

**Reserved on 28.8.2024**

**Delivered on 30.8.2024**

**Court No. - 39**

**Case :- FIRST APPEAL No. - 455 of 2013**

**Appellant :- Shiv Sagar**

**Respondent :- Smt. Poonam Devi**

**Counsel for Appellant :- Akhilesh Kumar,Ram Pyare,Sanjeev Singh**

**Counsel for Respondent :- Ajay Kumar Yadav,Manvendra Singh**

**Hon'ble Saumitra Dayal Singh,J.**

**Hon'ble Donadi Ramesh,J.**

1. Heard Shri Sanjeev Singh and Shri Ram Pyare, learned counsel for the appellant and Shri Ajay Kumar Yadav, learned counsel for the respondent.

2. The present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as the "Act") arising from the judgment and order dated 12.2.2013 passed by the Additional District Judge, Court No. 1, Fatehpur, in Petition No. 31 of 2012 (Shiv Sagar vs. Smt. Poonam Devi), whereby the learned trial Court dismissed the divorce case instituted by the appellant, seeking dissolution of his marriage on the grounds of insanity and cruelty.

3. The marriage between the parties was solemnized in 2005. Admittedly, they lived together for almost seven years. Two daughters were born to them, both of whom are in the custody of the respondent. The parties have been living separately since January 2012. The appellant is a driver in the Provincial Arms

Constabulary. Maintenance is being paid to the respondent and her two daughters under an order passed in separate proceedings. Upon exchange of pleadings, the learned court below framed the issue, whether the appellant was entitled to seek dissolution of his marriage on the ground of insanity, as the main ground. He also pleaded cruelty arising from the insane behaviour attributed to the respondent.

4. The appellant led both oral and documentary evidence in support of his case. Besides the appellant, two other witnesses, Jitendra Kumar and Pratap Singh, were examined. By way of documentary evidence, the appellant filed paper No. 7 Ga 1/1, being a medical prescription from Dr. S.B. Joshi, and paper Nos. 7 Ga 1/2 to 3, being medical test reports, along with list Nos. 34 Ga to 35 Ga, which included prescriptions from Dr. S.B. Joshi.

5. On her part, the respondent led oral evidence wherein, besides herself, Ram Singh and Gulab Singh were examined. By way of documentary evidence, the respondent filed documents, including her High School and Intermediate certificates, as well as her marks sheet and Graduation degree certificates to establish that she was well educated.

6. Upon detailed consideration, the learned trial Court reached firm conclusions of fact. It concluded that the parties had cohabited for seven years without any criminal or other case being lodged by either party against the other. The period of cohabitation was largely uneventful. Two children were born to the parties during that period. In the context of those firm findings, which are also not disputed by the appellant, the learned trial Court proceeded to consider the further evidence led by the appellant regarding the allegations of insanity.

7. As to insanity, Section 13(1)(iii) of the Act and the explanation thereto reads as below:

“13(1)...

...

*[(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.*

*Explanation.--In this clause,--*

*(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other 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 subnormality 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; or]”*

8. Thus, the appellant was burdened to establish either that the respondent was incurably of unsound mind or that she had been afflicted by such a medical condition as may be described as a continuous or intermittent mental disorder of a kind in which the appellant may not be reasonably expected to live with the respondent. As to what medical condition qualifies as mental disorder, the Explanation leaves no doubt. It must be a medical illness involving arrested or incomplete development of the mind, psychopathic disorder or any other disorder or disability of the mind, including schizophrenia. Further, ‘psychopathic disorder’ has also been defined as a persistent disorder or disability of the mind that may result in abnormally aggressive or seriously irresponsible conduct on the part of the person alleged to be afflicted by such a condition.

9. To meet the above strict requirements of the Act, there is no exception. Seen in that light, the appellant never attempted to establish before the learned trial Court that the respondent was incurably of unsound mind or was suffering continuously or intermittently from any mental disorder that may have given the

appellant a reason to live away from her.

10. While the appellant and his witnesses made statements in favour of the appellant by generally stating that the respondent had been prescribed medicines for her mental ill health, they did not demonstrate the nature of her illness or the extent of affliction (if any) suffered by the respondent. Even as to the medication, if any, advised to the respondent, it was not proven if any specific/particular medicine had been prescribed, as may be prescribed only to a person who may fall within the scope of Section 13(1)(iii) of the Act. All that the appellant had been able to prove was that the respondent was not regular with her medicines as prescribed by Dr. S.B. Joshi. That fact is neither here nor there. Unless the pre-existing and irreversible mental condition of the respondent had been proven and unless by its very nature that condition was such as to give the appellant a reason to seek dissolution of his marriage under Section 13(1)(iii) of the Act, the fact thus proven remained extraneous to the grounds raised.

11. Furthermore, the behaviour of the respondent that was cited as evidence of insanity could not be proven. Mainly, the appellant relied upon the evidence of one Jitendra Kumar to establish that the respondent had a tendency to enter into quarrels with others without any cause or provocation. However, during his cross-examination, Jitendra Kumar's testimony was effectively dismantled as he could neither recall the house number where such incidents took place (government accommodation) nor could he recall the details of any medical prescription offered to the respondent. In fact, during his cross-examination, he admitted that he had never accompanied the appellant to any doctor in connection with the treatment allegedly offered to her. He could not recall the name of any doctor who may have been consulted in

that regard nor could he recall the names of any medicines that may have been administered to the respondent. As to the other instance of insane behaviour attributed to the respondent—her having torn to pieces the educational qualification certificates of the appellant—during his cross-examination, Jitendra Kumar denied having seen such an occurrence. He admitted having only seen the torn pieces of the appellant's certificates. He made an unsuccessful effort to establish that the respondent was under medical treatment for insanity by making a bald statement that he had seen medicines lying at the doorstep of the appellant. However, he could not provide any prescription or the name and nature of the medicines. Neither Dr. S.B. Joshi nor the two other doctors who were according to the appellant had treated the respondent, were examined by the appellant. No expert opinion or medical test report was filed and proven by the appellant to establish any serious permanent medical ailment suffered by the respondent.

12. It is in that context that the learned trial Court considered the testimony of the respondent and observed that she came across as a well-educated lady who had completed her graduation. Thus, findings were recorded based on oral and documentary evidence, as well as the Court's own observations as to the conduct of the parties, during court proceedings.

13. Seen in that light, the learned trial Court observed that the parties lived and enjoyed a normal matrimonial relationship for a long period of seven years. As to the reason for the disputes between them, the respondent appears to have offered a factual explanation regarding the circumstances of the birth of two daughters, which was not to the liking of the appellant and his paternal family members. While we do not record a positive

finding as to that explanation, no material or evidence has been shown to exist on the record that may lead us to doubt the correctness of the other finding recorded by the learned trial Court as to lack of proof of insanity and cruelty alleged by the appellant. Further, no material has been shown to us that may prompt us to record any different or further finding of fact. Thus, no ground for divorce, either on account of insanity or cruelty, is made out.

14. As for the ground of cruelty, we note- despite the bad matrimonial relationship suffered and despite the fact that in such circumstances, often criminal prosecutions and other proceedings are lodged against husbands, here no such proceedings were lodged against the appellant. The matrimonial dispute that arose has remained a matrimonial dispute, till now.

15. Further, the learned trial Court noted that according to the appellant himself (as admitted by him during his cross-examination), the medical condition of the respondent was reversible to the extent that the doctor had advised the respondent to continue her medication, which would lead to a cure.

16. Thus, there is no ground to interfere with the order impugned. The appeal lacks merit and is **dismissed**. No order as to costs.

**Order Date :- 30.8.2024**

Faraz/<sup>Sumaira</sup>

**(Donadi Ramesh, J.) (S. D. Singh, J.)**