

Shankerappa Vs. Sushilabai

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Court : Karnataka

Decided On : Jul-28-1983

Reported in : AIR1984Kant112

Judge : M.N. Venkatachaliah and ;K.A. Swami, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 96; ;[Hindu Marriage Act, 1955](#) - Sections 5, 24 and 25; ;[Evidence Act, 1872](#) - Sections 47, 50 and 114; Hindu Marriage (Amendment) Act, 1995 - Sections 5, 11, 12 and 18

Appeal No. : Regular First Appeal No. 278 of 1983

Appellant : Shankerappa

Respondent : Sushilabai

Advocate for Def. : B.S. Raikoto, Adv.

Advocate for Pet/Ap. : Shivaraj Patil and ;M. Shanthangoudar, Advs.

Judgement :

Venkatachaliah, J.

1. This appeal by the defendant is directed against a decree for maintenance dated 30-9-1980 made in O. S. No. 95/78 on the file -of the, Civil Judge, Gulbarga. This appeal is in the list of cases for admission. -The appeal is admitted and with

the consent of learned counsel on both sides taken up for final hearing, heard and disposed of by this judgment. The records of the proceedings of the Court below are also before us.

2. plaintiff. Sushilabai, instituted the suit claiming separate maintenance from Shankarappa alias Shivashankar, the defendant. alleging that she is the legally wedded wife of the defendant, their marriage having been performed on 11-5-1961 at Hagargundagi village of Gulbarga Taluk. She alleged that after the marriage the parties lived together as man and wife for some time; but thereafter The defendant, who is an Engineer in the service of Government left the plaintiff in the house of his parent's at Aland and began to live separately at the place of his posting. She further alleged that on account of the ill-treatment meted out to her by her mother-in-law, she found it impossible to continue to live at Aland. She says: that defendant instead of taking her Along with him send her back to her own parents place at Hagartundagi village during Ehipavall of 1966 and thereafter defendant totally ignored and, deserted her ignoring the importunities of her father to permit her to live with the defendant. Plaintiff sought a decree for maintenance at Rs. 200/- p. m. Some past maintenance was also claimed in the suit. It was Alleged that defendant apart from his salary of Rs. 1,000/- p. m. owns, 1 and at Aland which yield Rs. 20,000/-, a year.

3. The defence was one of total denial of the relationship itself. Defendant contended that though the father at the plaintiff was desirous of giving plaintiff in marriage to the defendant, as the two were related and known to each other and had made a proposal in that behalf, the proposal did not fructify in a marriage as defendant turned down the proposal. It was suggested that in view of defendant rejection of the Proposal the relationship between the two families became estranged and highly strained and that the suit was the outcome and expression of this ill-will. It was also contended that the estimate of his income, both by way of salary and from immovable property, as well a quantum of maintenance had been highly exaggerated.

4. On these pleadings, the court below framed the necessary and relevant issues and the parties went trial on those issues.

Plaintiff herself tendered evidence as P. W. 1. She also examined on her side Shankerayya (P. W. 1) who is stated to have officiated as the priest at wedding ceremony. Sidramappa (P. W. 3) stated to be a cousin of the plaintiff who caused production of Anil spoke to Exhibit P-5 said to be a letter from add in the hand of the defendant admitting the relationship Shivasbarnappa (P. W. 4), who is stated to have attended the wedding and lastly Nagappa (P. W. 5) stated to be a neighbour of clefenclant's family at Aland.. In support of her case, plaintiff. in the, course of the evidence on her side, got marked Exts. F-1 to P- 12.

On his side, defendant tendered evidence as D. W. 1. His father Chanderamappa gave evidence as D. W. 2.

5. On an appreciation of the evidence both oral and documentary, on record, the trial Court recorded findings in favour of The plaintiff on the material issues and entered a decree.

In regard to the quantum. the trial Court accepted the evidence of the defendant himself that his total emoluments, then, were Rs. 900/- p. m. Defendant's income from his share of agricultural property was also quantified at some figure which is not substantial. The Court below determined a sum of Rs. 200/- p. m. as maintenance to plaintiff. So far as the claim for arrears was concerned, arrears were limited to a period of 3 years immediately preceding the suit. Suit was decreed accordingly.

6. In this appeal, the findings of the Court below as to the income of the defendant or the quantum of maintenance are not seriously challenged, though some grounds have been taken in that behalf in the memorandum of appeal. Indeed, the income of Rs. 935/- p. m. is quantified on the basis of the admission of the defendant himself. Defendant has no other dependants to maintain. In any event, the award of Rs. 200/- p. m. is otherwise unexceptionable if the main question as to the relationship is decided in plaintiffs favour. So is the finding in regard to the award touching past maintenance. In these circumstances, we think that Sri Shantan Goudar is right in not reagitating these questions,

Sri Shantan Goudar did not also challenge the position that if the marriage is upheld the plaintiff-wife would, in the circumstances of this case, be entitled to separate maintenance. This indeed is logical corollary of the defence of denial of marriage. A plea that the wife had no justification to live separately would, indeed, be inconsistent with such a defence.

7. However, the two contentions vigorously urged by Sri Shantan Goudar in support of this appeal admit of being formulated thus:

(a) Such evidence as obtains on record touching the marriage and the relationship, is insufficient to support an affirmative finding that plaintiff was the legally wedded wife of the defendant.

(b) That, at all events, having regard to the admitted circumstances that at the time of the alleged marriage plaintiff was only 13 years of age and defendant some 3 years her senior, the alleged marriage, even if true is void ab initio for contravention of the mandatory requirements of S. 5(iii) of the [Hindu Marriage Act, 1955](#).

The second point was neither raised nor argued before the Court below. However.. Sri Shantan Goudar is right in his submission that this is essentially a question of law, which does not require for its decision any fresh facts to be found upon and that as the question goes to the root of the matter, appellant should be granted leave to raise this ground, even if it be for the first time in appeal. We gave appellant leave to raise this, question.

8. Re: Point (a) : The evidence on record bearing on this question falls, mainly, into and is in three areas. First is the direct evidence of P. Ws. 1, 2 and 4 as to the alleged performance of the marriage ceremonies at Magaragundagi village on 11-5-1961. The second aspect is the alleged admission of the relationship by the defendant in the letter Ext. P-5 said to have been written to P. W. 3 and the conduct of the defendant. The third aspect is the reputation evidence under S. 50 of the Evidence Act comprising the evidence of P. W. 5.

9. On the first aspect, plaintiff, as P. W. 1 has stated that defendant is her husband, her marriage with him having been celebrated at Hagargundagi village in the year

1961. She speaks to the ceremonies of the marriage and the antecedent preparations. She says that Shankarayya (P. W. 2) officiated as the priest at the wedding and performed the wedding ceremonies and that a 'Thali' was tied by the defendant persons assembled showered and all the sacred-rice on the couple. She says that the marriage was consummated 3 years thereafter and she went to live with the defendant at Aland. She further states. that thereafter defendant went away pursuant to his official postings. She says that after defendant was posted out on service. he did not take her with him: but left her with his parents. She then speaks of the ill-treatment meted out to her during her stay with her parents-in-law and to the circumstance that in 1966 Deepavali her father had come to Aland and took her to his place for the festival It is her case that thereafter defendant did not choose to take her back; but deserted her despite the efforts of her father to persuade him to agree to take her with him. She also speaks to Ext. P-1,, the marriage invitation and Ext. P-8, the notice issued to and served upon defendant before suit; and to Exts. P-4 and P-5, the postal cover and the letter respectively stated to have been written by the defendant to Sidramappa (P . W. 3).

The line of cross-examination of plaintiff is consistent with the stand of the defendant that there was no marriage at all. It was suggested to her in cross-examination that since. the defendant and his father had spurned the proposal of the marriage and as nobody else had come forward to marry plaintiff, she has come forward with a false and vexatious claim. It was, also suggested that she was suffering from Tuberculosis. She denied, these suggestions and also denied that she ever took any medical treatment for any communicable disease.

Shankerikyya,(P. W. 2) is a 'Jangam' who claims to have officiated as the priest at the wedding. and performed the marriage ceremonies. This is what he says in his evidence at the wedding as to the events at the wedding .

'2. In the evening on the day previous to the date of the marriage, the defendant and his people came to Hagargundgi. In the evening there was a 'Sakare Karana'. On the following day i.e., on the date of the marriage, oil was applied to the defendant and the plaintiff . At about 2 p. m. there was 'Devaru Akki Kalu'. At that time chanting Manthras I worshipped Tali and gave it to the defendant who tied it

to the plaintiff. The people assembled showered rice on the plaintiff and the defendant. Thereafter Jangam were, led. Then relatives were fed. Then people of the village were fed. At about 8 p. m. there was 'Diavad Akki Kalu'. At that time people assembled showered rice on the wedded Couple Presents were given to the couple. Father of the plaintiff received the presents. Shivesharnappa Patel of our village prepared the list of presents and the names of the persons giving presents. Thereafter water was poured. (Dhare yeri) That function was done by the elders of the plaintiff.' P. W. 2 claims to have officiated in about hundred marriages. Indeed, his ability to chant 'Mantrams' apposite for such occasions appears to have been subjected to a demonstration in the Court below. He seems to have emerged from the test quite creditably.

Sidramappa, P. W. 3, is stated to be a cousin of the plaintiff. He claims to have participated in the negotiations that preceded the wedding. He produced the letter Ext. P-5 which is stated to have been addressed by the, defendant to this witness. P. W. 4 is one Shivasbaranppa. He. claims to have attended, the marriage at Hagargundagi. He speaks to the marriage ceremonies. He says that P. W. 2 officiated at ,the wedding, He claims to have prepared the list of presents offered to the plaintiff on the occasion of her wedding. That list is Ext. P-9.

10. So far as the evidence of P., W. 51, who speaks to his visits to the house of defendant's father at Aland and to the circumstance that he found plaintiff present in that house as the daughter is concerned. the trial Court thought fit not to place any reliance on this testimony. The rejection of this evidence is on the ground that P. W. 5 claims to have visited defendant's father Chandramappa for the purpose of collecting dues owed the latter to some of his creditors and that the names of the creditors nor the particulars of the debts were furnished by P. W. 5. In view of what is stated by the trial Court, it may perhaps, be appropriate to eschew this piece of evidence in assessing plaintiff case.

11. In the present case, the question whether defendant and plaintiff were man and wife and had been joined in wedlock would have to be found upon and decided on the cumulative effect of the evidence of P. Ws. 1 to 4 in the light of the evidence as to the surrounding circumstances. In the matter of assessment of the

weight of these surrounding deserves particular notice. Prior to the suit a notice as per the original of. Ext. P-8 dated 15-3-1977 was issued by plaintiffs counsel to the defendant. It is not disputed that this was duly served on the defendant. He did not choose to reply. The question is whether any inference against the defendant could be drawn from this silence. Conduct in certain circumstance may include silence as well. But the silence to amount to conduct must be what may be styled 'positive-silence', and in the context of a clear duty to speak silence it is said, is golden except where there is a clear duty to speak. It is true that mere silence, without more, might not be susceptible of implications of conduct admitting of any adverse inference. Under normal circumstances it might be too much to say that a man by merely omitting to answer a letter must be held to admit the truth of the statements contained therein. There is, it is said, no general duty cast upon a recipient of letter to answer it and his omission to do so does not amount to any admission of the truth of the statements contained. in the letter. But it may be somewhat different where the relationship between the parties and the content in which and the purposes for which the letter is addressed are all such that a reply might properly be expected. There may be conceivable cases where if the written communication does not draw forth an indignant repudiation it may be a circumstance which may not altogether be ignored in assessing the truth or otherwise of the statements contained in the communication. The conduct indicated by silence must, of course, be assessed with all other relevant circumstances and The only fair way of stating the rule of law is that in every case one must look at all the circumstances under which the letter was written and determine whether the circumstances are such that the refusal to reply amounts to a piece of conduct which might admit of and carry with it an element of admission.

Phipson on Evidence (12th Edn., 1976) at para 766 states :

'The silence of a party will not normally render statements in his presence admissible evidence against him. In some circumstances an adverse inference may be drawn from such a silence, but this is very far from being the general rule.'

There is, at para 766, a statement of Lord Alverstone, C. J. thus:

'It may be that in some cases. the absence of an indignant repudiation of a charge 'might be some corroboration.'

12. In the present case, the notice. Exhibit P-S, asserted that plaintiff was Ag lawfully wedded wife of the defendant and proceeded to narrate the subsequent events in their married life. It also refers to plaintiff having been turned away. A stiff claim for past maintenance in a sum of Rupees 24,800/- was made, along with a claim for future maintenance at Rs. 200/- per month. This notice was served on the defendant on 22-3-1977. The suit itself was filed some time in May, 1977. It is not the case of -the defendant that even before, he content plated the issue of a reply the plaintiff had forestalled matters by filing the suit. Defendant's stand is that he was entitled to ignore this notice. It appears to us that, having regard to normal course of human conduct and reactions in such a situation this which a case in which a reply could be said to be properly expected from a person in the position of the defendant. The circumstance that, according to defendant, plaintiff was mischievously trying to foist herself on defendant as a wife records added need and justification for a reply. Having regard to the facts of this case, this silence in our opinion, does amount to a piece of conduct susceptible of an adverse inference against the defendant and to afford some, though not a decisive, corroboration to the plaintiff's case.

13. The next important factor is the alleged admission of the- relationship in letter dated 18-6-1969. That letter is addressed to Sidramappa (P. W . 3), Plaintiff's case is that this letter was written by the defendant from Poona who, he was Then in service. The letter is EXt. P-S and the envelope which contained it is Ext P-4. In that letter, defendant is stated to have acknowledged the marital relationship and aired a number of grievances against the conduct of plaintiff. The letter does not refer to the plaintiff by name; but if the authenticity and authorship of the It was established. there would be no difficulty in understanding it as referring to the plaintiff herself. The relationship between Sidramappa, the address of the letter, and the plaintiff is not disputed. The letter start thus.:

(Matter in Vernacular omitted - Ed.)

The communication proceeds to refer to certain letters stated to have been written by the plaintiff to him and criticises the tone of those letters. Thereafter in an apparent reference so the threat of the plaintiff to go over to Poorta to join the defendant, if defendant did not take her, the letter proceeds to say:

(Matter iii vernacular omitted- Ed.)

Then the letter proceeds to make enquiries of Sidramappa is (P. W. 3s) son:

(Matter in vernacular omitted- Ed.)

Defendant. of course, has denied having written this letter. He denies that it is in his handwriting. Though Sidramappa, P. W. 3. the addressee of this letter. was called as a witness, he did not speak to the identity of the handwriting of the defendant in Ext. P-5. He merely stated that Exts. P-4 and P-5 were received by him and he passed them on to the plaintiff. The evidence of P. W. J cannot, therefore bear upon the proof of the writing in Exhibit P-5 as that of the defendant.

The only other evidence as to the writing is the evidence of plaintiff herself who claims to be able to identify the handwriting of her husband and says that the writing in Ext. P-5 is In the hand of her husband. Plaintiff mid :

'I have studied up to VI Standard Kannada. I can read and write Kannada. I can identify the Kannada handwriting of my husband. I am now shown a letter. It contains the handwriting of my husband. Sidramappa is my elder brother. My brother Sidramappa had received a letter from my husband. I have produced, that cover in this suit and the letter received in that cover. Exhibit P4 is the cover and Ext. P-5 is the letter of my husband

The question is whether this evidence Satisfies tile requirement of S. 47 of the Evidence Act and if it does, what is its probative value.

14. Sri Shantan Goudar urged that in the first place this evidence does not passed muster having regard to the requirements of Section 47. He says that explanation to Section 47 says in what manner a person a person could be said to be acquainted with the handwriting of another and if the witness in We explanation

plaintiff claims to be able to speak about the handwriting, the evidence is mere hearsay and does not qualify under S. 47. Sri Shantan Goudar referred to the observations of the Supreme Court in *Rahim Khan vs. Khursid Ahmed* : [1975]1SCR643

(para 39)

'There is also oral evidence identifying the signature of the returned candidate on Ext. P3 and P. W. 11/1, particularly in the deposition of Habib, P. W.;²³. He has not spoken to his familiarity with the hand-writing of the appellant. Opinion evidence is hearsay and becomes relevant only if the condition laid down in S. 47, of the Evidence Act is first proved. There is some conflict of judicial opinion on this matter but we need not resolve it here, because although there is close resemblance between the signature of Rahim Khan on admitted documents and that in Exts. P-3 and P.W. 11/1, we do not hazard a conclusion based on dubious evidence or lay comparison of signature by Courts. In these circumstances, we have to search for other evidence, if any, in proof of circulation of the printed handbills by the returned candidate, or with his consent.'

(Vide 'para 39)

The above observation cannot be understood as a pronouncement on the question whether a witness is called for the purposes of identification of the writing of another should, in the course of the examination-in-chief itself, state which of the manners enumerated in the explanation, he or she claims to be acquainted with the authorship of the disputed handwriting and whether in the absence of such a prefatory clarification, the evidence would not be admissible. Indeed the Supreme Court did not choose to express any opinion on these questions. But this matter has received judicial consideration in the High Courts. In *Shyam Pratap v. Beninath Dubey* (AIR 1942 Pat 449), Fazal Ali, J, stated:

'A witness need not state in the first instance how he knows the handwriting which he is examined to prove since it is the duty of the opposite party to explore on cross-examination the sources of his knowledge, 14. Sri Shantan Goudar urged that if the witness is dissatisfied with the testimony of the first place this evidence does

not Passed the witness as it stands to the effect that the witness was acquainted with the handwriting of the writer. (1904) ILR 28 bom 58,Rel. on.'

Phipson on Evidence (12th Edn. 1976) does not say In which of the ways indicated states, the law on that matter in terms followings:

' The genuiness of a party's handwriting, or mark, may be proved by the opinion not only of experts, but of the opinion non-experts; and this is so even where the writer himself or the attesting witness is actually in Court and might be called

A statement that the witness is acquainted with the witness is generally sufficient in chief, it being for the opponent to cross-examination as to means and extent. Such knowledge may be acquired : (1) by having at any time seen the party write, through the value of its opinion will, of course, vary with the frequency and references of the occasion and the attention paid to the matter by the witness or; (2) by the receipt of the written communications purporting to be in his handwriting in reply to documents addressed to him by or on behalf of the witness; through the evidence will be strengthened by the communications having been acted or as genuine between the parties; or (3) by having observed, in the ordinary course of business, documents purporting to be the party's handwriting: a method which applies also to the Proof of ancient handwriting.'

The treatise proceeds to say that the non-expert's knowledge must not, however, have been acquired for the express purpose of qualifying him to testify at the, particular trial. The manner of acquisition of knowledge entitling a non-expert evidence to testify under Section 47 is broadly similar. What emerges is that it may not be necessary for the witness to state in examination-in-chief as to the mode in which the knowledge of the handwriting was acquired, it being open to the cross-examining counsel, if he challenges the statement of the witness, to probe into the matter in the cross-examination.

In the present case, the cross-examination of the plaintiff on this aspect is not directed to the question as to the manner in which she became competent to speak to the handwriting of her husband., Her acquaintance with, or ability to,

identify the, handwriting of her husband has not been challenged, at all in the cross-examination. In view of the fact that the 'Court below has accepted the evidence of P. W. 1 and as the Court below has had the opportunity of observing the demeanour of the witness and to judge what weight the oral evidence should carry we think there is no justification to differ from the appreciation of the evidence bestowed on this aspect by the Court below, We hold that the plaintiff was competent to speak to the handwriting of her husband and that Ext. P-5 is proved to be -in the handwriting of the defendant. This circumstance, by itself, has almost a crucial bearing on the question of relationship.

15. So far as the oral evidence of the actual marriage ceremonies are concerned, though there might be some minor discrepancies in the versions of the witnesses, by and large the evidence is such as to commend itself for acceptance. Having regard to the fact that the witnesses were speaking of an event after a lapse of nearly 20 years, it would be unreasonable and unrealistic to expect a perfect and cogent recapitulation. The discrepancies are of a non-material character. We are in agreement with the appreciation of this evidence made by the trial Court. The defendant himself admits that plaintiff on and off had occasion to stay in his house, though, however, he would describe the stay as confined to a few days on rare occasion and would also further qualify the period to which the stay related, as relating to a , period when (sic) about 7 years old' go. We, have gone through the discussion and appreciation, of this evidence by the trial Court. We are in agreement with the appreciation of the evidence of P. W. 1, P. W. 2, P. W. 3 and P. W. 4 made by the trial Court.

16. The plaintiff relied upon Exh. P-12 an extract of the Voters list, which purports to show that the plaintiff was a resident of House No. 5/3/69 of Aland Town. It appears to us that apart from the question whether a voters list could be relied upon for the purpose of showing the relationship of the parties, it may not be safe to place reliance on the document in view of certain intrinsic inconsistencies. Exhibit P-12 Purports to be the electoral roll of the Karnataka State Legislative Assembly Election of 1977, It is not plaintiff's case that in the year 1977 she resided with the family of the defendant at Aland. Her case is that in 1966 Deepavali, she went back to her own Parent's Place and defendant did not take

her back ever since.

17. But, we think, even without the evidence in Ex, P-12 the other evidence on record is sufficient to sustain the finding of the trial Court that defendant and plaintiff were man and wife. The cumulative effect of the oral evidence of P. Ws. 1, 2 and 4, who speak to the actual marriage ceremonies read with the effect of Ex. P-5, support the finding of the Court below on this issue. There is nothing brought out in the evidence of D. W. 1 and D. W. 2 which consists of mere denials, to detract from this position. We see no reason to disturb the, finding of the Court below. We accordingly, answer Point (a) against the appellant.

18. Point No. (b):-The contention of Shri Shantan Goundar is that at that time of the alleged marriage in the year 1961, plaintiff, admittedly, was 13 years of age and defendant was, some 3 or 4 years her elder. The undisputed position as to the age of the parties, says Sri Shantan Goudar, was that the bride was below 15 years and the bride-groom below 15 years of age Prescribed under Section, 5(iii) of the Act, as it then stood as one of the conditions essential for the solemnisation of a marriage between Hindus. Learned Counsel also contended that as the alleged marriage was clearly in violation of Section 5(iii) of the Act, the marriage was ab initio void and no right could be founded thereon. Sri Shantan Goudar sought to rely on the decision of the High Court of Andhra Pradesh reported in : AIR 1975 AP193 , (P.' A. Suranina v. G. Ganapatlu). However upon it being pointed out to him that that decision had been overruled by a Full Bench' of that Court in : AIR 1977 AP43 , (Pinninti Venkataramana v. State) he did not commend the former decision.

19. Several High Courts have taken the view that the violation' of the condition under Section 5(iii) concerning the age of the parties to the marriage would not attract the pain of nullity. Section 11 which specifies the conditions, the non-compliance of which render marriages solemnized after commencement of the Act, void. does not however, include a case of violation of Section 5(iii) of the Act. Section 11 of the Act. attaches the pain of nullity-to a marriage if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of Section 5. It appears to us that the scheme of Section 5, 11 and 12 and 18 of the Act. would

show that if a marriage is solemnized in violation of the condition concerning the age of eligibility in Section 5(iii) of the Act. the penalty is not one of nullity of the marriage; but there are other penalties and sanctions for that breach Section It says that if the conditions for a valid marriage in Clauses 0), 6v) and (v) of Section 5 of the Act, are violated or infringed, the marriage could be a nullity. If certain other conditions are violated the marriage, is under Section 12, merely voidable. Violation of S. 5(iii) finds no place in either of these two sections, but a breach of the condition in Section 5(iii), is made punishable under Section 18 of the Act.

This Court. in Nanjundachar v. Mallikarjunachar, (M. F. A. 684 of 1972, disposed on 18-6-1974). has held that a decree of nullity can be made only if any of the conditions specified in Section 11 are satisfied. Several other High Courts have taken the view that a marriage in violation it S. 5(iii) of the Act, is not a nullity. (See (1) , Smt. Naumi v. Narotam; (2) , Mohinder Kaur v. Major Singh; (3) : AIR 1976 MP83 , Gindan v. Barelal: (4) : AIR1977 Ori36 . Durjyodhan v. Bengabati Dei; (5) : AIR 1977 AP43 (FB), Pinninti Venkata ramana v. State).

20. The matter must now be held to be concluded by the observations of the Supreme Court in Lila Gupta v. Laxmi Narain : [1978]3SCR922 . -The Supreme Court was considering the effect of violation of Section 15 of the Act, touching the case of remarriage of divorced parties. The Supreme Court observed (para 6):

'6. A Comprehensive review of the relevant provisions of the Act unmistakably manifests the legislative thrust that every marriage solemnised in controvention of one or other condition prescribed for valid marriage is not void. Section 5 prescribes six conditions for valid marriage. Section. 11 renders marriage solemnised in contravention of Condition (i), (iv) and (v) of Section 5 only void. Two incontrovertible propositions emerge from a combined reading of Sections 5 and 11 and other provisions of the Act, that the Act specifies conditions for valid marriage and a marriage contracted in breach of some but not all of them renders the marriage void. The statute thus prescribes conditions for valid marriage and also does not leave it to inference that each one of such conditions is mandatory and a contravention, violation or breach of any one of them would be treated as a breach of a pre-requisite for a valid marriage rendering it void. The law while

prescribing conditions for valid marriage simultaneously prescribes that breach of, some of the conditions but not all would render the marriage void.....

A further aspect that stares into the face is that while a marriage solemnised in conka. vention of Cls. (iii), (iv), (v) and (vi) of Section 5 is made penal, a marriage in contravention of the prohibition prescribed by the proviso does not attract any penalty

The express provision prima facie would go a long way to negative any suggestion of a marriage being void though not covered by Section 11 as being void by necessary implication. The net effect of it is that at any rate Parliament did not think fit to treat such marriage void or that it is so opposed to public policy as to make it punishable.'

(underlining supplied)

The observations of the Supreme Court in the aforesaid case would support the conclusion that, even if Section 11 is not. held to be exhaustive of cases of nullity of marriages the scheme of Sections 5, 11, 12 and 18 of the Act, would show that violation of some conditions contemplated in Section 5 would alone render a marriage void and that the violation of Section 5(iii) is not in that category.

21. We, accordingly, hold and answer Point (b) also against the appellant.

22. No condition are urged.

23. in the result, we do not see any merit in this appeal which is accordingly, dismissed, in view of the particular circumstances of the cases, we direct the parties to bear and pay their own costs in this appeal. Ordered accordingly.

24. Appeal dismissed.