

Veena Rani Vs. Mohinder Kumar

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Court : Punjab and Haryana

Decided On : Aug-11-2000

Reported in : I(2001)DMC449

Judge : R.L. Anand, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13, 13(1) and 13(B)

Appeal No. : First Appeal From the Order No. 41-M of 1997

Appellant : Veena Rani

Respondent : Mohinder Kumar

Advocate for Def. : Mr. R.K. Gupta, Adv.

Advocate for Pet/Ap. : Mr. Kamal Sharma, Adv.

Judgement :

R.L. Anand, J.

1. This is a First Appeal filed by Smt. Veena Rani, appellant- wife and has been directed against the judgment and decree dated 28.2.1997, passed by the District Judge, Rupnagar, who allowed the petition under Section 13 of the Hindu Marriage Act filed by Shri Mohinder Kumar, respondent-husband, against his wife Smt. Veena Rani.

2. The brief facts of the case are that Mohinder Kumar filed the petition under Section 13 of the Hindu Marriage Act, alleging inter alia that the marriage between the parties was solemnized on 20.7.1992 at Panchkula, according to Hindus rites. After the marriage, the parties resided at Kaithal up to September, 1973 and thereafter, they shifted to Mohali. It is alleged that on the very first night of marriage, appellant, Smt. Veena Rani was cold, fringed, nervous and so recluse that she could not cooperate in performing the sexual act, although the respondent-husband made all efforts to excite her for the sexual act and this state of affair continued till the filing of the petition. The behaviour of the wife was just like a child of 5 or 6 years. She did not know the concept of menstruation, its period and interval. Due to incomplete development of mind the respondent never expressed emotions like joy, sorrow, fear, hate and love. She does not know how to express condolences. The infant son of the brother of the Veena Rani died in July, 1994 at Panchkula and on receipt of message, Mohinder Kumar took Veena Rani to Panchkula for condolence but she did not condole the death with her brother and his wife. Due to incomplete development of mind which amounts to mental disorder, the appellant-wife could not carry out the daily work. She did not know how many days are in a week and how many weeks in a month and she also cannot tell the number of months in a year. She has no knowledge about the festivals like 'Karwa Chauth', Diwali and Dussehra and importance in life. She does not know which festival comes first and which afterwards and she cannot tell the names of her own near relations like maternal uncle, cousin, maternal grandmother, maternal grand-father, mother's sister and their places of residence. Respondent suffers from such mental disorder that she is unable to run the household affairs. She does not know how to prepare Halwa, vegetables and other eatables and she is also unable to handle domestic appliances like frying pan, refrigerator, colour television, etc. It is also alleged that respondent-wife used to urinate in the open courtyard in the presence of the parents of the petitioner. The parties shifted to Mohali in October, 1993 and started living with the joint family of the petitioner and there also the appellant-wife continued her habit of urinating in the open in the presence of the family members. According to the petitioner-husband, the development of the mind of the appellant-wife is so incomplete that she cannot take a bus from Mohali to reach Panchkula of her own as she does not

know as to from where the bus is to be taken and what fare is to be given to the Conductor. She does not know the distance between Mohali and Panchkula. It was also alleged by the respondent-husband that appellant-wife is suffering from such mental disorder and development of her mind is so incomplete that she cannot reasonably be expected to live with the respondent and that the doctor has also opined that the petitioner-wife is a case of mental retardation.

3. Notice of the petition filed by the husband was given to the appellant- wife who filed the written statement and denied the allegations. According to the appellant-wife, the respondent-husband is a greedy person. He had taken Rs. 30,000/- from her parents. After few days of the marriage, respondent- husband started saying that appellant-wife has not brought sufficient dowry. Another amount of Rs. 20,000/- was given after a year to the respondent- husband as he was to run shop at Mohali. The respondent-husband again made a demand of Rs. 70,000/-. Her parents are poor persons and they are not in a position to pay the demanded amount and in order to put pressure on them the respondent-husband had filed the petition in (he Court of District Judge, Ropar. According to appellant-wife, she was fit and marriage has been consummated. The respondent-husband had co-habited with her during the period of her stay with him. Appellant-wife also stated in her statement that she was a fit lady and the respondent is levelling false allegations against her just to put pressure so that she may be able to bring more money. By denying the other allegations of the respondent-husband appellant-wife prayed for the dismissal of the petition under Section 13 of the Hindu Marriage Act filed in the Court of District Judge, Ropar.

4. I may also state here that respondent had signed her written statement by writing the words 'Been' instead of 'Beena'.

5. A rejoinder was filed by the respondent-husband in which he reiterated the allegations made in the plaint by denying those made in the written statement.

6. From the pleadings of the parties the learned trial Court, framed the following two issues:

1. Whether the respondent has been suffering continuously from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent OPP

2. Relief.

7. In support of his petition, respondent-husband appeared as his own witness as PW-1. He examined Shri Suresh Kumar his brother as PW-2 and Dr. Dwarka Parshad as PW-3 and closed the case.

8. In rebuttal, Smt. Veena Rani appeared as her own witness and also examined her father Shri Chandgi Ram who appeared as PW-2. The documentary evidence on record by the respondent-husband is the medical opinion dated 4.9.1996, which I shall deal in the subsequent portion of this judgment.

9. On the conclusion of the proceedings, the learned trial Court decided issue No. 1 in favour of the husband and the decree for divorce was passed in favour of the respondent-husband against the appellant-wife for the reasons given in para No. 8 of the judgment:

'Mohinder Kumar while appearing as PW-1 has stated that she is nervous and she does not know anything about sex and her behaviour was just like a child of 5-6 years and she does not know about menstruation and she does not know the ceremonies to be performed at different occasions and the son of her brother died at Panchkula and he took her there to condole and she did not express condolence to her brother or his wife. She does not know how to prepare different vegetables and she cannot go from Panchkula to Mohali. He further stated that she does not know how many days are in a week, how many weeks are in a month and how many months are in a year. She also does not know about Diwali, Dussehra and Karwa Chauth. Shri Mohinder Kumar (PW-1) has been supported by Suresh Kumar PW-2 and Dr. Dwarka Parshad (PW-3) has stated that my report is Ex. PA and she was found to be mentally retarded and it cannot be anticipated that in every case the children of any retarded spouse would also be retarded. He further stated that she can feel difficulty in making shopping independently and she can perform routine work under supervision. He further stated in the cross-

examination that she would be slow in doing work. While appearing as RW1 Veena Rani has stated that she was married with Mohinder Kumar at Baddi and in cross-examination she had admitted that she does not know about the four directions and the direction from which side the sun rises and there are four paises in one rupee. She also does not know if there are four weeks in a month. So, it is apparent that she is a retarded woman and cannol do the normal job even and she is having difficulty regarding sexual relations with the petitioner. So, the petitioner cannot normally live with the respondent and she is mentally retarded continuously. This issue stands adjudicated in favour of the petitioner and against the respondent.'

10. Aggrieved by the judgment and decree of the trial Court the present appeal has been filed by the wife.

11. I have heard Shri Kamal Sharma, Advocate, appearing on behalf of the appellant Veena Rani and Shri R.K. Gupta, Advocate, appearing on behalf of respondent Mohinder Kumar and with their assistance have gone through the record of this case.

12. The dissolution of the marriage has been sought by the husband under Section 13(1)(iii) of the Hindu Marriage Act. According to this Section, 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 fhat the other party has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such akind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

13. According to Explanation the expression 'mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder of disability of mind and includes schizophrenia.

14. Sub-clause (b) of the Explanation lays down that 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 party, and whether or not it requires or is susceptible to medical treatment.

15. In order to succeed on this ground, it is obligatory on the part of the husband to prove that his wife has been suffering continuously or intermittently from such mental disorder of such a kind and to such an extent that he cannot reasonably be expected to live with (he respondent. The Legislature in his wisdom has intentionally incorporated the words 'disorder of such a kind and to such an extent that a person cannot be reasonably expected to live with his wife.' Still, a petitioner can succeed if he establishes mental illness, incomplete development of mind or any other disorder or disability of mind which includes schizophrenia.

16. Let us see what evidence has been led in this regard by the petitioner and what was the case pleaded by him.

17. First of all, it will be appropriate on my part if I deal with the statement of the doctor. Thereafter, I will deal with the statement of the petitioner-husband. A reading of the file of the lower Court would show that the petitioner-husband had examined Dr. Dwarka Par-shad Additional Professor in Psychology P.G.I. Chandigarh. This witness examined Veena Rani on 14.9.1994 to test her intelligence (Intelligence quotient) (I.Q.). Her I.Q. was found to be 69. She was found to be mentally retarded. This has also come in the statement of the doctor that it could not be anticipated that in every case the children of any retarded spouse would also be retarded. The doctor stated that respondent can perform the normal routine functions under some mild supervision and she can feel difficulty in making shopping independently. 70 to 90 IQ is low average and 70 and less is mental retarded and 90+ is complete mind for all practicable purposes. The possibility of I.Q. being few points more viz up to 75 or less can also be there because IQ cannot be measured with mathematical exactitude. In the cross-examination the doctor stated that on 14.9.1994 the I.Q. of the respondent-wife was 77 on one test, Report is Ex. PA. (though not written by this doctor but it was written under his supervision by the junior doctor). The doctor admitted in the cross- examination that it has been written in the report that Smt. Veena Rani can do routine household task. It was also volunteered by his doctor when he said that

respondent would be slow in doing the works. The possibility of I.Q. being more or less cannot be ruled out if the person/patient is examined at different occasions and different times. He has categorically stated that there is no chance of I.Q. becoming low on account of any depression because of any matrimonial dispute.

18. Thus, from the evidence of the expert, the average T.Q. of a man should be 70 whereas the I.Q. of the respondent-wife was 69 on 14.9.1994. The I.Q. of a person of low average should be between 70 to 90 and above 90 this shows the complete mind for all practicable purposes. Thus, there is only a marginal loss of one degree of I.Q. In the opinion of this Court, this type of deficiency cannot be held to be a mental disorder of such a nature and to such an extent that person cannot live with his wife. There is no evidence on the record to show that at any point of time appellant-wife Smt. Veena Rani became violent or she behaved in such a manner or in any aggressive manner that it became a risk to the life or person of the respondent-husband. The documentary evidence mark 'A' dated 22.8.1994 shows that respondent-wife was suffering from mild mental retardation and some medicines were prescribed to her. On 26.8.1994, she again examined by Dr. Mrs. Razai Sultana Siddiqui a Psychologist and at the time of her examination it was found that respondent-wife was cooperative and communicative. Though she was afraid of making any mistake and initially she could not do even simple task but she managed after rapport was established. At one point of time her I.Q. was assessed at 84 though finally her I.Q. was assessed at 67 i.e. why she was declared a case of mild mental retardation. God has not made everybody uniform soul. I.Q. differs from person to person. 70 is the normal IQ of an average person. The Legislature when introduced the words 'mental disorder of such a kind and to such an extent, it meant that the degree of deformity in a spouse should be to such an extent that it cannot reasonably be expected to live with such a person'. Marriage is a sacrament under the pure concept of Hindu Law. It has been partly made contractual with the introduction of certain clauses in the Hindu Marriage Act like Section 13B but its basic fibre of sacrament has not been exploited or violated by the Legislature. To succeed on this ground, a good amount of onus is required to be proved.

19. Let us see now what the respondent-husband says on this score. In the examination-in-chief, he makes certain sort of allegations in consonance with his petition but in the cross-examination, it has been admitted by him that he enjoyed his first night on 20.7.1992 i.e. the date of the marriage. It has also been admitted by the petitioner that respondent lived with him 3/4 days at village Baddi in Himachal Pradesh and he had been co-habiting with her for 3/4 days. He also came to the house of his in-laws for ceremonial phera after 4 or days. That was the relevant time when he could complain to his in-laws that respondent is a lady of mental disorder. Rather the evidence is that the petitioner and his wife had been sleeping together in one room. When the petitioner had been co-habiting with his wife on the first night of the marriage and thereafter, this part of the evidence is directly in contradiction with the pleading of the petitioner-husband.

20. The statement of Suresh Kumar PW-2 who is the real brother of the respondent-husband cannot be relied upon much. Though, this witness stated that on the first night of the marriage, petitioner told him that respondent did not respond to sexual act in spite of the fact that he tried to excite her in every way and that the behaviour of the respondent-wife was just of a child of 5/6 years yet keeping in view the statement of the petitioner that he co-habited with his wife on the first night and thereafter 3/4 days of the marriage, would show that this witness is not telling the truth. The petitioner has not examined any other witness of his family from which inference can be drawn that respondent behaved like a child of 5/6 years or that she was so mentally retarded that she was not in a position to tell anything from which a mind of normal person can be depicted.

21. Learned counsel for the respondent-husband tried to convince me that the wife had no normal mind and that the behaviour of the appellant-wife was such that a reasonable inference can be drawn that she is suffering from a mental disorder of such a magnitude that she did not even condole properly to her brother when his son expired. He submitted that the appellant-wife has not categorically denied the allegations of the husband and, therefore, it will be presumed that the allegations of the respondent-husband have been admitted.

22. I have taken note of this submission raised by the learned counsel for the respondent-husband and in my opinion, it is devoid of merit. Appellant- wife has denied the allegations. She has come with a counter stand that the petition has been filed in order to put pressure upon her and her parents. She has stated that she is a lady of sound mind. It is true and proved on the record that the I.Q. of the respondent-wife is not of an ordinary person i.e. 70 to 90 but also it cannot be said that she was a lady suffering from mental disorder. In AIR 1988 S.C. 2260, *Ram Narain Gupta v. Smt. Ramesh-wari Gupta*, it was observed by their Lordships of the Supreme Court that in order of succeed on the ground of mental disorder, the mere branding of spouse as schizophrenic is not sufficient and degree of mental disorder of the spouse cannot reasonably be expected to live with each other. In this cited case, it was observed as follows :

'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 inlaw. 'Schizophrenia', it is true, is said to be difficult mental affliction. It is said to be insidious in its onset and has heredity 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. But the personality disintegration that characterises this illness may be of varying degrees. Not all schizophrenics are characterised by the same intensity of the disorder. The mere branding of a person as schizophrenic therefore will not suffice. For purposes of Section 13(1)(iii) 'schizophrenia' is what schizophrenia does.'

23. Thus, the slight mental deformity found with the appellant-wife, is not a proved ground for divorce under Section 13(1)(iii). When a person is levelling all these types of allegations, he is supposed to lead such evidence of those persons who may be in a position to say about the individual or collective acts of the spouse complained of. The respondent-husband has not even examined his parents. Therefore, the bald statement of the husband, coupled with his own real brother, cannot be made a valid ground for divorce. In this regard we can place reliance on AIR 1991 Calcutta 123, *Pramatha Kumar Maity v. Ashima Maity*.

24. There is one more angle of vision from which I have formulated an expression (impression) that appellant Smt. Veena Rani is not suffering from mental disorder of such an extent that the dissolution of the marriage is justified. She appeared as RW1. She stated that she gave the date of her marriage. She stated that she lived with the respondent-husband for two years at Kaithal. She supported her case as highlighted in the written statement. Of course, in the cross-examination, she stated that she cannot tell from which side the sun rises nor she knows about the four directions. She further states that in one rupee there are four paise. She also stated that she does not know in which country she is living but she stated that she was residing at Chandigarh. All this evidence is excusable for the reasons; firstly, the lady is uneducated and secondly her I.Q. is slightly deficient. In 1994(3) PLR 312 : 1994(2) RRR 222 (P&H), *Harpreet Singh v. Smt. Surinder Kaur*, this Court held that to succeed under Section 13(1)(iii) it is necessary for the husband to show that wife has been suffering continuously or intermittently from mental disorder and this mental disorder should be of such a kind and to such an extent that he cannot reasonably be expected to live with her. In the cited case, the lady was though an educated but she was suffering from some sort of abnormalities and it was concluded that lady was not suffering from such mental illness so as to constitute a good ground for divorce. Incomplete development of mind is different from the mental disorder of such a kind and to such an extent that it is not reasonably be expected to live a spouse with the other spouse.

25. The learned counsel for the respondent-husband, however, relied upon 1981 Hindu Law Reporter 157, *Darbara Singh v. Sudarshan Kaur*. This judgment will not be helpful to him because in the cited case the mental disorder ailment was

incurable. There is no such evidence in the present case.

26. The counsel for the respondent-husband also relied upon 1984 Hindu Law Reporter 508, Vinod Ku-mari v. Major Stirinder Mohan. In this case the behaviour of the spouse was abnormal and there were statements of the witnesses who had given such instances that the lady was not normal and her conduct was abnormal. The lady admitted in the statement that after the marriage she used to lose temper and she used to be given medicines. It was also established that wife was suffering from schizophrenia. She was aggressive and prone to abusing and she used to curse her husband and neglected him with food and she used to sleep separately at odd hours. She was under the impression (hat her food had been mixed with poison. With those proved facts she was declared a case of mental disorder. There is no such evidence in the present case. The judgment reported as 1985(1) HLR 97, Baiwinder Kaur v. Baldev Singh is again not helpful to the counsel for the respondent-husband. In this cited case the wife was suffering from mental disorder even before the marriage. The wife was so greaily excited that she tried to commit suicide. Again this type of evidence is missing in the present case. The judgment reported as 1994(2) HLR 114 : 1994(3) RRR 272 (P&H;)(DB), Asa Rani v. Raj Kumar is again not helpful as it was a case of insanity. It is not the case of the husband that his wife is a patient of insanity. Otherwise also in the cited case it was established by oral as well as by documentary evidence that wife had been mentally sick and it was impossible for the husband to live with his wife under those conditions.

27. In the view of this Court, the learned District Judge, Ropar has not rightly viewed the evidence causing miscarriage of justice to the appellant Smt. Veena Rani. Therefore, I reverse the finding of the trial Court on issue No. 1 and decide this issue against-the husband and in favour of the wife.

28. As a result of reversal of finding on issue No. 1 the appeal is hereby allowed, the judgment and decree of the trial Court are set aside and the petition of Shri Mo-hinder Kumar, husband, under Section 13 of the Hindu Marriage Act stands dismissed with no order as to costs.

29. Appeal allowed.

