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**(1990) 03 P&H CK 0014**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : F.A.O. No. 112-M of 1989**

Sudha Mehta

APPELLANT

Vs

Ravinder Mehta

RESPONDENT

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**Date of Decision :** 28-03-1990

**Acts Referred:**

Hindu Marriage Act, 1955 — Section 12

**Citation :** (1990) 2 DMC 362

**Hon'ble Judges :** Amrit Lal Bahri, J

**Bench :** Single Bench

**Advocate :** B.R. Mahajan, for the Appellant; P.C. Mehta Som Nath Saini and Kanwaljit Singh Bakshi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.L. Bahri, J.—This appeal has been filed by the wife-Sudha Mehta against the judgment and decree of the Additional District Judge, Amritsar, dated May 17, 1989, annulling the marriage of the parties u/s 12 of the Hindu Marriage Act.

2. Ravinder Mehta, the husband, filed the petition for annulment of the marriage on the ground that at the time of the marriage, the wife "Sudha Mehta was suffering from recurrent attacks of epilepsy. The marriage of the parties took place on December 6, 1985. It was on 23rd of March, 1986 that Sudha Mehta suffered severe attack of epilepsy. Doctors were called to the house and she was examined. While giving history of the illness, she told the doctors that she was suffering from epilepsy since 1981. She was taken to Guru Nanak Dev Hospital, Amritsar, and also to Municipal Zanana Hospital, Dhab Khatikan, Amritsar. The petition for annulment of marriage was filed on April 5, 1986. While controverting the allegations of the husband the wife took up the stand that the entire story was fabricated by the husband in order to extract money from her parents. At the time of the marriage on attache-case containing jewellery and other articles was lost. The valuables were to the tune of Rs. 50,000/-. On persistent demand of the petitioner's father, her parents agreed to compensate the loss. Once a

sum of Rs. 10,000/- was paid and thereafter a sum of Rs. 20,000/- was paid. Since the remaining amount was not paid promptly, she was taunted by family members of the husband. She was left at her parents' house on March, 1986. These allegations were controverted in the written statement filed by the wife. The trial Court framed following issues :--

(1) Whether the consent of the petitioner was obtained by fraud ? If so, its effect ?

(2) Whether the respondent is subjected to attacks of epilepsy ? If so, what is its effect ?

(3) Relief.

3. After both the parties led evidence, the trial Court decided the case in favour of the husband holding that the wife was subject to attacks of epilepsy and the consent of the husband was obtained by fraud for the marriage. The petition was allowed.

4. Section 12 of the Hindu Marriage Act provides the grounds on which a marriage can be annulled. u/s 12(1)(c) of the Act, a marriage can be annulled if consent of the petitioner was obtained by force or by fraud as to any material fact or circumstance concerning the respondent u/s 12(1)(b) of the Act, a marriage can be annulled if the same was in contravention of the condition specified in Clause (ii) of Section 5 of the Act. A perusal of Section 5(ii)(c) would show that the marriage between two Hindus could be solemnised if the conditions provided were fulfilled ; namely, at the time of the marriage neither party had been subject to recurrent attack of insanity or epilepsy. The aforesaid provisions of the Act were considered in several decisions. Some of them may be noticed. In *Roshal Lal v. Smt. Kadembari* 1979 PLR 232, it was held that if it was proved that the wife had suffered from recurrent attacks of epilepsy before her marriage with the husband, the latter will be entitled to get his marriage with the wife annulled by a decree of nullity. In *Tarlochan Singh v. Jit Kaur* 1986 (1) PLR 542, the following observations were made:

"Where the wife has been found to be suffering from schizophrenia and husband and wife have lived together for only a short period, it is difficult to visualise an atmosphere of conjugal bliss, so necessary to ensure continual sound mental state of the wife even if she assumed to be of that state now. The husband would always be under the apprehension of the wife suffering a relapse. In such a situation, it would not be reasonable to expect the husband to live with his wife and lead a normal life."

"Where by an arranged marriage, a normal healthy person is bound in matrimony to one with a history of mental ailment, as in the present case, it must indeed raise a presumption, rebuttal no doubt, of matrimonial fraud. It is reasonable to assume that in the absence of special reason or circumstances, no one would willingly consent to marriage except to a person physically and

mentally fit. No such special reasons are forthcoming in the present case."

The Division Bench of the Andhra Pradesh High Court, in *Balakrishna v. V. Lalitha* 1986 (2) HLR 499, held on proof of the fact that the wife was suffering from recurrent attacks of epilepsy two years prior to the marriage as sufficient ground for annulment of the marriage. In *Mangat Ram v. Smt. Kanta* 1987 M L J 1, G.C. Mital, J., in the case of annulment of marriage on the ground of epilepsy, observed as under:--

"Once it is found that the husband has taken a false plea and has brought in a cooked up doctor to depose in his favour, it gives a clear clue that he wants to get rid of his wife because she is not able to bring any more gifts or money from her parents who are not that well off. The statements of the wife and her father in this behalf deserve to be believed."

5. Keeping in view the ratio of the decisions on the subject referred to above, in the present case, on appreciation of the evidence produced by the parties it is to be found as to whether the husband has succeeded in establishing the ground or that the petition was filed with ulterior motive of securing monetary advantage and to get rid of the wife.

6. Both the parties produced oral as well as documentary evidence. The same is briefly summarised. AW 1 Ravinder Mehta, husband, entered into the witness box and reiterated the facts as given in the petition. Apart from deposing about the ceremonies of the marriage, he stated that for ten days he and his wife went on honey-moon to different places. He produced their photographs of different places. Referring to the incident of attack of epilepsy he deposed that on March 23, 1986, the wife suffered the attack while they were sitting in the bed-room. She started shaking involuntarily, collecting her limbs. She lost her senses. He sent his brother to fetch the doctor. His brother brought Dr. Ravi Kant and Dr. Dinesh who examined her and diagnosed the illness. An injection was also administered. Regarding condition of the wife he stated that fluid was coming out of the nose and froth from the mouth. He was advised by the doctor not to have intercourse as she was not well. The doctors informed that it was an attack of epilepsy. Medicines were also prescribed. On the next day Dr. Ravi Kant again checked Sudha Mehta and talked to her. On his advice she was taken to Neurological Unit of SGTB Hospital, where she was examined by Dr. Adarsh, Assistant Professor, who suggested E.E.G. test. She was also taken to Municipal Zanana Hospital, Dhab Khatikan, Amritsar. She had given her medical history in her own handwriting which is Exhibit AW 1/3. In support of the above story AW 2 Dr. Ravi Kant and PW 4 Dinesh Kumar appeared and corroborated his version. PW 3 Dr. Suresh Aggarwal of Medical College, Amritsar, had given a date for examination of the patient for purposes of E.E.G. It may be stated that on the said date i.e. April 8, 1986 as given by the doctor, Sudha Mehta was not taken there. PW 5 Dr. Adarsh, who was earlier working in Guru Nanak Dev Hospital, Amritsar, deposed about the history of Sudha Mehta, as recorded in the ticket, that she was suffering from fits since 1981. She was patient of G.M. epilepsy.

The diagnoses made were in his hand-writing. He referred the patient for E.E.G., X-ray examination, fundus examination, Haemoglobin, TLC, DLC, urine complete examination and C.A.T. scan. The relevant documents, on which reliance has been placed on behalf of the husband, are two; Exhibits AW 1/2 and AW 1/3. In Exhibit AW 1/2 Sudha Mehta gave her own history in her own handwriting. The first attack suffered was in 1981 and thereafter in September and October, in August 1983 and in January, March and June in 1985. Against these entries and places doctors' name are also mentioned. Last attack suffered was on March 23, 1986. Exhibit AW 1/3 does not bear any year although dates and months only are mentioned. Exhibit PW 3/A is the E.E.G. report form which mentioned that the patient was suffering from G.M. epilepsy and last fit was about 4 days earlier. In this form the history was reported from the O.P.D. Ticket Exbt. PW 5/1.

7. Before referring to the evidence produced by Sudha Mehta it may be noticed that when she appeared as RW 14, she did not refer to or deny having written documents Exhibits AW 1/2 and AW 1/3. Generally she did deny about suffering any attack of epilepsy on 23rd. During cross-examination Exhibit AW 1/3 was put to her and she denied the suggestion that she had written the same and that on the dates mentioned therein she had suffered fits of epilepsy. It was expected of her to deny Exhibit AW 1/2 as according to the husband this history was given by her in her own hand-writing.

8. RW 14 Sudha Mehta stated about the loss of jewellery articles which were in an attache-case worth Rs. 50,000/- as belonging to her in-laws at the time of the marriage and out of the same a sum of Rs. 10,000/- was paid by her father to the mother and brother of her husband. Out of the same, her father borrowed a sum of Rs. 5000/- from Professor J.L. Sharma. Her father had agreed to arrange to pay the balance of Rs. 40,000/- later on. Her mother-in-law had informed her parents to make good the loss otherwise they would not rehabilitate her. On March 27, 1987 she was turned out of the house in three clothes after giving beatings. She further stated that her father paid a sum of Rs. 20,000/- and some clothes on the festivals. Her uncle, Chaman Lal Joshi, had come from Bangkok on March 22, 1986. On the next day Chaman Lal and others visited her in-laws' house asking for more time to make good the loss. She denied having suffered from epilepsy, especially on March 23, 1986. No doctor was called. Dr. Ravi Kant and Dr. Dinesh were stated to be related to her in-laws. RW I G.L. Sharma supported her case. RW 2 Inderjit Mehta is a colleague of the father of Sudha Mehta. He had been visiting their house and never noticed Sudha Mehta suffering from any malady. RW 3 Dr. Ramesh Sharma, who was earlier residing in the house of the father of Sudha Mehta from the period 1958 to 1984, stated that he did not receive any complaint that Sudha Mehta was suffering from epilepsy. RW 4 Dr. Hardip Singh, as a neighbour, knew Sudha Mehta and her father for the last about eight to nine years. The evidence in general is as to how epilepsy is detected and treated. On going through the reports of Sudha Mehta, he described her as fully normal. RW 5 Arvindjit Singh, Laboratory Assistant, deposed about the urine and blood reports of Sudha Mehta, Exhibits RW 5/1 and

RW 5/2. RW 6 is Gurdip Singh, a neighbour of the father of Sudha Mehta. He attended the marriage of the parties. He deposed about the loss of the attache-case containing jewellery etc. and at the time of marriage a sum of Rs. 10,000/- was paid to compensate the loss. RW 7 Kundan Lal Joshi is the grandfather of Sudha Mehta who deposed that she never suffered from epileptic attacks. RW 8 is Som Nath Sharma who deposed about the X-ray report (Exhibit RW 8/1) of March 20, 1987. RW 9 Vijay Singh of Modern X-ray Clinic, Amritsar, deposed about the E.E.G. examination of Sudha Mehta on March 23, 1987. Report is Exhibit PW 9/1. RW 10 Ajit Kumar deposed that he and his family members never saw Sudha Mehta suffering from epilepsy. RW 12 Dr. K.C. Kirpal proved his X-ray report (Exhibit RW 12/A), and X-ray report (Exhibit RW 12/B). RW 13 Gulzari Lal Joshi is the father of Sudha Mehta. He supported her on all the material facts.

9. The fact remains that one attache-case containing jewellery and other articles which were brought by the husband side at the time of the marriage was lost. The father of Sudha Mehta paid some amount, say Rs. 10,000/- at that time to compensate the loss. It appears that the side of Sudha Mehta is now taking advantage of that proved fact. But that per se, to my mind, is not enough to hold that on that account the husband is getting rid of the wife. The parties lived together for about three months after the marriage and during this period they spent about 10 days on honey moon, visited Jaipur and other stations. Till 23rd of March both of them were living happily. No evidence has been put forth by the wife that something extraordinary happened, so that her husband would have left her.

10. The evidence produced by Sudha Mehta, the appellant, is, of course, in the negative that she never suffered attacks of epilepsy. The medical evidence produced by her is also in the negative. RW 4 Dr. Hardip Singh did not rule out from the E.E.G. report that the appellant could not have suffered epilepsy. We are left with the positive evidence produced by the husband that on March 23, 1986, Sudha Mehta suffered attack of epilepsy which was followed by another. No doubt two doctors, namely, Dr. Ravi Kant and Dr. Dinesh were summoned to the house and they were earlier known but on that account their evidence cannot be ignored. May be some other doctors were available in the neighbourhood, as has come in the evidence, however, if known doctors are called, no inference can be drawn that they have deposed falsely. These two doctors found symptoms of epilepsy. The condition of Sudha Mehta as found has already been described above. Not only that, that Dr. Ravi Kant and Dr. Dinesh were called, who examined Sudha Mehta at that time, she was taken to two hospitals for further diagnosis. Although one of the hospital doctors advised E.E.G. test, yet feeling sure of the disease, the husband left Sudha Mehta at her parents' house. He did not lose any time so that it could be later on argued that he had condoned the fact. The medical evidence gets support from Ex. AW 1/2, the history sheet recorded by Sudha Mehta herself giving details of the months since 1981 that she suffered epilepsy attacks. As discussed above, the husband proved these

documents while leading his evidence. However, Sudha Mehta did not have the courage to deny in her statement. It has been established by the husband that Sudha Mehta was suffering from recurrent attacks of epilepsy at the time of the marriage and this fact was concealed by Sudha Mehta and her relations at the time of the marriage. Findings of the Court below on these two facts are affirmed.

11. For the reasons recorded as above, there is no merit in this appeal which is dismissed leaving the parties to bear their own costs.