

Himachal Pradesh High Court

Bench: Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Date of Decision: 16 October 2023.

FAO No. 109 of 2012 Reserved on:

Neeraj Guleria

....Appellant

Versus

Sonia

.....Respondent

Sections, Acts, Rules, and Articles :

Hindu Marriage Act, 1955.

Article 142 of the Constitution of India.

Subject: Divorce petition based on grounds of cruelty and desertion in a marriage - Marriage breakdown not a ground for divorce under the Hindu Marriage Act – Power to dissolve marriage on the ground of irretrievable breakdown vested in the Supreme Court under Article 142 of the Constitution.

Headnotes:

Family Law – Divorce – Appellant seeking divorce on grounds of cruelty and desertion – Trial Court dismissed the petition – Appellant challenges the judgment – Clubbing of issues by Trial Court not erroneous – Evidence supports that the wife was left in her parental home when she was ill and efforts to bring her back were resisted by the appellant and his family – Marriage breakdown not a ground for divorce under the Hindu Marriage Act – Power to dissolve marriage on the ground of irretrievable breakdown vested in the Supreme Court under Article 142 of the Constitution – Appeal dismissed. [Para 2-36]

Referred Cases:

- Hiru vs. Mansa Ram (2003) 1 Curr. L.J. 133.
- Jagat Singh vs. Shanti Swaroop (2007) HLJ 192.
- Kollam Chandra Sekhar v. Kollam Padma Latha (2014) 1 SCC 225.
- Debananda Tamuli v. Kakumoni Katakya (2022) 5 SCC 459: 2022 SCC OnLine SC 187.

- Amravati v. Harish Kumar Sharma (2022) SCC OnLine HP 6592.
- Anil Kumar Jain v. Maya Jain (2009) 10 SCC 415: 2009 SCC OnLine SC 1575.
- Rakesh Raman v. Kavita (2023) SCC OnLine SC 497.
- Shilpa Sailesh v. Varun Sreenivasan (2023) SCC OnLine SC 544.

Representing Advocates:

For the Appellant: Mr. Bhupender Gupta, Senior Advocate with Ms. Rinki Kashmiri, Advocate.

For the Respondent: Mr. Rajnish Maniktala, Senior Advocate with Mr. Naresh Verma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 27.12.2011 passed by learned District Judge, Mandi, vide which the petition filed by the appellant (petitioner before the learned Trial Court) for seeking divorce was dismissed. (Parties shall hereinafter be referred to in the same manner in which they were arrayed before learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the petitioner/husband filed a petition for seeking dissolution of marriage by a decree of divorce on the grounds of cruelty and desertion. It was asserted that the marriage between the parties was solemnized on 21.07.2005, as per Hindu Rites and Customs. The parties resided together as husband and wife in their matrimonial home till 30th October, 2005. The respondent's father visited the matrimonial home of daughter on 30.10.2005 to invite her on the occasion of Diwali.

She left her matrimonial home with the consent of her husband and his parents. She was to return after two or three days of Diwali. However, she did not return. The petitioner called her telephonically and she was brought to Kullu on 01.01.2006 by her relative-Ashok Kumar Pathania, where the petitioner was serving. Her father told the petitioner's parents that she was under depression and required treatment. She resided with her husband at Kullu till 04.02.2006. She did not allow him to consummate the marriage. He brought these facts to the notice of his parents, who advised him to bring her back to the village Panjethi, where his parents were residing. This fact was brought to the notice of the respondent's father, who visited Panjethi on 05.02.2006. He made inquiries from her but she did not reply. Her father took her with him to her parental home on 05.02.2006. Since then, she is residing in her parental home. Petitioner/husband even served a notice upon the

respondent/wife, which was received by her; however, she did not join the company of the petitioner. Therefore, the petition was filed for seeking divorce on the grounds of cruelty and desertion.

3. The petition was opposed by filing a reply denying the contents of the petition. It was asserted that the petitioner and his father were posted at Bhuntar. The parties and parents of the petitioner were living at Kullu. The petitioner and his parents visited Panjethi on 30.10.2005 to celebrate Diwali. The petitioner's father informed the respondent's father on 30.10.2005 to visit Mandav Hospital, where the respondent was being examined. The Doctor told that she did not suffer from any disease, which required treatment; however, she needed love and affection. The respondent's father returned to his home. The petitioner and his father asked her to accompany them to her parental home and brought her to Maniana, the parental home of the respondent. The Petitioner/husband stayed for one day at Maniana and left the respondent/wife in her parental home. The petitioner's parents visited the parental home of the respondent in the 3rd week of November, 2005. However, they did not take the respondent with them. The petitioner stayed with the respondent/wife in December 2005 in her parental home but he did not ask her to accompany him. The respondent/wife went to Kullu on the invitation of the Petitioner/husband on 01.01.2006 and resided with him till 03.02.2006. The petitioner's father contacted the respondent's father on 03.02.2006 and called her to village Panjethi. Respondent's father visited Panjethi on the morning of 04.02.2006. The respondent's father informed that she was suffering from depression and was being treated in Kali Mata Temple. All the persons went to Kali Mata Temple and returned after taking the holy water. The petitioner's father left the respondent in her parental home with the instructions that she needed further treatment and should be taken to the temple from time to time. The respondent/wife contacted the Petitioner/husband telephonically and expressed her intention to join him. However, the Petitioner/husband told her to wait and that he would take her with him. The respondent's father contacted the petitioner and his mother and enquired as to when the respondent should be sent to her matrimonial home. However, no response was received. The Petitioner/husband said in April, 2008 that he wanted to divorce the respondent/wife. The respondent/wife was ready and willing to reside in her matrimonial home but she was forced to reside in her parental home. The petition was filed without any basis; hence, it was prayed that the petition be dismissed.
4. A replication denying the contents of the reply and affirming those of the petition was filed.

5. The learned Trial Court framed the following issues on 14.01.2009 and 07.12.2011:

1. Whether the respondent has deserted the petitioner?

OPP 1A Whether the respondent treated the petitioner with cruelty as alleged? OPP

2. Relief

6. The parties were called upon to produce the evidence and the petitioner examined himself (PW1), Prithi Pal Singh (PW2), Ashok Kumar (PW3), Sohan Singh (PW4) and Surjan Singh (PW5). Respondent's father examined himself (RW1), Kartar Singh (RW2), Rajinder Singh (RW3) and Yudhvir Singh (RW4).

7. An application under Order 32 Rule 15 of CPC was filed for the appointment of a legal guardian of the respondent.

A report was received from the Assistant Professor, Department of Psychiatry that the respondent was suffering from Schizophrenia and needed regular treatment; hence, the .

respondent's father was appointed as a legal guardian.

8. The Learned Trial Court held that the petition was not filed on the ground that the respondent/wife was suffering from a mental disorder; hence, the diagnosis of schizophrenia would not have any impact on the petition. There was no evidence to prove the cruelty. The respondent/wife was residing separately from the Petitioner/husband but she was sent by the parents of the petitioner when they found that she was suffering from depression. It could not be said that she had gone to her parental home to put an end to her relationship with the petitioner. The service of legal notice by the Petitioner/husband also implied that the act of cruelty was condoned by the petitioner; hence, all the issues were answered in negative and the petition was dismissed.

9. Being aggrieved from the judgment and decree passed by the learned Trial Court, the present appeal has been filed asserting that the learned Trial Court erred in clubbing issues no.1 and 1(a) together. There was a misreading of pleadings and the evidence by the learned Trial Court. The respondent was permitted to be represented by her father as she was not found mentally fit to defend herself. She abandoned her .

matrimonial home without the consent of the petitioner and she never returned to discharge her matrimonial obligations.

Learned Trial Court erred in holding that the petition was based upon the mental condition of the respondent. The mental condition was not a ground for divorce in the present petition.

The respondent has been residing separately from the petitioner for more than two years and she failed to establish any reasonable cause for doing so. The act of the respondent of physical separation amounted to cruelty and the learned Trial Court erred in denying the divorce on this ground. The respondent did not appear in the witness box and an adverse inference should have been drawn against her. Therefore, it was prayed that the present appeal be allowed and judgment and decree passed by the learned Trial Court be set aside.

10. I have heard Mr. Bhupender Gupta, learned Senior Counsel assisted by Ms. Rinki Kashmiri, learned counsel, for the appellant-petitioner and Mr. Rajnish Maniktala learned Senior Counsel assisted by Mr. Naresh Verma learned counsel for the respondent.
11. Mr. Bhupender Gupta, learned Senior Counsel .

submitted that the petitioner has succeeded in establishing that the respondent was residing separately without any reasonable cause. Separate residence by the respondent amounted to cruelty on her part. The parties have resided separately for a long time and the marriage between the parties has broken down. It is useless to carry the relationship any further and should be dissolved in the interest of the parties. Hence, he prayed that the present appeal be allowed and judgment and decree passed by the learned Trial Court be set aside.

12. Mr. Rajnish Maniktala, learned Senior Counsel for the respondent submitted that the respondent was left in her matrimonial home by the petitioner. Efforts were made by the respondent to join the company of the petitioner but she was not taken. The respondent was abandoned when she required the love and affection of the petitioner and his family members. The marriage cannot be dissolved on the ground of irretrievable breakdown as this power is vested with the Hon'ble Supreme Court and not with this Court. Therefore, he prayed that the petition be dismissed.

13. I have given considerable thought to the rival .

submissions at the bar and have gone through the records carefully.

14. The following points arise for determination in this appeal:-

1. Whether the judgment and decree passed by the learned Trial Court is sustainable?
2. Final Order.

15. For the reasons to be recorded hereinafter while discussing my findings on the aforesaid points are as under:-

Point no. 1 : Yes. Relief :

The appeal is dismissed as per

the operative part of the judgment.

REASONS FOR FINDINGS

POINT NO.1

16. It was asserted in the memorandum of appeal that the learned Trial Court erred in clubbing the issues together and the judgment is vitiated due to this fact. This is not acceptable.

Learned Trial Court had taken the issues together as the evidence related to them was common. It was laid down by the Hon'ble High Court in *Hiru vs. Mansa Ram* 2003 (1) Curr. L.J. 133 that the judgment of the Court is not bad simply because issues .

were taken together for discussion. It was observed:

"8. A bare perusal of this rule shows that the Court has to give a decision on each of the issues along with reasons thereof unless the findings upon any one or more of the issues are sufficient for the decision of the suit. There is nothing in the language of rule 5 of order 20 which indicates that two or more issues cannot be clubbed together for discussion and findings in the context of the evidence on record. What is required by rule 5 is that the Court has to give its findings on all the issues unless the findings on any one or more of the issues are sufficient for the decision of the suit. The provision is aimed at curbing unnecessary protraction of litigation. The true import of rule 5 of order 20, as pointed out by a Division Bench of Patna High Court in *Ram Ranbijaya Prasad Singh v. Sukar Ahir*, AIR 1947 (34) Patna 334, is that the Courts of fact must decide all the issues of fact which arise between the parties so that if the appellate court takes a different view, the parties are saved from further harassment.

However, clubbing of most of the issues and writing a conclusion at the end of the judgment would not contravene rule 5 of order 20 of the Code nor will it vitiate the findings for that reason.

9. It is true that sometimes Judicial Officers as a convenience club together all or most of the issues and write a judgment though not often without applying their minds on a particular matter that has to be decided under each issue and then conclusions on several issues are given at the end of the judgment but even such a judgment cannot be said to contravene the provisions of rule 5 of Order 20 of the Code which requires no more than that reasons should be given for the findings in respect of each issue. Such a judgment may be open to criticisms but it cannot be said to be no judgment in the eyes of law."

17. This position was reiterated in *Jagat Singh vs. Shanti Swaroop* 2007 HLJ 192, wherein it was held:

"13. Now coming to the question with regard to the discussion and decision by the learned trial court of issues No.1, 3 and 6 together. As far as Issues No.1 and 3 are concerned, I am of the opinion that there was no error committed by the trial court in discussing the deciding these issues together because both the issues overlap to some extent. Though normally, the trial court should endeavour to decide every issue separately, there is no bar to two or more issues being decided together. Issues, which overlap or where the same evidence has to be considered and where points to be decided are similar in nature, can always be decided together. In the present case, I find that issue No.1 is with regard to the entitlement of the plaintiff to claim possession and issue No.3, is whether he was estopped by his acts, conduct and acquiescence from claiming possession. These could have been conveniently decided together by the learned trial court."

18. Therefore, the judgment cannot be faulted because the issues were taken together.
19. The petitioner reiterated the contents of his petition in his proof affidavit (Ex. PW1/A). Headmitted in his cross-

examination that he, the respondent and her parents went to Panjethi to celebrate Diwali on 30.10.2005. He left for his job on the next day. The respondent called him and told him that she was not feeling good. He returned in the evening and was told by the respondent that she was feeling giddiness and was afraid of coming out of the room. He informed the father of the respondent about this fact, who took her with him. He had not .

accompanied the respondent to Mandav Hospital. He also denied that he had left the respondent in her matrimonial home and resided at Maniana with her.

20. His father Prithavi Pal Singh (PW2) admitted in his cross-examination that they had gone to Panjethi, where the respondent fell ill. He called the respondent's father. He, his wife, the petitioner and the respondent went to Mandav Hospital. The Doctors said that there was no problem with her.

The respondent was told that she should be left in her parental home on which the petitioner dropped her at her parental home.

He resided in the parental home of the respondent during the night and thereafter, went to Kullu on the 2nd-3rd day.

21. The testimony of the petitioner's father falsifies the version of the petitioner. Petitioner denied that he had accompanied the respondent to Mandav Hospital or had dropped her in her parental home, which facts have been admitted by his father. These were innocuous facts and the fact that the petitioner is lying about these facts shows that his testimony cannot be relied upon.

22. Petitioner's father also admitted that he and his wife .

went to the parental home of the respondent. The respondent was undergoing treatment but her condition was not proper.

The petitioner also went to the parental home of the respondent in December, 2005 and remained there. The respondent's father said that the respondent should be taken and she was sent to Kullu with Ashok Kumar Pathania, where the respondent resided till February 2006. They visited home on 02.02.2006.

They informed the respondent's father that the respondent was being treated spiritually. The respondent, her father and the petitioner's father went to the temple. The respondent broke the holy thread and expressed her intention to visit her parental home. She left for her parental home. He admitted that he had instructed the respondent's father to get the treatment for one month. He admitted that the respondent's father came to his village after 10-12 days of the service of the notice. 10-12 persons had gathered in the house of a brother-in-law of the petitioner's father. He admitted that he had told them that the condition of the respondent was not good and what was the use of bringing her to her matrimonial home.

23. Ashok Kumar (PW-3) also stated in his cross-

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examination that the parties sat together. The respondent's father stated that the respondent was being treated and she would be sent after the improvement of her condition. The petitioner stated that she should be sent after her condition would improve.

24.

r to These statements show that when the condition of the respondent deteriorated, her husband and his family members dropped her in her matrimonial home. They refused to take her and insisted upon the improvement of her condition before she could be taken to her matrimonial home. In similar circumstances, it was laid down by the Hon'ble Supreme Court in Kollam Chandra Sekhar v. Kollam Padma Latha, (2014) 1 SCC 225 : (2014) 1 SCC (Civ) 168: 2013 SCC OnLine SC 858, that the husband cannot abandon his wife because she is suffering from sickness. Marriage under the Hindu Law is a sacred institution.

Life is made up of good times and bad and the partners must weather these storms. It was observed:

"41. Under Hindu law, marriage is an institution, a meeting of two hearts and minds and is something that cannot be taken lightly. In the Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realised [Vedic Index, I, 484, 485; CHI, I, 89 as in Ranganath Misra, J., Mayne's Treatise on Hindu Law and

Usage [15th Edn. (Revised), Bharat Law House, 2003] 97.].

In Vedic Index I it is stated that "the high value placed on the marriage is shown by the long and striking hymn". In Rig Veda, X, 85; "be, thou, mother of heroic children, devoted to the Gods; be, thou, Queen in thy father-in-law's household. May all the Gods unite the hearts of us 'two into one'", as stated in Justice Ranganath Misra's Mayne's Treatise on Hindu Law and Usage [Vedic Index, I, 484, 485; CHI, I, 89 as in Ranganath Misra, J., Mayne's Treatise on Hindu Law and Usage [15th Edn. (Revised), Bharat Law House, 2003] 97.].

42. Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with them terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the

respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. Can this be a reason for the appellant to abandon her and seek dissolution of marriage after the child is born from their union? Since the child is now a grown-up girl, her welfare must be the prime consideration for both parties." (Emphasis supplied)

25. In the present case, the petitioner and his family members failed in their sacred duty to take care of the respondent, when she was in need and left her in her parental home. Learned Trial Court had rightly held in these circumstances that the respondent could not be said to have deserted the petitioner with an intent to bring the matrimonial ties to an end.

26. Sh. Bhupender Gupta, learned Senior Counsel for the .

petitioner heavily relied upon the judgment of Hon'ble Supreme Court in *Debananda Tamuli v. Kakumoni Katakya*, (2022) 5 SCC 459:

2022 SCC OnLine SC 187, to submit that it was the duty of the respondent to visit her parental home and she cannot reside in her parental home without any reasonable cause. In the cited case, the wife had left the matrimonial home without any reasonable cause and did not make any effort to join the company.

27. Reliance was also placed upon *Amravati v. Harish Kumar Sharma*, 2022 SCC OnLine HP 6592, however, in this case, the wife left the matrimonial home. Efforts were made to bring her to her matrimonial home but these were not successful and in these circumstances, marriage was dissolved by a decree of divorce.

28. In the present case, the wife was left in her parental home when she was ill. The efforts to join the matrimonial home were spurned by the petitioner and his family members by insisting upon by improvement of her condition; hence, the facts of the cited case do not apply to the present case.

29. It was submitted that the parties have resided .

separately for a long time and the marriage has broken down irretrievably and as such the marriage should be put to an end.

Reliance was placed upon the judgment of the Hon'ble Supreme Court in *Rakesh Raman v. Kavita*, 2023 SCC OnLine SC 497. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in *Anil Kumar Jain v. Maya Jain*, (2009) 10 SCC 415; (2009) 4 SCC (Civ) 226; 2009 SCC OnLine SC 1575, that power to dissolve the marriage on the ground of irretrievable break down is vested in the Hon'ble Supreme Court under Article 142 of the

Constitution of India and such power is not vested in the other Courts. It was observed:

"28. It may, however, be indicated that in some of the High Courts, which do not possess the powers vested in the Supreme Court under Article 142 of the Constitution, this question had arisen and it was held in most of the cases that despite the fact that the marriage had broken down irretrievably, the same was not a ground for granting a decree of divorce either under Section 13 or Section 13-B of the Hindu Marriage Act, 1955.

29. In the ultimate analysis the aforesaid discussion throws up two propositions. The first proposition is that although irretrievable breakdown of marriage is not one of the grounds indicated whether under Sections 13 or 13- B of the Hindu Marriage Act, 1955 for grant of divorce, the said doctrine can be applied to a proceeding under either of the said two provisions only where the proceedings are before the Supreme Court. In exercise of its extraordinary powers under Article 142 of the Constitution, the Supreme Court can grant relief to the parties without even waiting .

for the statutory period of six months stipulated in Section 13-B of the aforesaid Act. This doctrine of irretrievable breakdown of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution. Neither the civil courts nor even the High Courts can, therefore, pass orders before the periods prescribed under the relevant provisions of the Act or on the grounds not provided for in Sections 13 and 13-B of the Hindu Marriage Act, 1955."

30. The power under Article 142 of the Constitution of India was also recognised in *Shilpa Sailesh v. Varun Sreenivasan* 2023 SCC OnLine SC 544 wherein it was held:

"(iii) Whether this Court can grant divorce in the exercise of power under Article 142(1) of the Constitution of India when there is a complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

This question is also answered in the affirmative, inter alia, holding that this Court, in the exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the grounds of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and

there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed."

31. Therefore, the power to grant divorce is vested with the Hon'ble Supreme Court of India and this Court does not have the power to dissolve the marriage on the ground of irretrievable .

breakdown.

32. It was submitted that the wife is residing separately and this amounts to cruelty. This submission cannot be accepted. It has been found out above that the respondent is not residing separately due to her own volition but because she was abandoned by the petitioner and his family members, therefore, the submission that the act of the respondent of residing separately amounts to cruelty is not acceptable.
33. It was submitted that the respondent did not appear in the witness box and an adverse inference should be drawn against her. This submission cannot be accepted. The Court had found that she was unable to defend herself and she was permitted to be represented by her father. Since she was unable to defend herself; therefore, she could not be expected to visit the Court and make the statement and no adverse inference could have been drawn against her.
34. No other point was urged.
35. Therefore, there is no infirmity in the judgment and the decree passed by the learned Trial Court and the same are sustainable. Hence, this point is answered in the affirmative.

Final Order:

36. In view of the above, the present appeal fails and the same is dismissed. Pending miscellaneous application(s), if any, shall also stand(s) disposed of.

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