by Dr. Joel he was not shown any previous treatment record and therefore, merely on the basis of first examination, recording of disease of category F-23 by Dr. Joel appears to be finding not based on proper, careful and follow-up examination.

The observations of the Trial Court regarding alleged mental disorder of appellant during the hearing of the case are that on 7-9-2000 she was personally present before the Trial Court at the time of reconciliation then on 17-10-2000 at the time when the case was fixed for evidence, again on 13th/14th-12-2000 and 1-1-2001 when her evidence was recorded by the Trial Court is that her behaviour/conduct/demeanour was as of a normal person. Taking into consideration the entire evidence and the certificate (Ex. D-1) about her working as a teacher in school during the pendency of the petition, I find that the Trial Court has committed absolutely no error in refusing the respondent to grant decree u/s 12(1)(b) of the Act, Thus, I affirm the finding of the Trial Court on this issue and reject the cross objection of the respondent.

Now coming to the next point as to ground u/s 12(1)(c) of the Act. In order to decide this issue it has to be seen whether the consent of the respondent in marriage was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the appellant. Learned Counsel for the respondent has strongly relied on the letter (Ex. P-2) written by the father of the appellant and the history of ailment of appellant attached to the said letter. Ex. P-2 reads as under:--

My dear Bumba, Bilaspur 16-2-98

Hope, you are all rights. As you asked, I am giving you a short history of Shanta for last 14 years. After coming from Jabalpur, Shanta is all right, she is sleeping regularly, Medicines of Doctor Joel arc restarted from 14-2-98.

In one sense you are correct that, as parents, we failed to establish our responsibilities towards Shanta. And the fact is that, medicines" action created loss of memory for Shanta and at the same time drowsyness also disturbed her. She was unable to study and her progress was coming down. We stopped her treatment.

Except, a mild case in 1991 Summer, she was all right up to her marriage.

I have belief, if Shanta remains away from us and gets proper guidance, she may become a good housewife. She possesses respect and faith on you.

I want you should come to\* Bilaspur, and observe her and her surroundings. I should be glad if she gets proper medical treatment in Bombay.

Take care of your diet and health. How are your parents at Jabalpur.

You take our love and affection. Your Baba.

History of Shanta : (enclosed with Ex. P-2)

Summer 1983, (12 years, ago)

In middle of June, sleepless nights started and continuous for about 7-8 days, got irritated and started unconnected talk. Local Rly. Doctors gave sedatives-no action observed. After two-three weeks got completely cured by "Mantar" & ritual functions.,

February, 84 :

Visited by Dr. A. Dasgupta, neurologist at Calcutta. (She was normal at that time) Doctor advised medicines- Thioric/Malleric, stemetil, Pecitane, Vit-B complex and treatment continued for seven months.

September, 84 :

Visited by Dr. Dasgupta for checkup readvised the above dose and advised for continuation.

In fact, medicines were continued for six-seven months 7 then stopped without asking doctor-because proponded application of medicines reloss of memory, drowsyness etc. for the sake of higher study, it could not be started further.

Summer, 91 :

Tendency of sleeplessness and irritation started and continued for a week. B.Sc. 2nd year paper dropped for want of preparation - became normal without medicine.

Up to the marriage (23-1-98) she was all right & again sleeplessness started from 24-1-98.

It is relevant to mention here that the Trial Court has drawn adverse inference against the father of the appellant who has written the aforesaid letter, as though he was present on many dates of hearing before it, did not step into the witness box. The Trial Court tallying the signature of appellant's father with other document (Ex. P-9) held that Ex. P-2 is letter written by appellant's father. Appellant also in her deposition has not categorically denied about hand writing of her father on Ex. P-2. But has said that she can not say whether its her father's writing or not. In this view

of the matter the Trial Court has correctly drawn adverse inference against the appellant on this issue and has rightly held that the letter (Ex. P-2) has been written by the father of the appellant.

In the aforesaid letter (Ex. P-2) it has been mentioned that in February, 1984 Dr. A. Das Gupta advised Thioril/Mallevil and stemetil to the appellant. As per short text book of Psychiatry by Neeraj Ahuja the list of drugs prescribed in schizophrenia is given and it shows thioril and stemetil as such drugs. In the book "Principles of Interval Medicine" by Harrison Volume-2, 12th Edition, page 2145 "Mellevil" is shown as commonly used antipsychotic medicine. Apparently as per Ex. P-2 and the history sheet annexed with it, these medicines were taken by appellant since February, 1984 for seven months which proves that the appellant was suffering from schizophrenia in the years 1983 and 1984. In the history it is again mentioned that in 1991 the tendency of sleeplessness and irritation started and continued for a week and she had to take drop from her studies. The appellant's case is not that this history was made known to the respondent. Thus the appellant was having history of schizophrenia and admittedly this was not made known to the respondent and his parents at the time of marriage. In his deposition respondent has categorically deposed that had these facts were disclosed to him at the time of the negotiation of marriage he would not have agreed for marriage.

Learned Counsel appearing for the appellant has vehemently argued that the alleged mental disorder is of the year 1983-84 and in the absence of any evidence about reoccurrence of it the judgment and decree of the Trial Court on the basis of past history can not be sustained. No doubt the history of schizophrenia disclosed by the father of the appellant in history sheet attached to letter (Ex. P-2) speaks about her ailment of the year 1983-84 then of the year 1991 still it was the duty of the appellant or her parents to inform about her previous mental illness to the respondent as it was a material fact about the appellant which they have not done and the marriage of appellant was performed suppressing this material fact, this certainly amounts to fraud. The Trial Court has rightly concluded this finding in favour of the respondent.

Accordingly the judgment and decree of the Trial Court deserves to be and is hereby affirmed.

In view of aforesaid, the appeal and also the cross-objection fails and the same are hereby dismissed. No orders as to cost.