

APPELLATE CIVIL

Before Tek Chand, J.

MUNISHWAR DATT VASHISHT,—Appellant

versus

INDRA KUMARI,—Respondent

Regular First Appeal No. 76-D of 1961

Hindu Marriage Act (XXV of 1955)—S. 12—Unsoundness of mind for annulment of marriage—Crucial time for determination of—Insanity prior or subsequent to marriage—Whether sufficient for its annulment—Mental incapacity at the time of marriage—Extent of, to avoid the marriage—“Lunatic”—meaning of—Form or degree of lunacy to invalidate a marriage stated—Evidence in proof of nullity of marriage—Nature and extent of, stated.

Held, that the crucial time for determining the mental condition of a spouse in application under section 12 of the Hindu Marriage Act, 1955, for the annulment of the marriage is the time of marriage. An attack of insanity, if it comes after marriage, will not furnish a ground for annulling it. Similarly, where party had suffered from an occasional derangement of mind prior to marriage but the mental state at the time of marriage was not unsound, such a marriage cannot be avoided. Courts have drawn a distinction between a sudden occurrence of insanity in distinction to cases where unsoundness of mind has been of progressive growth. A sudden attack of insanity before marriage, which has been transitory, cannot invalidate marriage if at the time of the marriage the malady had ceased. The condition of the state of a party's mind at other times, before or after marriage, will not govern the question of its validity though that may provide evidence for holding that at the time of the marriage the infirmity also existed. That, of course, will depend upon the nature, intensity and duration of the attack. A marriage of a person, subjected to temporary or periodical insanity, will be deemed to invalidate the marriage if it is shown to have been performed at a time when the mind of one spouse was deranged. A marriage of a person contracted while he or

1963

Feb., 28th

she was lucid despite the occurrence and recurrence of insanity before or subsequent to marriage, cannot invalidate it. It thus follows that on the state of mind at the time when the marriage is celebrated its validity or invalidity depends; and the mental condition, before or after the ceremony is immaterial except in so far as it affords evidence of mental incapacity at the time of the performance of the marriage.

Held, that the term "lunatic" is generic and includes every kind of unsoundness of mind except idiocy, but it has to be remembered that unsoundness of mind does not include mere weakness of mind. Etymologically, the term "lunatic" is derived from "luna" the moon, as in the pre-scientific times it was believed that the malady was affected by the waxing or waning of the moon. Lexically, the term has a wider meaning, and includes a person of deranged or unsound mind or a person who was once possessed of reason but has lost it. The term now includes abnormality of varying degrees of severity, or incapacity ranging from mental weakness to total insanity. It is not necessary to categorise various forms of insanity which have been called by distinct names by mental experts. The expression, though elastic, does not include mere eccentricity or every infirmity of mind. Every aberration or deviation from a normal behaviour cannot be termed lunacy as there are large number of behavioural variations between lunacy invalidating marriage and normalcy. Some persons may be crotchety, cranky, suffer temporarily from emotional imbalance by reason of heat of passion, ungovernable temper, uncontrollable jealousy, or entertain feelings of insensate hatred or unreasoning revenge, or suffer from moral depravity or from incurable perversions, or may be hypersensitive or excitable, or be stupid or obtuse, or exhibit certain eccentricities or idiosyncracies, which in an individual of ordinary mental equipoise are not discernible and yet, such a person would not be classed among lunatics. It is for this reason that standards of medical profession regarding mental affliction cannot in all cases be applied by the law Courts where unsoundness of mind is a factor for deciding a legal status, a contractual obligation, tortious or criminal liability.

It is, therefore, not every form or degree of insanity or lunacy that invalidates a marriage. The mental derangement must be such as to adversely affect the capacity to

solemnise marriage. The test applied is that a person should have the capacity to understand the nature of contract of marriage and the duties and responsibilities entailed by it. It is not possible to define in more precise terms the extent or the degree of mental capacity. Broadly, the mental incapacity to enter into marriage should approximate to mental incapacity which disables a person from entering into contracts generally. A view has also been expressed that marriage depends to a great extent on sentiment, attachment and affection which persons with weaker intellects may also feel and the discernment or soundness of judgment while contracting marriage is of a lesser degree than in the case of an ordinary contract. It will suffice to say that persons solemnising marriage must possess a mental capacity sufficient to understand the nature of marital obligations and willingness to shoulder them. Complete want or entire dethronement of reason is not the test for the validity of marriage. On the other extreme, a mere weakness of intellect will not justify annulment, Ability to understand the nature of material union and the probable consequences is an acceptable test for determining validity of marriage.

Held, that in cases where marriage is sought to be annulled on ground of idiocy or lunacy of a spouse, the onus in support of the plea of insanity existing at the time of the marriage lies on the petitioner. Of course, where permanent insanity is shown, then it is for the respondent to show that marriage was performed during a lucid interval. The presumption is in favour of validity of marriage and in favour of mental capacity of the spouses entering into matrimony. As marital union is closely associated with peace and happiness of society in general and individuals and families in particular, the marriage should not be annulled on grounds of mental incapacity unless the evidence in support of the alleged idiocy or lunacy at the time of marriage is cogent and compelling. The petitioner, in order to succeed, must make out his allegations clearly and beyond doubt. The consequences attending on annulment of marriage are grave and the Courts before passing a decree of nullity insist on production of evidence which is satisfactory and convincing. Courts must eschew matters and considerations which are irrelevant and extraneous

and concentrate upon the real question in issue, namely, the degree of mental infirmity at the time of marriage invalidating its solemnisation. The evidence of pre-nuptial or post-nuptial insanity must be such from which an inference in favour of insanity at the time of marriage may be convincingly deduced. The standard of proof in such cases must approximate to satisfaction of the Court beyond reasonable doubt. Court has to be vigilant guardian to see that the legal requirements are fulfilled before it annuls the marriage which has been solemnised; and the grounds justifying the granting of relief sought have been strictly proved.

First Appeal from the decree of the Court of Shri Man Mohan Singh Gujral, Additional District Judge, Delhi, dated the 29th day of March, 1961, dismissing the petition and leaving the parties to bear their own costs.

GURBACHAN SINGH BAKSHI, SHIVCHARAN SINGH, R. L. TANDON AND PRITAM SINGH, ADVOCATES, for the Appellant.

S. N. ANDLEY, ADVOCATE, for the Respondent.

JUDGMENT

Tek Chand, J. TEK CHAND, J.—This first appeal has been preferred by Munishwar Dutt Vashisht against his wife Indra Kumari under section 28 of the Hindu Marriage Act (Act 25 of 1955) from the order of the Additional District Judge, Delhi, dated 29th of March, 1961.

A petition was made by the husband on 28th of October, 1955, under section 12 of the Act, praying that the marriage of the petitioner with respondent Indra Kumari be annulled and a decree of nullity passed on the ground that the marriage was in contravention of the condition specified in section 5(ii) in so far as the respondent Indra Kumari was a lunatic at the time of the marriage. The marriage

between the parties was performed on 9th of May, 1955 at Amritsar when the petitioner was under 30 years and the age of the respondent was 20/21 years. It is alleged in the petition that after the marriage he learnt that his wife was a lunatic both before and at the time of the marriage and has been of unsound mind; and her insanity prior to marriage had been concealed by the respondent's parents from the petitioner and his relations and that a fraudulent representation had been made that she had passed the intermediate Examination and was studying for B.A. and that she was mentally and physically sound. On the arrival of the couple at Delhi, after the solemnisation of the marriage, it was observed that the respondent was not normal but was insane. On 23rd of May, 1955, she became violent and uncontrollable and that she was taken back to Amritsar on 24th of May, and she was treated in the Mental Hospital there. It was also alleged that the consent of the petitioner and his parents to the marriage was obtained by fraud and misrepresentation regarding the condition of her health, age, education and by concealment of the fact that she was a lunatic. On the above grounds, it was prayed that the marriage be declared to be null and void and a decree of nullity be passed in petitioner's favour and against the respondent. The respondent was impleaded personally and also through her father as her guardian *ad litem* on the ground that she was not of sound mind.

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

In the written statement, the allegations as to her lunacy were denied and it was maintained that she was and always had been a person of sound mind ever since her birth and has been enjoying good health both bodily and mental. It was denied that any facts relating to her mental and physical health had been concealed from the petitioner or

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

his parents or that any fraudulent representation was made in that behalf. It was stated that she had passed the Matriculation and Intermediate Examinations from the University of Punjab prior to her marriage. She had also passed "Bhushan" and "Prabhakar" Examinations in Hindi language and at the time of the presentation of the petition she was studying for the B. A. Examination in Government College at Amritsar. It was stated that the petition under section 12 was made by the petitioner with some ulterior purpose with a view to get the marriage annulled so that the petitioner might be free to marry again. It was also said that the petitioner wanted to keep the dowry which they had received on the occasion of the marriage from her father's side. In the additional pleas, it was stated that Shri Lakshmi Dutt Vashisht, father of the petitioner, and Shri Baldev Inder Singh, father of the respondent, were close friends and knew each other's family for many years in the past and no question of making fraudulent representation could arise.

A preliminary objection was also raised that Indra Kumari was competent in law to appear in the Court and defend herself and she objected to being represented through her father as guardian *ad litem* on the ground that she was a person of unsound mind. It was said that she did not require any guardian *ad litem* and the petition should, therefore, be amended.

The trial Court framed the following issue :—

"Was the respondent Indra Kumari of unsound mind at the date of the presentation of the petition and is she still incapable of defending herself in these proceedings ?"

The Additional District Judge, after recording evidence on this issue, decided it against the petitioner by his order dated 3rd of May, 1956 and directed that the respondent would defend the proceedings by herself without any guardian *ad litem*. Two issues were framed on merits :—

Munishwar Datt
Vashisht
v.
Indra Kumari

Tek Chand, J.

- “1. Was the respondent lunatic at the time of her marriage?
2. Was the petitioner’s consent to his marriage with the respondent obtained by fraud and if so, what is the effect of it?”

At the trial, the second issue was not contested. Moreover, it was found that there was no evidence to show that the petitioner’s consent had been obtained by fraud. The issue was thus found against the petitioner.

The first, and now the only issue, was strenuously contested between the parties and considerable evidence has been led by the petitioner to show that Indra Kumari was a lunatic before, at the time of, and also subsequent to her marriage. The learned Additional District Judge, after having exhaustively discussed the evidence, came to the conclusion that the respondent suffered from an acute type of mania on 22nd and 23rd of May, 1955. This attack had come on suddenly and was not shown to have been present either before or at the time of marriage. The several circumstances relating to her behaviour, from which an inference was sought to be deduced regarding her being a lunatic were discussed and the trial Court concluded that there was not sufficient evidence in support of this issue regarding mental infirmity at the time of her

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

marriage but some symptoms of mania had appeared on 22nd or 23rd of May which ultimately resulted in Indra Kumari being treated at the Mental Hospital, Amritsar, as an outdoor patient. According to the learned Additional District Judge, there was no evidence on the record to indicate that the symptoms were present on the date of marriage or soon after. The trial Court thought that there were predisposing and exciting causes present since her childhood which might have led to her ultimately suffering from mania but from the mere existence of such causes it could not be concluded that the actual attack of mania had come at the time of marriage. He, therefore, concluded that it had not been proved that the respondent Indra Kumari was a lunatic at the time of her marriage and the issue was decided against the petitioner and consequently the petition was dismissed but the parties were left to bear their own costs.

Before dealing with the principles, which are to be applied in such cases, it will be more appropriate to consider the evidence in this case. The petitioner has produced a number of witnesses who noticed abnormality of behaviour in the respondent at the time of and also soon after the marriage. Three doctors have been produced to depose that the respondent, when she was examined by them, suffered from mania. Reliance has also been placed upon documentary evidence. The respondent has appeared herself and her father has also deposed in her favour and she has also produced other oral evidence besides relying upon documents in refutation of the allegation of unsoundness of mind against her.

As to her conduct at the time of the celebration of the marriage, A. W. 3 Sham Sunder Lal,

and A.W. 4 Pt. Ram Nath, Advocate, deposed that contrary to custom, the bride and bridegroom were made to sit on the chairs and not on wooden *chowkies* at the time of circumambulation (Pheras). The bride was noticed to be drooping her head on four or five occasions within the course of two hours. It was also agreed that the bride, after the marriage but before Doli, would be sent to the place where the marriage party was sitting in order to receive presents from the relations and friends of the bridegroom but she was not sent. She was brought to the railway station just when the train was to start in which the marriage party was to return to Delhi. The second instance of unusual behaviour was deposed to by the petitioner who appeared as A. W. 15. He said that although the weather was hot, she asked while travelling by the night train to be given a quilt. This struck him as unusual. She had also remarked that she had to perspire and she did not seem to feel the variation of temperature. A reception was arranged by the petitioner's father in Delhi on 11th of May, 1955, where a large number of guests attended. It was said that she neither talked to anyone nor she wished anybody but was drinking water which struck people as unusual.

On the morning of 12th of May, 1955, she appeared at the breakfast table scantily dressed in petticoat and a blouse and did not put on a sari. When the petitioner's mother told her to put on proper dress, she left the table saying that if they wanted her to have breakfast with them, she would sit as she was. A.W. 13 Shri Ramchandani had invited the couple and some friends to tea a few days later. He thought that the respondent was somewhat discourteous and she gave to him an impression that the party given in her honour was not to her standard and she often said that the food

Munishwar Datt
Vashisht
v.
Indra Kumari
—
Tek Chand, J.

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

served was not good. He gave a present to her which she accepted rather reluctantly and he thought that she did not consider it to be good enough. A.W. 8 Shri Chhabra deposed that when he visited the house of the petitioner's father three or four days after the marriage, he noticed that her behaviour was not quite normal and the abnormality observed by him was that she kept standing for some time and when asked to sit down she sat down and then left the place abruptly. He also said that her looks were somewhat queer. He said he had no talk with the bride. A. W. 9 Shri Durga Dass said that on the next day after the arrival of the marriage party in Delhi he observed at the breakfast table that the respondent came without being properly dressed. There were 10 or 12 persons at the breakfast table. She did not eat breakfast at all but only had some water to drink. She did not listen to her mother-in-law when she was told to dress herself properly. At lunch, she put on her plate several dishes but did not eat anything. He also noticed that she spat about. At the reception, he observed that she showed no interest and preferred to sit aloof.

A. W. 11 Malik Motia Ram said that the bride at the reception behaved in an unusual and abnormal manner and had a blank look and was drinking away from a glass and she did not respond to the greetings. He had not met the girl before. In cross-examination, he said that he did not mention to the petitioner's father the girl's abnormal behaviour which he had noticed or to any other member of the family.

A.W. 12 Captain Vasudev Vohra said that 4 or 5 days after the marriage he was introduced to the

respondent but she did not offer the usual greetings and did not appear to have taken any notice of him.

Munishwar Datt
Vashisht
v.

Indra Kumari

Tek Chand, J.

A.W. 14 is Shri Lakshmi Dutt Vashisht the petitioner's father, who said, that while negotiations were proceeding regarding the proposed marriage between his son and the respondent, his two sons and his daughter went to the house of the respondent's father but had only a glimpse of the girl. He proved letters which he had written to the respondent's father. After the reception held in Delhi, the petitioner and his bride returned to Amritsar and he came back to Delhi after a few days. On 23rd of May, 1955, there was a telephonic conversation with the respondent's father and the petitioner's father told him that he should take back his daughter as she was insane and that he and his son had been cheated. He admitted that he had not written to the respondent's father about her odd behaviour. The girl's uncle came to take the girl to Amritsar. In August, 1955, the respondent's father asked the petitioner to take the girl back as she had improved but the petitioner and his father declined to do so as they feared relapse. The petitioner Munishwar Dutt appeared as A.W. 15 and after deposing to the incidents at the reception, the breakfast table and at the tea party given by Shri Ramchandani added that he and his bride went to Amritsar on 15th of May, 1955 where they stayed for a few days and returned to Delhi on 19th of May. A doctor came on two occasions to examine Indra Kumari and he had been told that as her stomach was upset a doctor had been called and some medicines were given to her which they took with them to Delhi. No prescription was given. On the return journey from Amritsar, she quarrelled with the waiters twice. On 22nd of May, 1955, he noticed that

Munishwar Datt she had put all her clothes, jewellery, linen, etc.,
 Vashisht under the water tap in the bathroom and had hurt
 v. Indra Kumari her hand by stretching the curtain wire. On 23rd
 Tek Chand, J. of May, 1955, he found that Indra Kumari had
 chewed up two tubes of tooth paste and had sprinkled Vim all over her body. Instead of sleeping on the bed, she lay on the carpet. He telephoned to the respondent's father at Amritsar that she was definitely a mental case and that he had been cheated. Shri Mudgil, who is a distant relation of the respondent, came to the house on the evening of 23rd and said that he had been desired by the girl's father to see her. On the night between 23rd and 24th of May, 1955, the respondent became violent and started throwing things hither and thither. She spat on the petitioner's face, Shri Mudgil was again called at midnight and by that time the respondent had become violent and could not be controlled. Shri Mudgil then telephoned to the respondent's father at night after seeing the condition of Indra Kumari and asked him to reach Delhi immediately. Shri Mudgil did not come against as he had left for England. On 24th, he wrote a letter (Exhibit A/5) addressed to the respondent's father. The respondent's uncle came at about 11 A.M. on 24th of May 1955 and took the girl away to Amritsar. Dr. Deish, Staff Surgeon of Irwin Hospital, was called on the night of 23rd. He has appeared as A.W. 1, and said that on 12th of May, after seeing a few odd incidents, he formed an opinion that the respondent was not quite normal and disclosed his observations to the petitioner's father and to the other members of his family. He said that he noticed that there was something mentally wrong with Indra Kumari on 23rd of May, 1955. The Letter (Exhibit A/5, which Mudgil left at the petitioner's house, which

he had addressed to the girl's father, is in the following words :—

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

“I am writing this at about 2 a.m. using borrowed spectacles.

I am afraid you may not reach before I have to leave, so I am leaving behind this note.

I would not have believed what I saw Indra saying and doing. I think you should take her to Amritsar and consult Vidya Sagar of the Mental Hospital. The earlier she is examined, the better. This is imperative.

I am sorry, desperately sorry that this has happened.”

Regarding her abnormal condition before marriage, the petitioner produced A.W. 6 (Y. N. Lall) who said that he had been in the service of the respondent's father and had worked as manager from March, 1955 to November, 1956 at Amritsar. He had many opportunities to see the respondent who was keeping indifferent health and used to be treated by physicians and Vaidis. On his enquiry, her father told him that she suffered from “some sort of weakness of the brain”. Three or four days before her marriage, she was not feeling well and Dr. Gurbaksh Singh had to be called who gave her some injection. He noticed that the respondent was “a moody person”. On the day of the marriage, she had to be given an injection. He could not state whether she had passed Matric, Intermediate, Bushan and Prabhakar Examinations before her marriage. On

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

two occasions, according to this witness, the petitioner had visited the respondent's house at Amritsar along with some relations. These visits were before their betrothal. He had come to finalise betrothal. The witness denied the suggestion that he was employed in November, 1955, and that he was not in the respondent's father's service formerly. He denied the suggestion that he was turned out and his services were terminated on account of misappropriation. The evidence of this witness has been disbelieved by the trial Court and it has accepted the contention of the respondent that he was not in their service at the time of her marriage. On the application of the respondent, this witness was recalled and further cross-examined. He admitted that he had applied for the post with the respondent's father as a P.A. in October, 1955, after having read an advertisement in the Hindustan Times. The Additional District Judge thought that if the witness had been in the service, of the respondent's father since March, 1955, as contended by him, he would have certainly come to know that a P.A. was needed. Not only he applied for the job, but he had also been interviewed by Shri Baldev Inder Singh, the girl's father. There would have been no occasion to interview a man if he had been serving his employer for seven months previously. His letters give no indication of his having been in the service of Shri Baldev Inder Singh. He was paid salary for a few days of November, 1955, suggesting thereby that he was engaged for some time in the month of November if he had already been in the service, he would have been drawing his salary for the whole month. His salary was not entered in the register of employees after November, 1956. The trial Court held him not to be a witness of truth and declined to rely upon his testimony. The

learned counsel for the respondent has drawn my attention to two letters, sent by this witness to the respondent's father. Exhibit R.B./1, dated 6th of October, 1955, is an application addressed to Box No. 9517, C.H. While giving history of his previous employments, this witness has not mentioned the name of the respondent's father. It is argued that he would have done so if he had really been in his service. Exhibit R. B./2 is letter, dated 14th of October, 1955, sent by Y. N. Lal to Shri Baldev Inder Singh by name. If he was actually serving Shri Baldev Inder Singh, when he wrote this letter, he would not have written with that strain. The language of that letter suggests that the addressee is a total stranger and not his employer. Exhibit R.B./5 is a receipt in the hand-writing of the witness given by him to Shri Baldev Inder Singh in respect of the salary paid to him for the days when he served Shri Baldev Inder Singh. The receipt is dated 26th of December 1955. It is argued that this receipt also militates against Y. N. Lal being in the service of Shri Baldev Inder Singh during the whole of November. For reasons stated above, I find myself in agreement with the reasoning and conclusion of the trial Court and, in my view, the statement of A.W. 6 Y. N. Lal, that he was in the service of Shri Baldev Inder Singh at the time of celebration of the marriage of the parties, is entirely false. He is not a witness of truth.

The next witness is A.W. 7 (Dharam Pal Sekhri) who said that he had gone to Amritsar in the first week of May, 1955, and had gone to see the younger brother of the respondent's father at about 11 A.M. He did not meet the person he had gone to see but he noticed a girl lying in the verandah who had a fit. She was Indra, the respondent, and appeared to him to be "somewhat

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

Munishwar Datt off her head". In cross-examination, he stated
 Vashisht that he did not mention this fact to anyone about
 v. Indra Kumari his having seen. Indra, the respondent, in that
 state. This witness had no occasion to talk with
 Tek Chand, J. the girl and no importance can be attached to an
 extremely vague statement made by this wit-
 ness.

I may now deal with the medical evidence produced by the petitioner. Dr. P. Diesh, Staff Surgeon of the Irwin Hospital, was called to see Indra Kumari, in May, 1955, at her husband's residence on Alipore Road, Delhi. He noticed that Indra Kumari was showing "signs of lunacy of an acute type and she was violent." He attended on her for half an hour and issued certificate on the night between 24th and 25th of May, 1955 (Exhibit A/1) which is to the following effect:—

"This is to certify that Mrs. Indra Vashist is suffering from violent type of mania.

In his opinion she should be admitted in the Detention Ward for (torn) lunatic (torn) Balak Ram Hospital (torn) observation and treatment (torn)".

In his opinion, she was suffering from "violent type of mania". At that time, she was in such a state that she could not be controlled. She was at times praying, shouting and singing. She was incoherent in her speech and did not give proper answers to questions put by him. He did not think hers to be a case of hysteria. He could not, however, express any opinion as to whether her disease was chronic or a recent one. According to him, the disease of such a patient could be properly diagnosed if she was kept under observation in hospital for ten days. He said that an

attack of the type noticed by him in the case of Indra Kumari may come on all of a sudden and may disappear after proper treatment. He said that he was not mental specialist and he had seen her only once.

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

A.W. 2 is Dr. Vidya Sagar, who is in charge of the Mental Hospital, Amritsar. She was brought as an out-patient on 25th of May, 1955 and her name was entered in the out-door register kept for the purpose at serial No. 1286. Her disease was mentioned as 'schizophrenia' but it was scored out and the word "Mania" was substituted. She was given Electric Convulsive treatment. He proved the relevant entries in the out-door register, copy of which is marked as Exhibit A/2. These entries show that electric treatment was started on 26th of May, 1955, with a voltage of 70 and time of one second but there was no response. The voltage was then increased to 80 but without any response. When it was increased to 90, the patient got a full convulsion. The voltage was increased from day to day and on 1st June, 1955 it reached 140, the patient having had no convulsion with voltage of 130. This electric treatment was given to her till 4th of July, 1955. The progress notes are entered on the register. In his opinion, Indra Kumari suffered from mania (simple). Physically, she was in a good state of health. When he saw her for the first time on 2nd or 3rd day of her visit, she was "extremely restless, talked away irrelevantly under high pressure, spat about indiscriminately, and was in a very dominating aggressive mood". She was irrelevant and her speech was incoherent and she got violently excited and at times she was boisterous. When he stopped treatment in her case, he thought she had been cured. Mania of the type that he saw in her case may recur later in life. He said that it was incorrect to suggest that the third attack of mania

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

resulted in chronic mania. In his cross-examination, he said that after observations he found that she was not a case of schizophrenia but was a case of mania and that is why in the diagnosis column of the register schizophrenia had been crossed and mania written instead. She was responding to the treatment given to her. According to his opinion, "ordinarily, simple mania comes on quite suddenly and disappeared quite quickly under electric treatment". In his view, two factors would be concerned mainly in the causation of her illness, firstly, constitutional pre-disposition and secondly, psychological stress. He thought that marriage was a psychological stress which might precipitate a mental illness or a mental breakdown. He also said that any harsh treatment in married life might also precipitate a mental breakdown. He had seen a number of cases where a mental illness of this type, had come on immediately before or after marriage. In re-examination, he said that it was possible that an attack before the marriage might be mild in nature and might not grossly affect the behaviour of the patient.

The last medical witness is A.W. 10 (Dr. Dayal Singh) who was posted at Amritsar as Deputy Superintendent, Mental Hospital in 1955. He said that on 25th of May, 1955, Indra Kumari was brought to Mental Hospital by her father and he examined her. He made a note on that day that she was suffering from schizophrenia. On 28th of May, 1955, he recorded the following observations :—

"She appears slightly less active than before, but still shows marked relation and there appears to be pressure of ideation with some flight of ideas. Her

father had stated that there was no history of mental disease in her ancestors and *as the illness suddenly started on the day when her marriage party was expected towards the evening this appears to be more a case of mania*". (Vide Exhibit A/3.).

Munishwar Datt
Vasishth
v.
Indra Kumari
Tek Chand, J.

He had revised his earlier diagnosis of schizophrenia and considered her to be more a case of mania. He could not give the duration of her disease. He expressed the view that in the case of mania, usually there is a constitutional pre-disposition but he could not say whether in her case there was constitutional pre-disposition. If this disease is not treated, its usual course is 4 to 6 months' illness. But there is no clear-cut demarcation as to the time that may be taken by a patient in developing into an acute stage. From a sudden start, this illness may reach an acute stage after a lapse of three or four weeks or even more or less. He then said "this disease of mania may in some cases affect the future offspring of the couple. Mania is liable to relapse". He also said that normally marriage did not bring about mania. He had examined her on three or four occasions and according to his note of 27th of May, 1955, the patient was responding favourably to the treatment. He said that some time mania might start all of a sudden and in a violent form. In some cases, sudden mental stress has led to an attack of mania either preceding or following marriage. A good deal of stress was laid in the trial Court as well as in this Court regarding the observations quoted above in the register to the effect that her father had denied history of mental disease in her ancestors and the illness had started suddenly on the day when her marriage party was expected towards the evening. This was with a view to show that she

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

was of unsound mind the evening before the marriage, and, therefore, had become a lunatic at the time of her marriage. The learned counsel for the petitioner also commented on the fact that Dr. Dayal Singh was not cross-examined with a view to show that the above entry was erroneous and that the girl's father had never admitted that the attack had suddenly started on that evening. Shri Baldev Inder Singh, who appeared as his own witness, however, denied having made the statement attributed to him. The Additional District Judge has not attached much importance to this entry. He construed the words "as the illness suddenly started on the day when her marriage party was expected towards the evening this appears to be more a case of mania" to be Dr. Dayal Singh's own conclusions rather than what was reported to him by Shri Baldev Inder Singh, the father of the girl. According to the learned Judge, the words which can be attributed to the father, are "her father had stated that there was no history of mental disease in her ancestors". What follows these words, is the impression formed by Dr. Dayal Singh himself. The Additional District Judge commented on the fact that Dr. Dayal Singh was not clearly asked as to what had the father of the respondent said and that it was not even clarified from him as to what was the basis of his observation that the illness had started on the day the marriage party was expected. It seems to me that the evidence on the record, suggesting pre-nuptial unsoundness of mind, to be rather slender. Efforts might have been made to produce definite and convincing evidence showing an attack of lunacy immediately before the marriage. The doctors, who might have treated her before her marriage, have not been produced. It is quite possible that Dr. Dayal Singh might have formed an erroneous impression. I would hesitate to

draw a conclusion regarding lunacy at the time of marriage or just preceding marriage from the inconclusive note of Dr. Dayal Singh. It is true that no effort was made either in the examination-in-chief or cross-examination of Dr. Dayal Singh, to elucidate the fuller details regarding the circumstances in which he wrote that the illness had suddenly started on the day when her marriage party was expected. It can be contended that nobody other than the father could have told Dr. Dayal Singh about it but it is also quite possible that from the gist of the talk Dr. Dayal Singh might have gathered this. The more important question to my mind, which Dr. Dayal Singh would have been keen to know, was whether heredity had any part to play regarding mental affliction in the case of the girl. As the statement is not free from ambiguity, in the absence of any other proof of attack of insanity at the crucial time, I would hesitate to hold the entry as a persuasive much less compelling evidence of pre-merital insanity. I was asked to draw a conclusion from absence of challenge in the cross-examination of Dr. Dayal Singh regarding this matter and my attention has been drawn to *Ganpat Ram Khosla v. Kishen Lal and another* (1), *Messrs Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. and another* (2) and *Banwari Lal v. Bhag Mal and another* (3). The learned counsel for the respondent has *inter alia* contended that Dr. Dayal Singh's statement is inadmissible as hearsay evidence and omission to cross-examine Dr. Dayal Singh on hearsay evidence would not make such evidence admissible. The Privy Council in *Lim Yam Hong and Co. v. Lam Choon and Co.* (4) observed that the failure of an advocate to object to the admission of evidence cannot

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

(1) (1958) 60 P.L.R. 349.

(2) A.I.R. 1958 Ph. 440.

(3) A.I.R. 1931 Lahore 213 (214).

(4) A.I.R. 1928 P.C. 127.

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

so after the character of testimony as to convert into corroborative evidence that which the law regards as merely fit for rejection as hearsay. If, what was stated in Exhibit A/3, was not a conclusion of Dr. Dayal Singh but what Baldev Inder Singh told him about the time of the attack of mania, then that would be contrary to the rule of evidence excluding hearsay statements. In this case, the question of lunacy of the respondent at the time of her marriage is a vital issue, the onus of proving which rests squarely on the petitioner. I would not, in the circumstances, draw an inference in favour of her being a lunatic at the time of her marriage from what was noted by Dr. Dayal Singh in Exhibit A/3. Insanity at a particular time has to be strictly proved and the entry *ex proprio vigore* in the register is not sufficient for substantiation of the issue.

I may now refer to the evidence adduced on behalf of the respondent in rebuttal, R.W. 1 is Raja Surinder Singh of Nala Garh who deposed that he had known the family of Baldev Inder Singh for 20 or 25 year and had known the girl from her childhood. According to him, she was very intelligent and he could find nothing abnormal in her. She suffered from no mental derangement. He was present at the occasion of the solemnisation of the marriage at Amritsar. He went to the girl to give her his blessings and sat for about half an hour with the family and found her quite normal. He stayed till the reception of the Barat. He learnt about her indisposition a few months after her marriage but he never ascertained the details of her malady. R.W. 3 is Pt Kishen Chand of Amritsar, who is a *purohit* by profession. He had known Shri Baldev Inder Singh for 8 or 9 years and has been visiting his house. He performed the marriage ceremony of the parties. He has said that the girl

was well mentally and physically till the performance of the marriage ceremony. He was present at this various ceremonies. The marriage ceremony started at 10.30 p.m. and continued for three hours. During the ceremony, both the petitioner and the respondent chanted the *mantras* which they were required to do. The parties sat on *chowkis* and she sat normally without any support from any other member of the family. Shri H. N. Kashyap (R.W. 4), who is married to the sister of Shri Baldev Inder Singh, stated that Indra Kumari's mental condition has always been absolutely normal and her intelligence was above average. She has been studying in the Amritsar Convent. He was present for three days before the marriage and found her to be a perfectly normal person. No doctor was called to attend her on those days and no injections were given during the wedding ceremony. The couple was sitting on wooden *chowkis* and she behaved like a normal bride and that there was no occasion to prop her up. He was present along with other friends at the railway station when the bride and bridegroom left for Delhi and talked to her for about half an hour at the station. A few days after her marriage, he learnt from his wife that Indra had been brought back from Delhi to Amritsar in a disturbed mental condition.

Indra Kumari offered herself as R.W. 5 and said that she had passed her Matriculation Examination in 1949, and Bhushan and Prabhakar Examinations in 1952 and 1953, respectively. For two or three years after her Matriculation, she learnt music and she had joined the Sacred Heart Convent at Amritsar some time in 1940 or 1941. Throughout this period, she was living with her father at Amritsar and her grandmother used to look after her till that lady's death in 1949. In 1954, she passed the Intermediate Examination.

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

She said that she and her husband travelled from Amritsar to Delhi in Air-conditioned coupe and that during the night the marriage was consummated. She stayed at Delhi for 5 or 6 days after her marriage, and she discharged her marital obligations towards her husband in a normal manner. After 5 or 6 days of the marriage, she and her husband paid a return visit to Amritsar where they stayed in the house of her father for two days and went back to Delhi on 17th or 18th of May. For 3 or 4 days at Delhi, she led a normal life. On 21st or 22nd of May, she had a headache in the afternoon and she complained about it to her husband's sister Miss Shanta Vashisht who gave her some medicine. An hour after taking that medicine, she started feeling giddy and lost her memory and consciousness. She did not know what happened after that till about 29th of May, when she started regaining her consciousness and getting back her memory. Towards the end of May, she felt better and was in the house of her father but could not remember how she reached there. She visited Mental Hospital a number of times during June, 1955, for electric shock therapy. After June, 1955, till now she has received no treatment and she has been feeling ever since perfectly well physically and mentally. Her father sent message to her husband to take her back but nobody came from the petitioner's family to take her to Delhi. When she learnt that her husband would not take her back, she joined a College as a casual student in November, 1955 and passed her B.A. Examination in April, 1956. She then joined B.T. class in Khalsa College, Amritsar, and Passed B.T. Examination in April, 1957. She is now working in Sacred Heart School as a teacher from April, 1958. She sent her form for appearing in M.A. English Examination which was to be held in May, 1961. She had made the

statement on the 28th of February, 1961. She produced photostat copies of her certificates showing the examinations that she passed. She said that prior to 21st of May, 1955, she had never suffered from any such illness or any mental trouble in her life. She said that Raja Surinder Singh of Nala Garh and Shri Surjit Singh Mijithia had given her their blessings when they came to attend her marriage.

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

Prior to her marriage, her father-in-law had come to see them at Mussoorie in August, 1954 and they had lunched together, and she sat at the table and had a casual conversation with him. In January, 1955, her husband and his elder brother Major Rameshwar Vashisht had come to Amritsar to see her and stayed at her father's house for a day, and left next afternoon. Both the petitioner and his brother talked to her at meal times and Indra also accompanied them in the evening for a walk when they conversed with her. Her parents also accompanied her. A few days later, the petitioner, his brother and his sister Miss Shanta Vashisht again came to Amritsar in the morning and left the next day. They stayed at her father's house and she and her husband and his relations talked with her and Miss Shanta Vashisht became very friendly with her. They used to have their meals together at the same table and also used to go for walk in the evening. Next day, her music teacher came in the morning and the petitioner, his brother and Miss Shanta Vashisht also came to hear her sing. On the eve of the wedding, she garlanded the bridegroom. She was called at the Mandap at midnight and the ceremony continued till 3.30 a.m. She participated in all the ceremonies and was feeling perfectly normal at that time and had no mental trouble of any kind. She sat in a normal posture and was not drooping or falling down. She denied having been given any injections or treatment

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 —————
 Tek Chand, J.

either on the day of marriage or during the preceding fortnight. Even before that, she had not been given any injection for any ailment. She said that during telephonic talk on the night of 11th or 12th of May with her father her husband and his relations had praised her. During the reception held on the evening of 12th of May, 1955, she was feeling and behaving normally. She denied having brought any medicine when she returned from Amritsar to Delhi with her husband. She had no treatment and said she needed none. She said that in the first week of June, 1955 after she had got well, she had written to her husband three or four letters but did not get any reply. During the fortnight prior to 21st of May, 1955, she lived happily with her husband and received no indication from him that he was not happy with her.

She was subjected to a long cross-examination in which she said that she had no recollection of her mother living with her father. She had some recollection of her father's second marriage with her step-mother as she was about six or seven years old then. She had three step-brothers and one step-sister. She said that after Matriculation, she did not join College as she wanted to devote more time to music. She had always complete faith in her father who would not act against her interests. When cross-examined, she denied that when she and her husband travelled after marriage to Delhi she said that she was immune to heat or cold or that she needed a blanket. She denied having come to the breakfast table the next morning scantily dressed. She denied that she had put some eatables on the plate but she did not eat. According to her, she ate her normal lunch. She denied having remarked about the poor quality of eatables at the tea given by the friends of her father-in-law. She denied having quarrelled with the waiters when bill for tea was given at Jullundur

Railway Station on her second visit. She admitted, however, that she could not remember anything between 21st or 22nd of May and 29th or 30th of May, 1955. At the time of marriage ceremony, she and the petitioner were made to sit on chowkis and not on chairs.

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

Her father Baldev Inder Singh appeared as R.W. 2 who deposed that he was a very old friend of Pt. Lakshmi Dutt Vashisht, the petitioner's father. He deposed to the several occasions when the petitioner along with his relations visited his house before the marriage. Miss Shanta Vashisht praised Indra to him and their other relations also showered praises on her and said that in her they found the girl of their choice.

On 13th or 14th of May, he received a letter Exhibit R/24 from Shri Lakshmi Dutt Vashisht which runs as under:—

“My dear Baldev Inder Singh Ji,

It is a matter of sincere congratulations to you for the excellent bringing up and the good training given to Indra. She has endeared herself to every member of the family and at the **At Home** yesterday, every one had a good word for her. We are all very happy to have her amongst us as a member of the family and it need hardly assure you that she will be as happy as Ram, Shanta, Raj, Munish and Tapi and Anu.

Ram's children are mostly with Indra. She is indeed a good girl we desired to have in our family and we must feel proud of her.”

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 —————
 Tek Chand, J.

When the petitioner and his wife paid a return visit after marriage to Amritsar, they stayed with him for two days and no complaint was made by the petitioner during those days regarding Indra. On the contrary, he said that he was satisfied with her. On 23rd of May, the petitioner telephoned to him that Indra was ill and she should take her away. As he was himself unwell, he asked a relative of his wife, Shri Mudgil, who as in Delhi, to see Indra. As she was having fits and fainting, he showed her to family physician and the Vaid who had advised him to consult Dr. Vidya Sagar of the Mental Hospital. The girl was examined by Dr. Dayal Singh. He said that he had noticed her fits for the first time and she had never fallen ill in that way before. He said that from her childhood up to 24th of May, 1955, she did not have any mental trouble. She began to improve four or 5 days after the treatment and she became entirely fit in 10 or 12 days and has been absolutely healthy ever since. He also deposed as to the examinations she passed later on. He denied having said to Dr. Dayal Singh on 28th of May, 1955 that her illness had suddenly started on the day when the marriage party was expected towards the evening. He also said that A.W. 6 (Y. N. Lall) was not in his service prior to November, 1955. He was in his employ from November, 1955 to November, 1956. He had not know him prior to November, 1955. He had come to him in response to the advertisement published in the Hindustan Times when he had made an application for his appointment. He denied that he was told by the petitioner on 23rd of May on the telephone that Indra was a mental case. He said that he did not give any land to Indra while he had made some dispositions of land in favour of his wife and children, i.e., to Indra's step-mother and step-brothers and sister. It was brought out in his cross-examination that he was

first married to Indra's mother who left him and started living with his younger brother as the latter's wife and then he married for the second time.

Munishwar Datt
Vashisht
v.
Indra Kumari

Tek Chand, J.

Besides the documentary evidence already referred to, I may *en passant* mention that Shri Lakshmi Dutt Vashisht wrote to R. W. 2 Baldev Inder Singh three letters, Exhibit R/13, dated 28th of July, 1954, R/14, dated 9th of August, 1954 and R/15, dated 20th of September, 1954. These letters were sent before marriage while betrothal of the parties was being discussed and they are couched in the usual complimentary terms. To the same effect are letters (Exhibit R/16), dated 22nd of September, 1954, and Exhibit R/17, dated 14th of January, 1955, from the petitioner's father to the respondent's father. Exhibit R/18, dated 15th of January, 1955, is a letter sent by petitioner's brother to the respondent's father. The petitioner's sister, Shanta Vashisht, sent letter (Exhibit R/20), dated 18th of March, 1955, to the respondent's step-mother. These letters prove several visits of the members of the family of Shri Vashisht to the family of Shri Baldev Inder Singh and refer to the opportunities they have had of seeing the girl. Exhibit R/20 refers to Indra Kumari in laudatory terms and she is eagerly looking forward to having Indra Kumari as a member of their family soon. She says that she has been charmed by all of them and all of them feel very much drawn to their family. She has expressed her thankfulness to God for His kindness in bringing them together. A perusal of these letters makes it abundantly clear that it was not a case of foisting an insane girl on the petitioner by concealing her defects. Apart from the fact that Shri Vashisht and Shri Baldev Inder Singh were old and close friends, the petitioner

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 —————
 Tek Chand, J.

and other members of their family have had ample opportunity of meeting, seeing and talking to the girl both in Amritsar and in Mussoorie. If Indra Kumari had manifested any traces of mental derangement which could have been observed, the members of the petitioner's family could not have missed noticing.

The letter (Exhibit R/24), dated 12th of May, 1955, which has been reproduced above, is very significant. According to the learned counsel for the petitioner, it merely reflects the goodness and creduality of Shri Lakshmi Dutt Vashisht and the appreciative observations regarding Indra were only as a matter of form and not meant to express his real views. It was also contended that within this short period her father-in-law might not have noticed her abnormal behaviour or her oddities might not have raised sufficient suspicion in his mind so as to induce him to bring the matter to the notice of Shri Baldev Inder Singh. I, however, feel that if by 12th of May, 1955, the girl had manifested symptoms of lunacy, whether incipient or advanced, there would have been some mention in the letter. I cannot persuade myself to agree with the comments of the learned counsel for the petitioner that the laudatory reference with regard to the girl was only a matter of form. The language of Exhibit R/24 and the sentiments expressed therein incline me to hold that Indra Kumari had not manifested any mental aberration by the time when Shri Lakshmi Dutt Vashisht wrote that letter.

In view of Indra's allegedly abnormal behaviour, both during and immediately after the marriage, I am asked to hold that the requirements of section 12 read with section 5 (ii) have been proved in this case and that it has been established that

the marriage is voidable at the instance of the petitioner as the wife was a lunatic at the time of the marriage. Her acts, on the basis of which I am required to conclude in favour of her unsoundness of mind, may be summed up thus; (i) the bride and the bridegroom were made to sit on the chairs and not on the *chowkis* or *patras*. (ii) her drooping head during the performance of the ceremony and the need of getting support from family relations close-by, (iii) the not sending of the girl to the place where marriage party was sitting, (iv) the hustling of the girl to the railway station just before the departure of the train, (v) her asking for quilt at night during hot weather and saying that she was immune from cold or heat, (vi) her blank looks at the reception and her not responding to the greetings, (vii) coming to the breakfast table scantily dressed, (viii) putting eatables on the plate at lunch but not eating any food, (ix) discourteous behaviour at the tea party given by Shri Ram Chandani, (x) putting under tap her clothes and jewellery, (xi) chewing tooth paste and sprinkling of Vim on her body, and lastly, (xii) getting excited and becoming violent after 15 days of the marriage. The evidence as to her unusual and odd behaviour during the ceremony, then in the railway train, later on at the reception, breakfast table, lunch and at Ram Chandani's tea party, is not convincing. The evidence relating to the alleged mental aberrations manifested prior to marriage is totally unconvincing. In this case, the significant fact is that the petitioner, if he had really started having suspicion regarding the abnormal state of her mind during, and soon after the marriage, would have communicated his fears either to his father-in-law when he paid his return visit with his bride to Amritsar or to his father and other own relatives. If he had started entertaining suspicion as to her mental infirmity his

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

father would not in all likelihood have extolled in such flattering terms the accomplishments of his daughter-in-law and would have perhaps confined himself to expressing his satisfaction as to the arrangements made for the comforts of the marriage party. Exhibit R/24 strikes me as a letter from a person expression his complete satisfaction with the conduct, behaviour and accomplishments of his daughter-in-law. I do not think there is a sufficient, cogent and convincing testimony pointing towards Indra's unsoundness of mind "at the time of marriage". Section 5(ii) is specific that the unsoundness of mind should be present "at the time of the marriage." A supervening lunacy after the marriage does not furnish a ground for annulment.

Unsoundness of mind has been dealt with under sections 5 (ii), 10, 12(b) and 13 (iii) of the Hindu Marriage Act. Section 5 deals with pre-existing conditions to the solemnisation of marriage between any two Hindus and if either party is an idiot or lunatic at the time of the marriage it can be avoided. Section 10 deals with judicial separation and under sub-section (1) (e) it is a good ground for judicial separation that the other party "has been continuously of unsound mind for a period of not less than two years immediately preceding the presentation of the marriage." The existence of conditions mentioned in section 5 (i), (iv) and (v) create an absolute bar to a valid marriage. A marriage solemnised after the commencement of the Act, which is bigamous or is within the degrees of prohibited relationship or where the parties are sapindas, is null and void *ipso jure* and *ab initio*. While section 11 deals with void marriages. section 12 makes marriage suffering from specified infirmities merely voidable. In other words,

marriage with a person, who is an idiot or a lunatic at the time of the marriage, is valid unless successfully avoided. This provision creates a discretionary bar, leaving the matter to the party affected to move the Court for relief. Section 13 anumerates grounds for dissolution of marriage by a decree of divorce, and one of them is, that the other party "has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition". The unsoundness of mind referred to in section 10, justifying judicial separation, and in section 13, entitling the petitioner to a decree of divorce, is an affliction which supervenes after marriage. An attack of insanity, where it amounts to mania or schizophrenia, if it comes after marriage, will not furnish a ground for annulling the marriage under section 12. What is of moment, therefore, is the mental condition at the time of marriage which is the crucial time for determining the question of annulment. If insanity supervenes subsequent to marriage, it cannot be annulled. Similarly, where a party had suffered from an occassional derangement of mind prior to marriage but the mental state at the time of marriage was not unsound, such a marriage cannot be avoided. Courts have drawn a distinction between a sudden occurrence of insanity in contradistinction to cases where unsoundness of mind has been of progressive growth. A sudden attack of insanity before marriage, which has been transitory, cannot invalidate marriage if at the time of the marriage the malady had ceased.

Munishwar Datt
Vashisht
v.
Indra Kumari
—
Tek Chand, J.

In *Jackson v. Jackson* (5), the wife had asked for a decree of nullity of marriage upon the allegation that the respondent at the time of the marriage was not of sound mind and incapable of

Munishwar Datt
Vashisht
v.
Indra Kumari
—————
Tek Chand, J.

entering into marriage contract and subjected to morbid delusions. On the facts of that case, the petitioner had led evidence which satisfied the Court of existence of the unsoundness of mind at the time of the marriage. Bargrave Deane J. posed the question and answered it in the following words :—

“The first question I have to ask myself is, What is the law with regard to these questions of nullity of marriage, when the allegation is, “as here, that one of the parties was from unsoundness of mind incapable of contracting?”

There is one substratum running through all the cases which indicates that one has to look at the nature of the alleged unsoundness of mind to see whether it is of character which might come on suddenly, or whether it is a matter of progressive growth and development.

In the older reported cases, the Court has hardly ever granted a decree where the evidence of the medical witnesses has proved or suggested that the particular form of insanity might be of sudden occurrence.

The cases where the Court has found incapacity to contract are where the unsoundness of mind has been of progressive growth. In that case, the respondent's insanity, had, however, been successfully traced back to an early period to an incident which justified the Court in arriving at a conclusion that it existed before as well as after the contract of marriage was entered into.

The condition of the state of a party's mind at other times before or after marriage, will not govern the question of its validity though that may

provide evidence for holding that at the time of the marriage the infirmity also existed. That, of course, will depend upon the nature and the intensity and duration of the attack. A marriage of a person, subjected to temporary or periodical insanity, will be deemed to invalidate the marriage if it is shown to have been performed at a time the mind of one spouse was deranged. A marriage of a person contracted while he or she was lucid despite the occurrence and recurrence of insanity before or subsequent to marriage, cannot invalidate it. It thus follows that on the state of mind at the time when the marriage is celebrated, its validity or invalidity depends; and the mental condition, before or after the ceremony is immaterial, except, in so far as, it affords evidence of mental incapacity at the time of the performance of marriage.

Munishwar Dutt
 Vashisht
 v.
 Indee Kumari
 Tek Chand, J.

The next question, which has bearing, is the extent of mental incapacity present at the time of marriage which will be sufficient to avoid it. Under section 5(ii) of the Hindu Marriage Act, a condition for solemnisation of a marriage is that "neither party is an idiot or a lunatic at the time of the marriage". It is not the petitioner's case that the respondent is an "idiot" for in the words of Blackstone an "idiot" is one "that hath had no understanding from his nativity; and, therefore, is by law presumed never likely to attain any". According to Coke's definition "an idiot is who from his natively by a perpetual infirmity is *non compos mentis*." Such a person is destitute of reason from birth. Sometimes, however, an idiot is also said to include a person who is destitute of intellectual powers whether the incapacity is congenital or developmental or accidental. It consists in total want of reason.

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

The term "lunatic" is generic and includes every kind or unsoundness of mind except idiocy, but it has to be remembered that unsoundness of mind does not include mere weakness of mind. Etymologically, the term "lunatic" is derived from "luna" the moon, as in the pre-scientific times it was believed that the malady was affected by the waxing or waning of the moon. Lexically, the term has a wider meaning, and includes a person of deranged or unsound mind a person who once possessed of reason but has lost it. The term now includes all unsound persons but lunacy refers to many facts of mental abnormality of varying degrees of severity, or incapacity ranging from mental weakness to total insanity. It is not necessary to categories various forms of insanity which have been called by distinct names by mental experts. The expression, though elastic, does not include mere eccentricity or very infirmity of mind. As observed by Sir William Scott in *Turner v. Turner* (6), that madness may subsist in various degrees, sometimes slight, as partaking rather of disposition or humour, which will not incapacitate a man from managing his own affairs, or making a valid contract. It must be something more than this, something which, if there be any test, is held by the common judgment of mankind to affect his general fitness to be trusted with the management of himself and his own concerns. Every aberration or deviation from a normal behaviour cannot be termed lunacy as there are large number of behavioural variations between lunacy invalidating marriage and normalcy. Some persons may be crotchety, cranky, suffer temporarily from emotional inbalance by

(6) 161 English Reports 600 (601-602).

reason of heat of passion, ungovernable temper, uncontrollable jealousy, or entertain feelings of insensate hatred or unreasoning revenge, or suffer from moral depravity or from incurable perversions, or may be hypersensitive or excitable, or be stupid or obtuse, or exhibit certain eccentricities or idiosyncracies, which in an individual of ordinary mental equipoise are not discernible and yet, such a person would not be classed among lunatics. It is for this reason that standards of medical profession regarding mental affliction cannot in all cases be applied by the law Courts where unsoundness of mind is a factor for deciding a legal status, a contractual obligation, tortious or criminal liability.

Munishwar Datt
Vashisht
v.
Indra Kumari

Tek Chand, J.

It is, therefore, not every form or degree of insanity or lunacy that invalidates a marriage. The mental derangement must be such as to adversely affect the capacity to solemnise marriage. The test applied is that a person should have the capacity to understand the nature of contract of marriage and the duties and responsibilities entailed by it. It is not possible to define in more precise terms the extent or the degree of mental capacity. Broadly, the mental incapacity to enter into marriage should approximate to mental incapacity which disables a person from entering into contracts generally. A view has also been expressed that marriage depends to a great extent on sentiment, attachment and affection which persons with weaker intellects may also feel and the discernment or soundness of judgment while contracting marriage is of a lesser degree than in the case of an ordinary contract. It will suffice to say that persons solemnising marriage must possess a mental capacity sufficient to understand the nature of marital obligations and willingness to shoulder them. Complete want or entire dethronement of reason is not

Manishwar Datt
Vaidhish
 v.
Indra Kumari
 ————
Tek Chand, J.

the test for the validity of a marriage. On the other extreme, a mere weakness of intellect will not justify annulment. Ability to understand the nature of marital union and the probable consequences is an acceptable test for determining validity of marriage.

This test has been accepted by Courts in England. Sir J. Hannen in *Durham v. Durham* (7), said:—

“.....the contract of marriage is a very simple one, which does not require a high degree of intelligence to comprehend. It is an engagement between a man and woman to live together, and love one another as husband and wife, to the exclusion of all others.”

He also said —

“I agree with the Solicitor-General, that a mere comprehension of the words of the promises exchanged is not sufficient. The mind of one of the parties may be capable of understanding the language used, but may yet be affected by such delusions, or other symptoms of insanity, as may satisfy the tribunal that there was not a real appreciation of the engagement apparently entered into.”

The facts of that case were somewhat similar to the instant case. The ceremony of marriage was

(7) (1885) P.D. 80 at p. 82.

performed in October 1882 and there was evidence of symptoms of insanity from and after April 1883. At the time of hearing of the suit in March 1885, the wife was hopelessly insane. There was considerable evidence to show that the wife was of apparently sound mind in the period immediately preceding the ceremony of marriage. It was admitted that she was exceptionally shy and reserved in her manner and did not possess great intellectual powers. Sir J. Hannen found on the facts that at the time of the marriage she was capable of and did in fact give her consent to the marriage and he dismissed the husband's petition. The principles cited in this decision have been cited with approval in a number of subsequent cases,—*vide inter alia Forstery v. Forster* (8). In the *Estate of Park, Park v. Park* (9), (Probate Divorce and Admiralty Division). The decisions in the case of *Park v. Park* was taken up in appeal before the Courts of Appeal but without success,—*vide In the Estate of Park, Park v. Park* (10). Singleton, J., in the above case cited a long passage from the judgment delivered by Caruthers J., in *Jemina Cole v. William Cole* (11). The following lines from the above passage may be cited with advantage :—

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

The test question in all such cases is whether the party is capable of making any binding contract. The identity of the doctrine that unsoundness of mind vitiates this as well as all other contracts is well established. But every consideration of policy and humanity admonishes us that a contract so essentially connected

(8) 39 T.L.R. 658 (861).
(9) (1953) 2 A.E.R. 468.
(10) (1953) 2 A.E.R. 1411.
(11) (1857) 5 Sneed's Ten. Rep. 56.

Munishwar Datt
Vashisht
v.
Indra Kumari

Tek Chand, J.

with the peace and happiness of individuals and families, and the well-being of society, should not be annulled on this or any other ground, not clearly made out. The consequences, in many cases, would be most deplorable. The rights of property would be unsettled and the peace of families destroyed, to say nothing about the effects upon the innocent offspring. The annulment of other contracts would only affect property; but this would be that, and more—it would tell upon the happiness, character, and peace of the parties. The appalling character of these consequences is well calculated to impress the courts with the solemn duty of requiring a clear case for the application of the general principles to this delicate and important contract. It is, however, only a civil contract, and must stand or fall by the usual tests applicable to contracts. It is not every unsoundness that will avoid a contract. The degree necessary to produce this effect is fixed by the law; and must be made out by proof. All persons of lawful age are presumed to be capable of contracting, until the contrary is made to appear. Some sanity is presumed, and if the contrary is alleged, it must be proved by the party imputing it. If a state of permanent insanity is once shown, the burden of proof shifts, and a lucid interval must be proved by the other side. But the rule is different in a case of temporary insanity, depending on some exciting cause not in perpetual action. The general rule is, "that those who have not the regular use of their understanding,

sufficient to deal with discretion in the common affairs of life, or the weakness being so considerable as to amount to derangement, are incapable of contracting a valid marriage, or making any other binding contract." Bishop on Mar. & Div., S. 177. Sir John Nicholl in *Browning v. Reane* (5), says (2 Phillim 70): "if the incapacity be such... that the party is incapable of understanding the nature of the contract itself, and incapable, from mental imbecility,, to take care of his or her own person and property, such an individual cannot dispose of her person and property by the matrimonial contract, any more than by any other contract." It is difficult to describe any exact, palpable line between legal capacity and incapacity. Perhaps this is impracticable, as an abstract thing, in reference to the ability to make a valid contract, as insanity subsists in various degrees and the line of separation between it and mere imbecility is often faint and imperceptible. The general test is the fitness of the person to be trusted with the management of himself and his own concerns. Such a person has a disposing, contracting mind, although it may be in a degree impaired."

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

In *G.E.G.R. v. E.M.R.* (12), which was a case of nullity of marriage between Christians, a view was expressed that where a contract of marriage was attempted to be set aside, it must be proved not only that the person attempting to set aside was eccentric or deficient to a certain extent in his mental capacity, but that the whole mental being was so affected that he was incapable of appreciating not necessarily

Munishwar Datt the nature of the act but its validity. *Mst. Titli v.*
 Vashisht *Alfred Robert Jones* (13), was a case under section
 v. *Indra Kumari* 19 of the Divorce Act (1869). The parties were
 Christians. Following the view taken in two English
 Tek Chand, J. cases, Mukerji, J., said:—

“The observation to be found in the well-known case of *Moss v. Moss* (14), are very pertinent on the point. Persons differ from one another in the degree of intelligence possessed by them. It would be a dire calamity if it could be said as a matter of law that a marriage, entered into by a person who is neither a lunatic nor an idiot, is void, simply because one of the parties lacks in intelligence, although he is able to understand the nature of the bonds of matrimony into which he is entering. As observed by Hannan, P. in *Durham v. Durham* (7), the contract of marriage is a very simple one, which does not require a high degree of intelligence to comprehend”.

A similar matter was considered by the Federal Court in *Ratneshwari Nandan Singh and others v. Bhagwati Saran Singh and others* (15), where the parties were governed by Hindu Law. The observations of the Privy Council in *Mouji Lal v. Chandrabati Kumari*, (16), were cited with approval. Their Lordships of the Privy Council had observed that an objection to a marriage on the ground of mental incapacity must depend on a question of degree of the defect in order to rebut the extremely strong presumption in favour of the validity of a marriage which

(13) A.I.R. 1934 All. 273.

(14) (1897) p. 263.

(15) A.I.R. 1950 F.C. 142.

(16) 38 Cal. 700.

had taken place in fact. Mukerjee, J., delivering the judgment of the Federal Court at page 178 said:—

Munishwar Datt
Vashisht

v.

Indra Kumari

—
Tek Chand, J.

“There are undoubtedly various degrees of insanity and the fact that a man has been adjudicated a lunatic may mean and imply that he is not competent to manage his own affairs, but it does not necessarily show that he suffers from complete mental aberration. He may have sufficient amount of reason still left in him which would enable him to understand the ceremonies of marriage and take an intelligent part in them. This view finds full support from the decision of the judicial Committee in *Mouji Lal v. Chandrabati* (16).”

In cases where marriage is sought to be annulled on ground of idiocy or lunacy of a spouse, the onus in support of the plea of insanity existing at the time of the marriage lies on the petitioner. Of course, where permanent insanity is shown, then it is for the respondent to show that marriage was performed during a lucid interval. The presumption is in favour of validity of marriage and in favour of mental capacity of the spouses entering into matrimony. As merital union is closely associated with peace and happiness of society in general and individuals and families in particular, the marriage should not be annulled on grounds of mental incapacity unless the evidence in support of the alleged idiocy or lunacy at the time of marriage is cogent and compelling. The petitioner, in order to succeed, must make out his allegations clearly and beyond doubt. The consequences attending on annulment of marriage are grave and the Courts before passing a decree of nullity insist on production of evidence which is satisfactory and convincing. Courts must eschew matters

Munishwar Datt
Vashisht
v.
Indra Kumar
Tek Chand, J.

and considerations which are irrelevant and extraneous and concentrate upon the real question in issue, namely, the degree of mental infirmity at the time of marriage invalidating its solemnisation. The evidence of pre-nuptial or post-nuptial insanity must be such from which an inference in favour of insanity at the time of marriage may be convincingly deduced. The standard of proof in such cases must approximate to satisfaction of the Court beyond reasonable doubt. Court has to be vigilant guardian to see that the legal requirements are fulfilled before it annuls the marriage which has been solemnised; and the grounds justifying the granting of relief sought have been strictly proved. In *Preston Jones v. Preston Jones* (17), (House of Lords), Lord Mac Dermott said:—

“The jurisdiction in divorce involves the status of the parties and the public interest requires that the marriage bond shall not be set aside lightly or without strict inquiry. The terms of the statute recognise this plainly, and I think it would be quite out of keeping with the anxious nature of its provisions to hold that the Court might be ‘satisfied’, in respect of a ground for dissolution, with something less than proof beyond reasonable doubt.”

The above observations equally apply where the marriage is sought to be annulled. It goes without saying that in sifting the evidence the Court must exercise sound discernment and should not sit with any preconceived bias and not withhold the relief where, on the facts and circumstances of the case, it ought, in all reason, to be granted.

The evidence produced on the record may thus be judged in the light of legal standards mentioned

above. It was also contended by the learned counsel for the petitioner, that there were pre-disposing causes in the early life of Indra Kumari which would lead to insanity. These were that she was born of a mother who in her early age left her in order to live as the wife of her uncle and took no interest in her nurture and upbringing. From the age of seven, she had a step-mother. There is no suggestion that her step-mother was in any way cruel or was allowed to maltreat her, so as to affect her mind. There is no evidence that the step-mother has been unkind to Indra Kumari. It is then said that after passing the Matriculation Examination, she was not given education in College. Indra Kumari in her statement said that she preferred to learn music at home which she did for 2 or 3 years. It was also said that her father, while partaining family property, did not give her anything although substantial areas of land were given by him to his other children. I do not think that the matters mentioned above could in all seriousness be deemed as pre-disposing causes which could lead to insanity. Moreover, there is nothing on the record to show that upto the time of her marriage she acted in a manner so as to give rise to suspicion of a deranged mind. From ordinary misfortunes, domestic infelicities, even calamities, which are experienced by some even at an early age, it is not safe to deduce that they carry the seed of mental derangement which in later years may germinate into insanity and still later lead to total dethronement of reason. It is not sufficient to prove mental incompetency by proving the existence of factors which may possibly become pre-disposing causes in certain cases. A conclusion regarding insanity cannot be drawn on the ground that there existed in the past a cause which might have tended to bring about insanity or that there was a taint of insanity in a person's family without actual evidence of insanity in the person

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

himself at the point of time required by law. Insanity must be proved by preponderance of evidence clear and convincing. Where there are two versions, the one in favour of insanity may not merely be counter-balancing but must also overcome the legal presumption of sanity. There is no evidence that the mental aberration manifested by Indra Kumari on or about 23rd of May, 1955, was developmental or progressive and not sudden. From the so-called predisposing causes, I cannot come to a conclusion in favour of lunacy at the time of marriage.

The most important question in this case is whether at the time of marriage Indra Kumari was mentally incapacitated in a degree so as not to understand that she was participating in the solemnisation of marriage and did not understand the consequences of matrimony or the resultant marital duties. The instances of abnormal conduct attributed to Indra Kumari at the time of marriage and during the succeeding days have been vehemently denied. The priest, who solemnised the marriage, said that the bride behaved in a normal manner. She chanted the *mantras* which she was required to repeat and did not droop, or conduct herself in a manner, so as to give rise to a suspicion of mental abnormality. There is no convincing proof on the record that just before marriage she had an attack of insanity and was in fact treated for it or that sedatives and injections had to be given in order to quieten her. I have already referred to the entry of Dr. Dayal Singh in the out-door patient register which by itself does not convincingly establish that she became mentally deranged on the evening on which the marriage party was expected. She has vehemently denied the behaviour attributed to her after she left Amritsar. A number of witnesses have no doubt stated that she had a "queer look" or "a blank look" at the reception, given by her father-in-law and also at the party given in honour of the

married couple by Shri Ram Chandani. Her conduct at the breakfast table and during lunch was also commented upon. If she had really acted in a manner so as to rouse a suspicion against her mental sanity, no mention of this fact was made by the petitioner or the other members of his family till 23rd of May. During this period the couple visited Amritsar and in the absence of proof to the contrary acted in the usual and normal manner. Indra Kumari in her statement said that the marital intercourse took place in the railway train and also later on and the marriage was consummated. Consummation of marriage has not been denied and the petitioner's learned counsel at the Bar assumed that intercourse must have taken place. It has nowhere been denied that marital intercourse did not take place since discovery of her unsoundness of mind.

Munishwar Datt
Vashisht
v.
Indra Kumari

Tek Chand, J.

On the assumption that the evidence as to her abnormal conduct at the time of marriage and soon after led by the petitioner is well founded, the next question is whether it shows a mental incapacity approximating to a standard which can be held sufficient for annulling marriage on the ground of lunacy. The evidence of the petitioner, even taken on face value, does not show that at the time of performance of the marriage she did not possess the requisite mental capacity. Considerable stress on behalf of the respondent has been laid on Exhibit R/24, letter dated 12th of May, 1955, sent by the petitioner's father to the respondent's father. That letter has been reproduced *in extenso* in the early part of the judgment. It is difficult for me to reconcile the language of this letter in which the qualities of Indra Kumari, have been extolled in high terms with the insane conduct which has been attributed to her at the trial as from the date of her marriage till the date of writing of this letter. However, onerous the social obligations or the dictates of etiquette and good

Munishwar Datt
 Vashisht
 v.
 Indra Kumari
 Tek Chand, J.

manners may be, this letter as to her behaviour is in complete discord as to how she is alleged to have behaved. Without violating any rules of decent conduct, the petitioner's father could have either remained quiet or sent a letter mentioning her odd behaviour or could have made anxious enquiries about her ailment and treatment regarding antenuptial occurrence. From the above, I am not satisfied that she was mentally afflicted in terms of section 5(ii) of the Act.

I may now refer to the effect of the medical evidence of Dr. Diesh, Dr. Vidya Sagar and Dr. Dayal Singh and also the condition of Indra Kumari as described in the letter of Shri Mudgil (Exhibit A/5) dated 24th of May, 1955, addressed to R. W. 2, Baldev Inder Singh, and the record of her treatment as an out-door patient in the Mental Hospital (Exhibit A/3). If what had happened on 24th of May, 1955, had occurred at the time of marriage or even just before or immediately thereafter, the evidence justifying annulment of marriage might have stood the legal test. The insane behaviour on and after 23rd of May, cannot be attributed to her retroactively in support of the conclusion that she was a lunatic at the time of marriage. As I have already said, there is no proof on the record that her malady was developmental or progressive and not sudden. According to the diagnosis of Dr. Vidya Sagar (A.W. 2), she was suffering from mania (simple) and not schizophrenia. He said "ordinarily, simple mania comes on quite suddenly and disappears quite quickly under electric treatment." He stopped her treatment when he thought she had been cured. Reference was made to Dr. Vidya Sagar's statement, "mania of the type that I saw in her case may recur later in life". These words cannot be read to mean that such a mania is likely to recur. There is no gainsaying the fact that after she was cured in June, 1955, there has been no recurrence of the attack

either mild or serious, upto now. After 1955, she passed B.A., and B.T., Examinations and she has been employed as a teacher in Sacred Heart School ever since April, 1958, and she had also sent her form for appearing in the M.A., English Examination. The question, therefore, which calls for decision, is whether in a case like the present a sudden attack of mania, which affected her only temporarily, is a sufficient evidence of the person's state of lunacy at the time of the marriage. I am afraid, I will not be justified in leaping to such a conclusion. Prior to her marriage, at the age of 20 years, she had passed Matriculation, Intermediate, Bhushan and Prabhakar Examinations. Absence of recurrence suggests that the attack of insanity in May, 1955, was mania (transitoria) and it was sudden and of short duration.

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

Mr. Gurbachan Singh read to me copiously from a number of legal books on the subject. These works are Emotional Problems of Living by English and Pearson (1958 Edition) pages 483-484, 487, 488, 489; Law of Medicine by Curran pages 558; 561; Annual Survey of Psychoanalysis, Volume IV by Frosch and Nathaniel Ross, pages 144, 167; Mind Medicine and Man by Zilboory, page 144, General Psychology by Garrett (Second Edition), 1961, page 538; American Handbook of Psychiatry, Volume I (1959) pages 447 and 449; and Medical Jurisprudence by Modi (13th Edition) 1959 pages 377 to 379. The passages deal with manifestations in conditions of acute mania, Manic-depressive psychosis, Functional psychosis, Etiology of Manic-depressive reactions and schizophrenic reactions. I have read the above passages carefully but I have not been able to derive much benefit from what is said therein for purposes of deciding this case. These are no doubt scientific words dealing with symptoms and also treatment but from their study I am unable to draw any useful conclusion which might throw light

Munishwar Datt
 Vashisht
 v.
 Indra Kumari

 Tek Chand, J.

on the mental condition of Indra Kumari at the time of her marriage. The learned discourses given in these works are not of much help in determining the state of mind of the respondent for purposes of legal tests. For determining the question, whether causes exist for annulling a marriage by virtue of mental incapacity, the Courts have to draw conclusion from the evidence produced in individual case and after applying the legal tests, the Court has to exercise its own judgment after taking into consideration such assistance as may be forthcoming from medical evidence. As pointed out by the learned Editor of Principles of Hindu Law by Mulla, 12th Edition, page 851, "the question is to be determined not upon wire-drawn speculations but upon tangible and established facts. The question is a mixed one partly within the range of common observation and partly within the range of medical experience. The gravity and importance of the issue requires that the Court ought to form its own independent judgment on the point. Medical testimony can be of considerable assistance and even guidance but the question is one for the Court and not for the experts and evidence of experts does not relieve the Court from the obligation of satisfying itself on the point beyond reasonable doubt".

I may now deal with what I may style as an *argumentum ad hominem*, an appeal on humanitarian ground and a plea for avoidance of domestic infelicity. The petitioner's point of view may be expressed thus: There are strong misgivings in the mind of the petitioner and the relations between the parties have been seriously strained. There is no likelihood of their ever living together as husband and wife. It would in the circumstances inflict intense misery on the couple to keep them tied together in matrimonial bonds; and particularly when it would not be possible for the petitioner to give to the respondent connubial

love, to perform conjugal functions, discharge marital obligations and to willingly offer her the marital protection; or, to expect from her in return uxorious loyalty and wifely devotion. It was urged that if the marriage is not annulled the parties would live a frustrated existence. In other words, the petitioner wanted to be relieved of the matrimonial bond which he had entered into with the respondent, in order, that he might be able to marry again, giving a similar liberty to the respondent. The argument is specious and the Court must not yield to it. Even where marriage is not a sacrament or a religious rite and is a civil contract, it is not at par with an ordinary contract relating to property. It is within the option of a man and a woman to enter into a matrimonial contract but once marriage is performed, such a contract cannot be revoked at will. A marriage contract cannot be avoided at the discretion of the parties. Marriage, even where it does not partake of a sacramental character and rests merely on a contract, the State, as such, acquires an interest in it, in so far as the marriage contract is the foundation of the family and is a social institution of the highest importance in which the State is deeply concerned. Even where marriage is a purely civil contract, it is also a status. It is a social institution which is regulated and controlled by law. A marriage concerns not only the two persons who have entered into matrimony but also the society. It is the concern of the society apart from the interest of the two individuals affected that marriage as such; should as far as possible, be preserved. The law must guard and maintain the matrimonial relation with watchful vigilance, as marriage vitally affects the public welfare. It is for this reason that even among societies, which are less conservative parties cannot contract out of marriage at their pleasure. The principal distinction between the marriage contract and other contracts lies in this that marriage contract

Munishwar Datt
Vashisht
v.
Indra Kumari

Tek Chand, J.

Munishwar Datt
Vashisht
v.
Indra Kumari
Tek Chand, J.

cannot be revoked or annulled by the parties but only by the sovereign power of the State. The rights and obligations cannot be altered by the parties themselves but only by law. In the matter of annulment or of dissolution of marriage, public policy is involved, and the State has an interest. Law does not favour annulment or dissolution of marriage and its policy is to uphold the marital status. The proceedings as to annulment of marriage or its dissolution are no doubt between the parties concerned but the marriage relationship, though consensual as its beginning, cannot be discarded by mere volition of either or both parties. Marriage relationship between any two persons being also a matter of public concern the Courts have, therefore, to scrutinize questions involved in annulment or dissolution from the point of view of social well-being. It is for this reason that the legislature had made stringent rules. Before marriage can be rescinded, the Court has to zealously see, whether the relief sought in annulment of marriage, is within the permissible bounds of law. A marriage tie cannot be served by abandonment, desertion or by consent. The cases in which the enforcement of law may conceivably result in unhappiness of either or both parties, cannot be helped, if the law does not provide relief. The Courts will not grant a decree of nullity except on production of clear and convincing evidence. It is for this reason that annulment cannot be granted even where the other party does not resist the claim. Courts do not grant annulment *pro confesso* and insist on proof that the petitioner is entitled to a decree. In the instant case, the annulment sought has been strenuously contested by the respondent and in the absence of clear proof of her lunacy at the time of her marriage, the relief sought by the husband has to be refused. After giving anxious consideration to all the points urged at the bar, I have not been able to persuade myself to hold that the petitioner has established that the

respondent Indra Kumari was a lunatic at the time of the marriage.

For the reasons discussed above, the appeal preferred by Munishwar Dutt Vashist fails and is dismissed.

Munishwar Dutt
Vashisht
v.
Indra Kumari
Tek Chand, J.

K. S. K.

REVISIONAL CRIMINAL

Before Tek Chand, J.

AJAIB SINGH,—Petitioner.

versus

CHINDO AND OTHERS,— Respondents.

Criminal Revision No. 1353 of 1962

Code of Criminal Procedure (V of 1898)—S. 204(1-A) and 252—List of witnesses filed under S. 204(1-A)—Supplementary lists filed under section 252—Magistrate—Whether bound to summon all the witnesses mentioned in the supplementary lists.

1963
April, 8th

Held, that section 252 of the Code of Criminal Procedure confers ample discretion on a Magistrate to allow or refuse calling of witnesses whose names have been added later on in the supplementary list. Of course the Magistrate has to carefully weigh the reasons as to why the names of the additional witnesses could not have been added in the earlier list. Section 252 leaves this matter elective and gives an option to the Magistrate to call or decline to summon the additional witnesses.

Case reported under section 438 of the Criminal Procedure Code by Shri Banwari Lal, Additional Sessions Judge, Amritsar, with his No. 7924, dated 5th October, 1962, for revision of the order of Shri Shiv Singh, M.I.C., Amritsar, dated 9th June, 1962; refusing to examine the prosecution witnesses named in second supplementary list.

S. K. SAYAL, ADVOCATE, for the Petitioner.

M. R. CHHIBBER, ADVOCATE, for the Respondent.