

HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU

CIA No. 51/2008  
CMA Nos. 33/2010 & 52/2008

Date of Order: 13 .05.2013

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Joosy Razdan.	V.	Sanjay Gangoo.
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Coram:

*Hon'ble Mr. Justice Bansi Lal Bhat, Judge.*

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**Appearing Counsel:**

For Appellant(s) : Mr. P. N. Goja, Advocate.

For Respondent(s) : *exparte.*

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i) Whether approved for reporting in Press/Media	:	<b>Yes/No</b>
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ii) Whether to be reported in Digest/Journal	:	<b>Yes/No</b>
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Appellant is legally wedded wife of respondent, marriage between spouses having been solemnized on 02.10.1998 at Jammu in accordance with Hindu Rites. A male child, Master Hritik, was born out of the said wedlock between the spouses. To her chagrin, appellant discovered within a month of the marriage that the respondent was a person of shaky nature avoiding people and the family members. The respondent would go to long sleep after consuming some medicine. On being confronted about his abnormal behaviour, he would abuse the petitioner. It finally dawned upon her that respondent was a drug addict – a fact

concealed from appellant at the time of marriage. Respondent lost his job and he could not stick to work at any place after finding alternate jobs. Appellant was abused and also subjected to physical violence as the respondent had been spending his nights in dark tunnels. The consistent abnormal behaviour of respondent resulted in embitterment of relations between the spouses. Finding it difficult to reconcile with the behaviour of respondent and that she had been cheated in marriage by concealing drug addiction of respondent, the appellant along with her minor son started living with her parents at Jammu. Respondent was fired from job whenever and wherever he took a new job after losing the previous one. Appellant prayed for dissolution of her marriage with respondent by invoking jurisdiction of District Court where she filed a petition under Section 11 of the Jammu and Kashmir Hindu Marriage Act for declaring the marriage subsisting between spouses a nullity and also under Section 13 of the same Act for dissolution of marriage by Decree of divorce. The Petition was contested by respondent-husband who denied that he ever consumed drugs or that he was a drug-addict. Respondent further pleaded that the appellant was enamoured of glamorous city life and she was reluctant to live with him in small and remote areas. She would exhibit her erratic behaviour picking up quarrel with him frequently. Respondent denied that he was ever fired by his employer. He pleaded that he was in search of better opportunities of job which resulted in

frequent change of employment. He alleged that the appellant had withdrawn from his society without reasonable and sufficient cause.

Parties joined the following issues:

1. Whether the consent of appellant for marriage was obtained by suppression of facts? OPP
2. Whether the respondent has treated the appellant with cruelty? OPP
3. Relief. OPP

Evidence was adduced by appellant who besides examining 2/3 witnesses in support of her case also entered the witness box to substantiate the allegations in the Petition. Respondent failed to enter the witness box to rebut the allegations in the petition, though he examined two witnesses in defence.

On consideration of the evidence adduced by parties learned District Judge (Matrimonial Cases) Jammu dismissed the Petition. Learned Trial did not find any evidence to prove that the respondent was a drug addict prior to his marriage with the petitioner, therefore no question of concealment of such fact or getting married with appellant arose. He found that there was also no evidence of cruelty.

In this Appeal filed against the impugned Judgment rendered by learned Trial Court on 30.09.2008 appellant has seriously questioned findings recorded by learned Trial Court on the ground that the facts pleaded in the petition have been substantiated by appellant and proved by her witnesses including an Expert-Dr. Vinod Dhar which stands un-rebutted. Respondent has not appeared in the witness box to prove that he has improved upon the vice of drug addiction and that he has undergone reformation. Furthermore the mere fact that the respondent was a drug-addict perpetuating agony and inflicting pain upon the appellant in itself constituted cruelty. He submits that the learned Trial Court failed to appreciate that the effect of non-appearance of respondent in witness box had resulted in non-rebuttal of allegations in the Petition which were also established satisfactorily by oral evidence adduced at the trial.

Efforts to serve the respondent through ordinary mode proved abortive. Substituted service was resorted to. Proclamation issued for service of respondent was published in Newspaper Edition of “**The Sunday Express**” Vadodra (Gujrat) dated September 09, 2012. However, respondent did not appear to contest the appeal. He was set *exparte* and the appeal was heard in his absence.

On scanning appreciation of evidence through the evidence brought on record by appellant during the trial of the cause before the learned Trial Court, it emerges that

appellant has, besides herself entering the witness box, examined a Medical Expert-Dr. Vinod Dhar and one Mr. K. L. Dhar who happened to be the boss of respondent while the latter was serving in Dooli Ganga Project, Uttranchal. Adverting to testimony of appellant it comes to fore that she got married to respondent on 02.10.1998 at Jammu. It was an arranged marriage. She belonged to an educated family and was a Diploma Holder in Electronics and Tele Communications from Bangalore. She was working as Junior Engineer with Shayan Haryana at the time of her marriage while respondent was serving as Engineer in JP Industries at Bunther (H.P.). According to her version it was a high standard marriage and her parents had given sufficient dowry to her. She joined respondent at Bunther just a day after her marriage. However, she found that the respondent was not having good attitude towards her and behaved in an abnormal way. He used to avoid people. Respondent quit his job barely a month after marriage. The couple went to Delhi where appellant joined her previous job. However, respondent stayed idle. He would keep sleeping for the whole day which gave rise to suspicion in the mind of appellant that he consumed drugs. She alleged that that respondent had beaten her on 2/3 occasions. Her mother-in-law was also living with them. Appellant turned pregnant. The family left for Baroda where respondent owned a house. Whenever appellant tried to confront the respondent and enquire about his erratic behaviour,

respondent would become violent. She found that the respondent used Corex and injections to induce drugs in his body. She gave birth to a child at Baroda. Her father visited her and bore the expenses incurred on her delivery. At the instance of her mother-in-law she sought assistance of one Mr. Sharma who happened to be friend of her father-in-law. Mr. Sharma arranged a job for respondent in HCC Dooli Ganga Project at Dharchula. She also joined him at Dhurchula after some time but to her dismay Project Manager Sh. K. L. Dhar informed her that respondent was an indolent as he was a drug addict. Meanwhile, a team arrived from Bombay and removed respondent from service. Mr. Dhar arranged a job for respondent with Samsung but respondent did not stick to the work place for more than a fortnight. Mr. Dhar again came to the rescue of the family and found another job for respondent with Gamon India Sikkim. Respondent joined there but he was removed from service. Appellant claimed that she left for Jammu. Her father not only looked after the appellant and her child but also managed a job for respondent at Rishikesh. Appellant did not join him there. She claimed that the respondent was taken to Dr. Dhar for treatment. Appellant further deposed that the factum of respondent being a drug addict was concealed from her till marriage. She was cheated. Respondent sold her ornaments including her golden chain. Shopkeepers from whom respondent had taken goods on credit visited her with demand of money. **She claimed that**

**matrimonial relations between her and respondent were snapped from the day respondent went to Rishikesh.** She claimed that she had served notice marked EXPW-J upon respondent seeking divorce by mutual consent. **She apprehended that respondent may push her in flesh trade to earn money so that he could satisfy his lust for drugs.** Thus she claimed to have lost faith in respondent. She felt insecure in living in the company of respondent and also apprehended danger to the safety of the child. Respondent had declined to go for divorce by mutual understanding. Appellant has been cross examined at length which revealed that she had met respondent twice at Delhi before her marriage. She was with respondent for about 2 hours when engagement had taken place. However during these brief visits she did not learn about the drug addiction of respondent. Her parents met respondent at the time of engagement only. She stayed in the company of respondent at Kulu Bunther after marriage. It is there that she discovered the attitudinal problem in him. Respondent would go for long sleep instead of attending to his work at the work place. But they had cordial relations at that time. Thereafter she lived with respondent at Delhi for about six months. It was at Delhi that she suspected drug abuse by respondent. She found the respondent visiting medical stores and going to bathroom with bottles of Corex. On enquiry respondent told her that he used to consume the drug on medical advice. However, she did not disclose this fact to

anybody. She discovered *Charas* and *Opium* besides *Corex* in the bag of respondent while staying at Dharchula. Their bathroom also smelt of such drugs. Respondent would also purchase injections from medical shop at Dharchula. He was not ailing. She made no complaint about the same. She held no joint account with the respondent. Her parents had provided money for purchase of vehicle. Mr. Dhar was the Project Manager and when she met him, he disclosed that the respondent had been deserting the site and indulge in drug abuse. Respondent was persuaded to attend his job at the site. The revelation by Mr. Dhar confirmed her suspicion that the respondent was a drug addict, though she herself noticed the respondent consuming drugs. She stayed with respondent at Dharchula and had relations with him as she wanted the respondent to reform. Respondent never invited her to join him at Rishikesh. He was removed from job shortly thereafter. Project Manager had called her on phone and told her that that respondent had taken a loan of Rs.15,000/- but failed to return the same. She was at Jammu at that time. She and respondent had stayed at Jammu for sometime before respondent left for Rishikesh but Doctor had prescribed medicines for respondent and it was a fortnight thereafter that the respondent left Rishikesh where here father had found a job for him. Respondent had never made any attempt to visit his child.

Appellant's testimony brings to fore the plight of a hapless woman who was duped into a nuptial alliance with a



man who turned out to be a drug addict. The amount of pain and agony inflicted on her can be gauged from the fact that the addiction of respondent ensued the inevitable consequences bringing disaster to the family as he was fired from his job. One can imagine the unenviable position in which the appellant had landed. She had not only to muster strength to come out of the shock upon learning that her husband was a drug addict but also to cope up with the circumstances resulting from removal of respondent from service. Clouds of financial crunch and the days of starvation ahead must have been looming large on her head, moreso as she attained the status of motherhood and had also to take care of her infant baby. The attitudinal change noticed in the respondent who would go to long sleep after consuming drugs and get irritated and become violent when confronted must have been yet another humiliation slapped upon the petitioner. Uncertainties of future and the family sinking into hardship on account of lack of resources to lead a decent life must have been staring at her face and further compounding circumstances that descended upon her. Not rest content with that, appellant had to run from pillar to post to salvage the sinking ship as she had to approach people and seek assistance to arrange job for the respondent. Her sworn testimony, which has been corroborated on all vital aspects by her witnesses, graphically depicts the brave efforts made by her to save marriage and prevent the respondent from becoming a victim of drug-addiction. Dr.

Vinod Dhar, examined by the appellant to establish drug-addiction of respondent, proved certificate marked EXPW-D. He is a qualified Medical Practitioner having a Diploma in De-addiction course beside a Degree in Medicines. He claimed to have experience of de-addiction cases which he handled. He supported appellant's version and produced record to establish that respondent had approached him for counseling and treatment of withdrawal symptoms as the respondent had quit drugs since 43 days. From case history noticed by the witness it emerges that respondent was addicted to drugs of Opiate group administered in the form of Corex Capsules and through Injections. Corex has codene as an ingredient which is an opium derivative. The witness had prescribed medicines to respondent for withdrawal symptoms and also had two counseling sessions with him but the respondent did not follow up. The record produced by witness was marked EXPW-D(1). His testimony further reveals that he had treated the respondent in the year 2003. It is, thus, manifestly clear that Dr. Vinod Dhar has duly corroborated appellant's allegations of respondent being a drug addict. Incidentally the testimony of this witness also reveals that the appellant alone was accompanying the respondent in drug de-addiction sessions which substantiated her assertion in Petition that she made all out efforts to reform the respondent and save her marriage.

Appellant also examined Mr. K.L. Dhar who was the boss of respondent in Dool Ganaga Project Uttranchal. The

witness held position as General Manager while the respondent was working under him as Engineer In-charge of underground works in the year 2001. Since respondent also belonged to the same ethnic group, the witness called him in his office and enquired about his work. The witness allotted him underground works as per his choice. However, the witness learnt within a fortnight that the respondent used to skip the site. On enquiry respondent refuted the allegations. The witness asked the night duty officer to keep vigil on the respondent. Three officers reported that the respondent was not discharging duties and he was a drug-addict. The witness claimed to have called appellant in his office and enquired about the drug habit of respondent. Appellant was speechless and she started weeping. Ultimately she came out with truth. Meanwhile, the witness received instructions from his Head Office at Mumbai to enquire about the drug addiction of respondent. He conducted inspection at night and found two Corex Bottles lying empty in the drawer of table placed in the cabin of respondent. On enquiry he learnt that respondent was habitual of drugs. He submitted report to his Head Office. A team with Deputy General Manager Personnel as its Head arrived from Head Office. The witness was directed to terminate services of respondent. He wanted to act accordingly. However the respondent was permitted to resign. The witness claimed that it was on humanitarian grounds that he recommended respondent to his friend Mr. Pandey working in Gamoon India Limited. Respondent was

employed there but it was just on his third day that when he disturbed public peace by knocking at doors of houses and shops in want of Corex that police arrested him and Mr. Pandey fired him from service. Testimony of appellant is also corroborated by her father Kanya Lal Razdan who supported her version in material particulars and events connected with matrimonial life of the spouses, drug addiction of respondent and the circumstances compelling him to extend financial support to appellant at the time of her delivery. The evidence tendered by appellant and her witnesses has withstood the test of cross examination and their testimonies have not been assailed to establish that they had a motive in making any false accusation against the appellant and deriving any benefit out of the same.

Respondent, as stated elsewhere, stayed away from the witness box. He examined two witnesses in rebuttal to appellant's evidence.

Vijay Kumar Koul is the maternal uncle of respondent who stated that he had never seen respondent consuming drugs and appellant never complained to him in this regard. Instead he blamed appellant of being hot-headed and attributed matrimonial discord to appellant who wanted to lead a hi-fi life at an urban location and was not willing to live dull life at the tunnel sites where respondent worked as Engineer. His cross examination reveals that he had no knowledge about the circumstances in which the spouses got separated and the events relating to frequent quitting of job

by respondent. Same is the case with Rajinder Koul, another witness examined by respondent. He is a cousin of respondent who claimed that respondent was not a drug addict as he knows the respondent since his childhood. He blamed appellant of being over-ambitious who wanted to settle in a city but respondent's job did not permit of the same. None of the two witnesses examined have spoken anything about de-addiction counseling and treatment which the respondent had to undergo but did not follow up. The evidence adduced by respondent is lacking insofar as the material issues relating to respondent being a drug addict and perpetuating cruelty upon appellant is concerned. Same is hardly of any significance and evidentiary value as the respondent himself has chosen not to appear in witness box to rebut the allegations emanating out of sworn testimony of appellant duly corroborated by her witnesses including a Medical Expert and General Manager, Dool Ganga Project under whom respondent worked as an Engineer. *The effect of non-appearance of respondent in witness box is that the allegations in the Petition substantiated by appellant and her witnesses stand un-rebutted and uncontroverted. In matrimonial disputes the spouses are best witnesses to events and circumstances concerning the nuptial alliance. What happens between them is best known to the couple. Seldom have others including the family members, an occasion to derive knowledge about the affairs and circumstances concerning a couple. Once respondent-*

*husband chose to stay away from witness box, he withheld the best evidence regarding the matrimonial dispute interse the parties. The evidence of two witnesses tendered by him, in absence of his own deposition, carries no weight. Even on merit the same is of no significance.*

Cruelty does not necessarily comprise of physical violence only. Harassment, intimidation, humiliation, breach of trust, ridiculing the other spouse publicly to humble and humiliate and create an atmosphere which may not be conducive to safety and security of wife constitutes cruelty on the part of husband.

In **Dastane v Dastane** Hon'ble Supreme Court examined the matrimonial ground of cruelty and held that the appellant must prove that the respondent has treated appellant with such cruelty as to cause reasonable apprehension in the mind of appellant that it will be harmful or injurious for the appellant to live with respondent. It is manifestly clear that the apprehension contemplated by the above conception is that further cohabitation will be harmful or injurious and not that the same or similar acts of cruelty will be repeated.

It is well settled that the acts complained of need not have taken place within the ambit of marital relationship. The conduct of erring spouse even prior to solemnization of marriage and revelation after marriage of fraudulent deception and suppression of facts in regard to conduct that per se constitutes cruelty may be so distressing as to amount

to cruelty. The doctrine of actual physical harm and reasonable apprehension thereof having been repudiated, modern views consider mental cruelty as causing more grievous injury and giving rise of reasonable apprehension that it will be harmful or unsafe to live with the other party. The fact of respondent being a drug addict, which resulted in his being fired from job time and again, had the inevitable consequence of affecting the susceptibilities of the innocent spouse. The conduct of respondent can be safely said to be amounting to cruelty. It is immaterial that the respondent may not have intended to injure or cause harm to petitioner-wife.

In the instant case the conduct of respondent being a drug-addict resulting in his being frequently fired from service is per se unlawful. Its impact on the petitioner-wife and the minor child living under her care spells disaster. Proof of conduct of respondent, who has not come forward to establish that he had quit the vice of drug addiction and reformed himself so as to instill a sense of security in the mind of petitioner-wife and generate hope that the object of marriage interse the parties would be achieved, constitutes cruelty and I have no doubt in my mind that the findings adopted on Issue Nos. 1 and 2 are perverse and the same cannot be supported.

Question of condonation of cruelty on the part of petitioner, given the nature of accusation constituting such cruelty, is untenable. Consumption of narcotic drugs or

psychotropic substances without medical necessity or appropriate permission is an offence. Drug addiction by a spouse can be a matter of perpetual agony for the other spouse. Condonation of cruelty on account of drug abuse by husband has to be established, if same is pleaded by the husband. In the instant case testimony of Dr. Vinod Dhar establishes that the case history of respondent established that he had acquired the habit of consuming drugs since 1992, i.e., six years prior to solemnization of marriage with petitioner. The onus of establishing the facts necessary for proving the conduct of respondent in being a drug-consumer rested upon the appellant who has discharged the same. Condonation of the acts of omission and commission constituting cruelty was to be established by the respondent who did not chose to appear in the witness box to rebut the allegations of appellant and prove that he was not guilty of any inequitable conduct.

In view of the fore going discussion, findings on Issue Nos. 1 and 2 returned by Trial Court cannot be supported. The findings are reversed and both the Issues are decided in favour of petitioner. However in view of the provisions of Section 12 of the Hindu Marriage Act, 1980, appellant's claim for annulment of marriage has to be rejected as no claim can be entertained if petition is presented more than one year after the fraud has been discovered. Such claim being clearly barred in view of the findings arrived at, the only prayer that can be acceded to in view of the finding



returned on Issue No.2 is the prayer for grant of divorce. Finding on Issue No.2 having been returned in favour of appellant and appellant not being guilty of any inequitable conduct disentitling her to the relief claimed, is held entitled to dissolution of marriage by a Decree of divorce.

The appeal is allowed and impugned judgment is set aside. Let a Decree of divorce dissolving marriage between the parties be passed in favour of appellant with costs. Decree Sheet be drawn up accordingly.

The Trial Court be informed about this order and the record be remitted back.

**(Bansi Lal Bhat)**  
**Judge**

Jammu:  
*Sunita.*  
13.05.2013