



Department of Laws
Panjab University, Chandigarh
(Established under the Panjab University Act, VII of 1947)



Phone: 0172-2541577, Fax-0172-2540381, Intercom: 4161 (Chairperson), Office-
4157-58

Email: lawsdept@pu.ac.in

NOTICE FOR DEMONSTRATION MOOT 2022

Demonstration Moot shall take place in the department of Laws on 14th October, 2022 at 4:00p.m. Hon'ble sitting judges of the Punjab & Haryana High Court shall preside over the bench, Mr. Amar Vivek Aggarwal, Advocate along with Ms. Bhavya Julka Advocate, shall make the argument.

Proposition is uploaded on the website of the department. Students are advised to read the same well in time.

Prof. Jyoti Rattan shall Co-ordinate the function.

Sd/-
(Prof. Devinder Singh)
Chairperson

BEFORE THE SUPREME COURT OF INDIA, AT NEW DELHI.

Civil Appeal Nos. of 2020

SLP [Criminal] No. of 2020

Mohan Kumar IAS, son of Siri Pal, aged about 37 years, permanent resident of Near Shimla Complex, now resident of SDM Residence, Ramnik Lake Complex. District Solan, HP.

Appellant

Versus

Dr. Sitara Mohan, wife of Mohan Kumar, aged about 37 years, c/o Dr. Sri Brij Mohan, resident of House no 503 Block No f, Sepoy Kunj, New Delhi, permanently resident of Moti Vihar, Rehman St, Saharanpur, UP.

...Respondent

Civil Appeals arising of Judgments and orders dated 15-01-2020 passed by the High Court of Delhi, at New Delhi in FAO no. 303 of 2013, dismissing the Appeal against denial of Divorce to the Petitioner husband; and appeal against fixation of maintenance and denial of custody of minor child by Hon'ble High Court vide same orders; Further Criminal SLP of husband's father, Mohan and his mother for refusing to quash FIR, vide orders dated 10-01-2020, passed by the Hon'ble Allahabad High court.

Facts in brief

Sitara, a bright young student of Medicine a GMCH, Chandigarh, fell for Mohan pursuing his Law at PU campus, who was aspiring to join Civil Services eventually. Sitara liked Mohan, his simple habits, his piety and his unstinted

hard work, honesty and sincerity, all pleased her notwithstanding the fact that besides being intelligent, Sitara hailed from a highly acclaimed and affluent family, but Mohan came from humble moorings. His family comprised of his old parents, who had a very small three room dwelling unit at Kurali in Punjab. His parents stayed in in old family house at Kurali, where Mohan's father used to run his business of selling magazines and newspapers while his mother had retired as a schoolteacher at local Govt School. Sitara's on the other hand was from a high Society's large and rich family of doctors, whose business was spread over length and breadth of the country, settled originally at Saharanpur, with huge properties at several locations including at Delhi and Singapore.

Mohan, a man of few words, self-drawn had hardly any friends, but he was intelligent and all rounder in sports and music besides very actively participant and winner in almost all competitions. Sitara, an extremely outgoing, social, popular personality on social media, had a large fan following club. Yet, Sitara came close to Mohan and both had shared many common moments together, during their little over 3 year's period of their joint studies at Chandigarh, while Mohan was doing his Law at PU, while Sitara was pursuing her MBBS at GMCH Chandigarh during **2005-2009**. At many events and functions both Mohan and Sitara participated and won prizes and both had very actively been involved in many such extra co-curricular events.

Mohan soon cleared IAS with flying colours in **December 2009**, as All India Topper, and meanwhile Sitara also topped her MBBS Batch. Sitara persuaded

her parents to approach Mohan's parents and soon their relationship was ready to flower into lifelong ties. However, Mohan's father had serious reservations over their wedding. He expressed his concerns to Dr. Brij Mohan and his wife Dr. Sharmishta that Mohan had a long way to go and Sitara had also a bright future in the field of medicine, which might be hampered due to marriage with Mohan, because of remote postings and transfers in early career of Mohan, in far-flung areas as he was likely to be assigned in Himachal Pradesh cadre. However, Sitara and her parents assured allayed their anxieties, by Sitara promising that she would not pursue her post-graduation and rather would be contend in serving Govt dispensaries etc. wherever Mohan was posted. Finally, the two got married at Chandigarh on **2nd February, 2010**. Mohan's mother was very excited at her son's bride and her bright career. As she was showcasing the jewellery brought by Sitara to her friends, Mohan's mother remarked that it was not of gold but the same was artificially made. Upon enquiries from Sitara, it transpired that her family had put gold jewellery in a locker, safe, as the places of posting of Mohan were not safe enough for expensive jewellery to be carried there and more so because the newly weds were now to stay in the company of orderlies and maids, where keeping gold jewellery was not safe. Mohan's mother however refused to buy this, remarking - what do we expect from big people who have started befooling them right from day one of marriage. Somehow Mohan impressed upon Sitara to not take these 'musings' seriously, as they were soon to charter their own course in their career. Mohan was soon deputed to 10 months' training at

Mussoorie. In between he kept on calling Sitara, as and when possible, and meanwhile Sitara got a House job at PGI, Chandigarh.

However, one day Sitara and her parents reached Mohan's Hostel and asked the Commandant of Institute to permit Mohan to stay with them in a hotel for a couple of days, so long as they were at Mussoorie. Mohan begged to them that he could only meet them once in a while in late evenings due to strict institute discipline, and staying off training during nights would certainly dent his grading and performance but the threesome insisted Mohan staying with them in Hotel, considering that they had come all the way and Sitara was suffering from pangs of separation from separation from her husband and after all she was his legally wedded wife and thus she also needed his company and thus one Sunday evening they persuaded Mohan to accompany them to their 5 star Hotel. However early on the Monday morning Mohan returned to training Institute, while all the threesome were still asleep, which infuriated Sitara, who reached the Institute in the evening and yelled and shouted at Mohan for not giving due respect to her feelings and for humiliating her parents, as they had come all the way for him alone, leaving their busy schedule and for no other reason to Mussorie and even termed him as 'timid and fused cell' and compared him like a 'potato' who had no drive in life and these words were loud enough to be heard by the course mates of Mohan including Raghu and Reeta, Sitara's friends, who later mocked at Mohan and derided him for 'avoiding his beautiful, charming, loving and caring wife'. Sitara told Mohan that she would not leave unless he took a day off and remained with them.

Seeking the situation, the Commandant nevertheless gave a day off to Mohan, to allow him to be with Sitara and her parents, but it certainly took fun off the vacation for Mohan.

This was just a beginning of many such aberrations, that kept following and haunting the yet to be settled couple in their lives, while Mohan was facing uphill task of out performing in training. Finally Mohan topped his batch again and was given his 1st posting as ADC, at Lahaul and Spiti in Distt Keylong, in non family station in far flung HP, while all his batch mates were only posted as General Assistants to Senior IAS officers.

Mohan however was allowed a house at base camp in Keylong, where he housed Sitara, and would often visit her at weekends or as and when possible, undertaking 12 hours' journey. Sitara had also been offered a temporary House Surgeon's position at Govt Civil Hospital, due to Mohan's intervention, but their house was bereft of conveniences and orderlies, contrary to perceived perquisites that accompany the coveted post held by Mohan. Due to challenging and adverse situation arising due to snowstorm in L&S area, Mohan had to work day and night to assuage the plight of masses as communication lines were cut off there for three weeks and even due to vagaries of his posting, the couple had little time together.

One weekend in **December 2010**, when finally Mohan came back to base camp Keylong after one month, he was informed by the sentry that 'Madam' had meanwhile resigned from her post and had left for Delhi to see be with her

parents. She was by now pregnant, but she never informed Mohan. He called on her cell but it remained switched off for next 15 days. Mohan went to Delhi to meet Sitara, but she and her mom ridiculed Mohan in completely ignoring Sitara. After all a lady newly wedded was only trying to demand a few moments of togetherness from her husband, which he was unable to spare for her.

Sitara reminded Mohan the bright moments spent under flowery trees of lush PU Campus while they were students, where sipping coffee, the two would sometime forget to watch their watches!. Mohan reassured Sitara's mom and even took a couple of holidays and they came to Chandigarh where Mohan proposed to Sitara to write PGI Entrance examination for MD Paediatric Course.

Raghu – his batch mate, known to Sitara, was by now posted as AAO in PGI, who offered 'logistic help to Sitara' to enable her to join at PGI, while Sitara remained at Chandigarh in accommodation hired by couple, and as Sitara was preparing for PGI Entrance exam, Mohan went back to Keylong. One evening, Mohan was informed by Sitara, that she had to write attempted PGI exam, but she could not clear it. Later, however Mohan learnt that Sitara she never appeared in PGI exam. When confronted, Sitara told him that she never wanted to Join PGI, as it was far below her standards and she had no life in Chandigarh and she would thus shift to her parents' place at Delhi. Sitara was now getting frustrated and vented out her anger many times on phone to Mohan 'as he could very well do in his career serving his bosses, but he was purposely ignoring his wife, who was languishing sans all niceties of life, which

were must for a recently wedded couple', but Mohan remained non-committal and slow to her pleadings.

One day Mohan received an SMS from Sitara in **January 2011** that she had topped prestigious AIIMS MD entrance exam and had joined Girls' Hostel, and meanwhile her parents too had shifted to Singapore from Delhi, for setting a new state of art hospital project there. One day Mohan was shocked to read a FB post that "an influential IAS husband had helped his wife, to top, AIIMS entrance". He broached the issue with Sitara, who dismissed it as gimmick of a few jealous ones, and rather told him that her parents had 'no role' in her admission, 'even though AIIMS Director was a bosom friend of her father, but he was not foolish enough to help her out of way, that too in a competitive examination'.

Mohan brought Sitara's luggage from Keylong to make her settle down at AIIMS Hostel. Sitara however dispatched the suitcases containing her clothing to Kurali, as she had bought lot of modern short dresses and Ts etc. in sync with young crowd', in Delhi, and she did not require Sarees and other heavy dresses at AIIMS!

Mohan's parents were quite shocked and peeved over these sudden developments and they even made faces of cynicism over this and remarked that such meanderings of 'bahu' and her jaunts in 'M n M' dresses were unacceptable in their house, but Mohan requested them to not to interfere in their lives, however, their remarks reportedly, were not to the liking of Sitara.

Whenever Mohan came to Delhi, he went to see Sitara in her hostel, but she remained too busy in her new course and was now finding fun in the company of her new found friends, as she had become a travel freak on weekends, exploring historical places. She often told Mohan, that her father could get him posting to Delhi in the Central Govt., as Under Secretary, but Mohan did not want any such 'clerical posting'. Sitara often told him that such posting would give them enough time together, which was by far eluding them, but Mohan remained adamant and strongly blocked any such suggestion.

Sitara gave birth to girl child in **August 2011**, who remained in AIIMS crèche under the care of two baby sitters employed by Sitara's parents for her. Mohan too came with his parents to Delhi to tend to new born, but his parents were not lucky enough to be near their grandchild often despite volunteering to take care of her at a rented accommodation in Delhi, rather Sitara chose to keep her in AIIMS crèche, away from the paternal grandparents.

In **December 2011**, Mohan proposed that instead of keeping their daughter at crèche, he would like child to with his parents, who were much eager to up bring her and finally he and his parents took the child to his native place, much against the wishes of Sitara. But his parents were overjoyed to receive little Adrija in their lives, with lot of excitement and joy. Sitara had always detested visiting Kurali, because mere mention of its name, sent feelings of disgust in her, due to which she felt deprived of her motherly rights. She would occasionally send her driver to fetch the child to Chandigarh where she would fondle her over a weekend and then return back to Delhi. Despite her hectic

schedule, she did not forget to send a bouquet of flowers to her in laws on their 50th Marriage Anniversary, **in January 2012**, from her weeklong holidays in Goa and also sent very exclusive and expensive dresses for her daughter from there.

In **March 2012**, Mohan was offered a UNO posting for Two years, by Govt of India, due to his impeccable service record, but he declined it stating family difficulties, and later he was shifted to Mandi on another posting. This became a simmering issue between the couple as Sitara and her parents accused Mohan and publicly ridiculed him of lacking 'drive and energy' and to avail such prestigious postings, and instead toeing the lines of his own parents, whereas Mohan sought to justify it by stating that he made such a sacrifice for Sitara only.

During one weeks' vacations in April 2012, Sitara called and requested Mohan to visit her parents in Singapore and Indonesia, along with their daughter, as they were too keen to see her, as her parents had recently acquired two big hospitals in Singapore and Delhi NCR, whose inauguration ceremony had been planned at Singapore, but Mohan informed her that due to ensuing general elections in HP, it was not possible for him to get leave, thus leaving Sitara frustrated and her hopes of taking part in these celebrations along with her husband got shattered, as she had to bear the ignominy of going to her parents alone, sans her daughter and husband.

Sitara had by now become too busy in her MD course due to which she could no longer come to Chandigarh, but she brought her daughter with her, and left her in the hostel crèche. But her not being able to meet Mohan, caused much frustration in her, due to which she would often ill mouth at Mohan, whenever she got an opportunity, because Mohan too was becoming more and more inaccessible. **In July 2012**, Mohan accompanied by Himachal's Addl Chief Secretary Home; who were at Delhi for some official meeting, went to meet and greet Sitara at her hostel and invited her for a dinner get together along with little Adrija. Sitara however came alone to be with them briefly, but she was very disappointed, as Mohan was least interested in Sitara and was more busy in looking after his boss and was all the time not only himself formally chatting with him, but was also expecting Sitara to converse with his boss at the dinner. Sitara, who had been longing to meet her husband felt slighted and virtually been ignored and bored at such kind of official decorum, due to which Sitara left the dinner mid-way, and left grumbling and shouting that Mohan and his bosses had made her life a hell. Mohan had to cut a sorry face in front of his boss and this really caused a lot of embarrassment to Mohan as 'he had rather felt insulted and felt 'cut to a size' in the presence of a fairly senior officer' of administrative hierarchy.

The relationship of parties had hit the nadir. Mohan had started nurturing a grudge due to 'uncanny behaviour of Sitara'. Sitara on the other hand had been feeling ignored and had hardly been maintaining any contact with Mohan. She was so embittered that she even forgot to wish him on their marriage

anniversary. Sitara meanwhile changed her mobile phone and did not pass her new number to her in-laws.

The parents of Sitara returned to India and called on Mohan's parents at Chandigarh in **December 2012**, and there was virtually a heated exchange between them due to 'Mohan's attitude in not taking care of his wife and making her stay in a hostel in Delhi, while they started accusing Mohan of 'enjoying luxury' of "playing to galleries for securing fat postings and privileges" of Administrative settings'. This caused huge embarrassment to the parents of Mohan, as they never expected Sitara and her parents to raise such allegations against Mohan.

Even though meetings and parleys continued between the parties later as well, but such talks remained inconclusive to reach a certain solution. During one such meeting, Sitara's parents proposed a wonderful solution to end stalemate between the parties whereby they would approach Govt of India and seek a special international posting for Mohan, in the form of arranging his deputation from Govt of India as - MD of their SBM range of Hospitals at Singapore for Two years, with a start salary of USD 10000 PM with other attractive perquisites, wherein there would certainly be a meeting point between the Sitara and Mohan and both could stay and earn together and at the same time Mohan could take care of Sitara's parents' family business and could come close to Sitara, who was ultimately being tipped to take over as Medical Director of proposed SBM range of Hospitals. However, the said offer was politely, but firmly turned down by Mohan and his parents, at which they were

tauntingly told by Sitara's parents that "certain people did not have the guts to come out of their small world".

Towards the end of January 2013, Mohan requested Sitara to come to her parents' house, for celebrating their Marriage Anniversary together. Sitara came for 2 days and parties had lot of fun, but most of the times Sitara was feeling embittered and even in the get together pictures, her face was clearly seen sullen for unknown reasons. Infact, the mother of Mohan told Sitara, that she wanted to hand over the key of family's bank locker to Sitara after she finished her MD course, as it should now rightfully belong to her. However Sitara simply put off such offers, as she was least interested in Mohan's family. The most shocking part of this get together was that Sitara left alone, leaving Adrija behind, and while going she was all the time growling and grumbling. Later she sent series of whatsapp messages to Mohan, blaming him and his family of running her life and scuttling her career, with their parochial nature.

By the end of February 2012, Sitara's parents wanted to have an urgent meeting with Mohan's parents. They met each other at Chandigarh, in which however, Mohan's father could not join, as of late, his health had become indisposed. However, Mohan, his mother and his uncle joined the meeting. During the meeting Sitara's parents raised a number of nagging issues with them. But the worst of all was that Mohan's father had molested Sitara during her recent visit in February 2013. They informed that out of 'lok laaj', and deep respect for Mohan's stature Sitara had not shared this unfortunate event with anyone, but having seen a 'Phantom' in Mohan's father, the bonhomie between

the relationships was virtually over. Stunned by such false allegations, Mohan's mother became unconscious. It was simply too much for Mohan to bear such insinuations. Mohan and his family left the meeting in a huff.

Sitara's parents also started shouting and yelling at Mohan and his relations, and telling them of teaching a lesson of their lives for ruining the career and life of their daughter, and also for outraging her modesty by Mohan's Father. They kept on saying that Sitara had many high-profiled' flamboyant matches falling for her, but ignoring all of them, she nonetheless chose Mohan, mistaking his stubbornness for simplicity and humility, and on contrary, he had spoiled her life, career and esteem completely due to his selfish, adamant, arrogant and egoistic behaviour; and his hollow and empty life style, wherein he had left no stone unturned to humiliate them and their daughter at every possible juncture. As a solution they went to the extent of telling Mohan's parents to call off the marriage of the couple immediately, upon payment of a sum of Rs. 5 Crores or to face consequences for whole life, which left Mohan's parents shell shocked.

Things now simmered to a point of no return. **In March 2013**, Sitara's parents filed a police complaint with Saharanpur Police, against Mohan's father for outraging the modesty of Sitara and for offences relating to IT Act, committed by Mohan's Father. Allegations were also made against Mohan and his whole family of demanding dowry and harassing their daughter. In the FIR, Sitara and her parents accused Mohan's father of often looking at Sitara's figure with prying eyes and that Mohan's father had also secretly clicked some

objectionable pictures of their daughter while she was changing clothes in their house. They also accused Mohan and Mohan's parents for their greed in demanding more and more dowry, and alleged that Mohan's Mother's had been levelling taunting remarks on Sitara and even went to the extent of threatening their daughter with her life and well being. Mohan and his family had to run helter-skelter to secure pre-arrest bail in view of non-applicability of Section 438 Cr.P.C in State of Uttar Pradesh and after a lot of strenuous efforts; Mohan and his mother secured pre-arrest bail from High Court of Allahabad, while Mohan's father was still denied bail. He had to approach the Hon'ble Supreme Court of India, and finally granted pre-arrest bail. Soon, the 'two young lives and a bubbling little Adrija, [daughter of couple, also called Rehmat by Mohan's parents]', were about to be lost in unseemly bitterness and unwarranted litigation that was to follow.

On 5th February, 2014, Mohan finally filed a Divorce petition for Dissolution of their marriage, at place of parties' last stay at Chandigarh, on grounds of Mental Cruelty due to false FIR against his father and his whole family and also on account of Desertion, irretrievable breakdown of marriage and also filed a petition for custody of minor child. These petitions were later, transferred to Delhi by the Hon'ble Supreme Court of India, on the plea of Sitara, who however had sought their transfer to Saharanpur. The Divorce petition was however dismissed in November 2015 by the Family court at Delhi, holding that the allegations at best, were ordinary wear and tear of life and did not amount to cruelty and the same having been filed in counter-blast to the FIR

filed by wife. The Custody petition was also dismissed. However, maintenance was allowed to wife and child @ Rs. 50,000/- each by the Family court. Mohan appealed against all these orders to the Hon'ble High Court of Delhi.

Meanwhile, Mohan's father along with other members of his family also preferred a Quashing petition under section 482 Cr. P.C. challenging the FIR before Allahabad High Court. The High Court of Allahabad dismissed the Quashing for FIR petition, filed by Mohan's father and other family, observing that in the wake of extreme seriousness of allegations, the FIR could not be quashed.

Before taking up petition for final hearing, the Hon'ble High Court of Delhi had however referred the parties for Mediation, wherein Sitara repeated the demand of permanent alimony to the tune of Rs. 5 Crores along with custody of child, which however was rejected by Mohan and finally when parties were unable to settle the matter, the Delhi High court dismissed the matrimonial appeal of the husband on merits observing that husband could not take the advantage for his own wrong and seek divorce instead, holding that the status of husband was like a 'dog in manger', but he himself was blameworthy for this situation and he could not 'destroy' the cherished dreams of a Young lady from pursuing her career dreams. The Delhi High Court however, upheld the decision of Family Court granting custody of minor child to Sitara, and rather ruled, that since Mohan and his whole family were facing a criminal case, with serious allegations, which might continue for many years, as such, custody of the child could not be allowed to them. Mohan was however allowed visitation rights for

two months every year, on the plea that the minor child could not be allowed to stay in a crèche during holidays, while the mother was pursuing her medical education in a Hostel and was rendering hectic duties in a hospital. The High Court enhanced monthly maintenance to the wife to Rs. 75,000/- pm, and also upheld Rs. 50,000/- per month to the minor child, on the plea that since Sitara was only getting a stipend in AIIMS, as such she was not earning enough to sustain herself and the child. Aggrieved due to all such orders and decisions, both the parties have filed petitions for Leave to Appeal before Hon'ble Supreme Court of India. Mohan also claimed the custody of child and sought annulment of maintenance for Sitara in Supreme Court, wherein one of his pleas is that he was not averse to the company of his wife and child and wanted his family to be together.

He also alleged an extremely negative role of Sitara's parents and their interference in his matrimonial life. He termed FIR to be a gross abuse of process of law and being totally bereft of any iota of truth and challenged the decision of Allahabad High Court in rejecting his quashing petition. On the other hand, Sitara alleged that Mohan and his family had ruined her life, besides their ever-growing greed for more and more dowry from her family and blamed them for excruciating their married life and through taunting behaviour and also on account of Mohan's father outraging her modesty.

Her arguments - She being a qualified medical professional, right from day one, it was quite clear to Mohan and his family that Sitara would pursue her medical career. However Mohan having failed to give any opportunity to her to

grow in her career, he could not be so selfish to keep pursuing his career alone and ruin the life and aspirations of a young female, who had every right to excel and do well in her life and in 21st Century, it was a not a crime for a woman to be independent in her career and stand on her own feet, for which she was being unfairly treated and punished. A woman cannot be allowed to surrender her independence at the mercy of her husband, though both are required to be bound in matrimonial ties, but yet, she cannot be subjugated to an extent that she could not pursue a career of her own choice. Merely because her husband was occupying a high post in administrative circles, this in no way could prevent her from chasing her professional dreams, after all she was set to become a medical professional in her own right. She was also entitled to custody of the child exclusively and so also maintenance from her husband. She challenged the maintainability of the quashing petition on the ground that when the FIR contained allegations of moral turpitude, outraging modesty of women and dowry harassment, the same could not be quashed and set aside. She therefore strongly contested the Divorce and custody petition, as these were bound to label her for life as a Divorced woman, for no fault of hers.

Mohan challenged the denial of divorce by the courts below and also challenged the criminal trial and denial of quashing of FIR to his father, him and his mother, terming the same as abuse of process of law.

Mohan also contends that besides allegations of Cruelty and Desertion having duly been proved under law, in any case, the marriage has broken irretrievably

and as such under Article 142 of the Constitution of India, it is good ground to dissolve the marriage.

A Larger bench of the Supreme Court decided to look into the plea that allegations regarding outraging of modesty and serious allegations of infringement of provisions of Information Technology Act, could also be quashed by terming them as abuse of process of law, as a fall out of matrimonial litigation, and also asked the assistance of State counsel for examining the records of the FIR and for ascertaining the stage of trial.

Arguing counsels

Amar Vivek Aggarwal, Ms. Bhavya Julka Advocates, for the Appellant husband
Ms. Puneeta Sethi and Ms. Deepika Sood, Advocates for Respondent Wife

Sh. Shiva Prashar
Advocate for the State of Uttar
Pradesh.