

M. Devender Vs. A. Sarika

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Court : Andhra Pradesh

Decided On : Apr-25-2008

Reported in : 2008(4)ALD728; 2008(5)ALT183

Judge : D.S.R. Varma and ;G. Rohini, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 7, 12 and 12(1)

Appeal No. : FCA No. 166 of 2007 and Cross-Objections (SR) No. 10941 of 2008

Appellant : M. Devender

Respondent : A. Sarika

Advocate for Def. : L. Arun Kumar Nadu and ;C. Prakash Reddy, Advs. for ;D. Prabhakar Reddy, Adv.

Advocate for Pet/Ap. : L. Arun Kumar Nadu, Adv.

Disposition : Appeal dismissed

Judgement :

D.S.R. Varma, J.

1. Heard the learned Counsel appearing for the appellant in the appeal and the respondent in the Cross-objections and Sri C. Prakash Reddy, the learned Senior Counsel, representing the learned Counsel appearing for the respondent in the

appeal and the Cross-objector.

2. The appeal is directed against the order and decree, dated 10.10.2007, passed by the Family Court, Hyderabad, allowing the petition F.C.A.O.P. No. 1001 of 2005, filed under Section 12 of the [Hindu Marriage Act, 1955](#) (for short, 'the Act'), seeking a decree of nullity of the marriage of the petitioner therein with the respondent therein; while the Cross-objections are filed seeking annulment of marriage under Section 12 of the Act as being voidable on account of fraud played by the respondent therein on the Cross-objector.

3. Since the appeal and the Cross-Objections are interrelated, they are being disposed of by this common judgment.

4. Appellant in the appeal and the respondent in the Cross-objections is the husband and the respondent in the appeal and the Cross-objector is the wife.

5. For the sake of convenience, in this common judgment, the appellant in the appeal and the respondent in the Cross-objections and the respondent in the appeal and the Cross-objector will be referred to as 'the husband' and 'the wife', respectively.

6. It is the case of the wife that, while she was studying Engineering Course, in the year 2004, she came in contact with the husband and got introduced to each other and slowly it was developed into friendship; that, during the course of friendship, she was informed by the husband that he was a graduate and owns a house at Mahendra Hills and he belongs to the same community to which she belongs etc., that, during friendly relationship, some photographs of the wife along with the husband were also taken; that, in course of time, the husband started threatening her to commit suicide if she refused to marry him; that, in that process, she was also informed that the husband had consumed poison and was admitted in a hospital; that, over a period of time, having believed various statements of fact made by the husband, which were very much material, she agreed to marry him and eventually the marriage was allegedly performed under the aegis of A.P. Abhyudaya Vivaha Vedika (A.P. Cosmopolitan Marriage Bureau), which appears to be a registered body; that since the marriage of the elder sister of the wife was

to be performed, they waited for sometime and only after her marriage, they were married and that subsequently she came to know that all the statements made by the husband, basing on which she married him, were incorrect. Hence, the said O.P. came to be filed.

7. On the contrary, the husband filed a counter, making a counter-claim for restitution of conjugal rights, stating, inter alia, that the allegations levelled against him were absolutely false; that he sincerely and honestly disclosed about himself and his caste to the wife and she, having been convinced with his honesty and sincerity, liked him and expressed her love towards him, though he belongs to Scheduled Caste Community; that the marriage was performed with free consent of the wife and the marriage was consummated; that when the wife had a complaint of eyes, he got her treated in Sai Jyothi Eye Institute, situated at West Marredpally, Secunderabad; that, similarly, when she complained of abdomen pain, she was taken to hospital where she was found to be pregnant; that the said revelation was made at Sagarlal Memorial Hospital, vide I.P. No. 2715, dated 12.6.2005, and the pregnancy was terminated on 13.6.2005; that, after termination of pregnancy, the wife stopped meeting him and all his attempts to contact her failed and that the change in the attitude of the wife was because of influence, threat and coercion exerted by her father.

8. In order to establish her case, the wife examined herself as P.W.1 and her father as P.W.2 and got marked Exs.P-1 to P-3 on her behalf and on behalf of the husband, he examined himself as R.W.1 and another as R.W.2 and got marked Exs.R-1 to R-16.

9. The Court below framed the following points for consideration:

1. Whether the respondent married the petitioner by making misrepresentation and by playing fraud on her and by exerting threat and coercion?

2. Whether the petitioner is entitled to the decree of nullity of her marriage that took place with the respondent on 15.10.2004 or in the alternative, whether she is entitled to a decree of divorce on the ground of cruelty?

3. Whether the respondent is entitled to the relief of restitution of his conjugal rights?

4. To what relief?

10. The Court below, on point No. 1 held that the marriage performed between the wife and the husband has to be declared as null and void, on point No. 2 held that the wife is entitled to a decree that the marriage between her and the husband performed on 15.10.2004 as null and void, on point No. 3 held that the husband is not entitled to the relief of restitution of conjugal rights and on point No. 4, eventually, allowed the O.P., filed by the wife, and dismissed the counter-claim of the husband.

11. Basing on the entire material, including the evidence, both oral and documentary, available on record, the Court below did not go into the aspect of nullity of marriage under Section 12 of the Act, however, it went into the ingredients of Section 7 of the Act, and granted a decree of nullity of marriage on the ground that the required rites and ceremonies were not followed, nor there was any proof to that effect.

12. The learned Counsel appearing for the husband submits that there is documentary and oral evidence on record to show that the marriage was performed in accordance with the customary rites and ceremonies and there was no suppression of material facts to the wife prior to marriage; that since the marriage was performed with full knowledge of all the facts and with her free consent, the wife is not entitled to seek declaration of the marriage as null and void; that both the wife and husband are known to each other for quite sometime and after complete understanding and knowing each other fully well, the marriage was performed and, therefore, the wife is not entitled to seek the said relief in the O.P.

13. On the other hand, the learned Counsel appearing for the wife submits that the husband has concealed all the material facts about his educational qualification, caste, income etc., and cheated the wife; that only because of the said wrong statements and misrepresentation made by the husband, she agreed for the

marriage with the husband and that had she been in full knowledge of all material facts about the husband, she would not have married him. In other words, it is only misrepresentation that made her to agree for the marriage with the husband and hence, she was totally cheated. He further submits that because of suppression of material facts, she is entitled for a decree of nullity of marriage.

14. In view of the rival contentions of both parties, the only question that falls for consideration, before us, is as to whether there was any material suppression of facts before marriage by the husband and, if so, what is its effect?

15. In this regard, the evidence of the husband, who was examined as R.W.1, has to be imperatively looked into.

16. In the affidavit, filed in lieu of chief-examination, the husband stated that he was in construction business doing ventures at Mettuguda, Moulali and Safilguda; that the total cost of venture was around 2 to 3 crores of rupees and that he had taken flats in his name, one at Mettuguda and Sainikpuri and another at West Marredpally. Interestingly, in his cross-examination, he admitted that he was doing civil works, but he was not an income tax assessee and he got no documentary proof to show that he is doing construction business and earning 3 to 4 lakhs rupees. He also admitted that he discontinued his studies, while he was doing B.Com., degree course. He also admitted that the statement given in his counterclaim that he had completed his graduation was not correct. He further admitted that he has no bank account though he started his business in the year 1995 and got no savings, nor any deposits in any bank in his name. He went to the extent of admitting that the motorcycle he was riding was in the name of his brother only and that he had no immovable property of his own. It is to be seen that in the chief-affidavit of the husband, he had stated that he got two flats at different places.

17. From the above evidence of the husband, it is obvious that there was material deviation in the statements made in the chief-affidavit as well as in the counterclaim regarding his educational qualification, financial status, social status, about the property owns etc. Most importantly, he admitted that he is a Commerce graduate. The same was the averment made by the wife in the O.P. But, he

admitted in the cross-examination that he discontinued his graduation and his statement made in the counter-claim was incorrect. Thus, it speaks volumes about the conduct of the husband. No prudent person, who intends to marry a lady, would conceal the fact of his educational qualification and it is but natural for a lady, who is well educated - like the wife in the present case, who is an Engineering graduate, to expect her husband to be of possessing a decent and equal educational qualification, though not more.

18. Similarly, the statement made by the husband that he owns two flats at different places in the city was also proved to be incorrect. Though he stated that he was doing real estate business since 1995, it is very interesting to note that he was not having any bank account in his name and even if there was any account with any of the bank, there was no cash balance. He was not even an income tax assessee. Any person, who was seriously or intensely involved in doing business, would, at least, be an income tax assessee from various points of view. Though minimum care was not taken, this fact was not made known to the wife prior to the marriage. Even he went to the extent of admitting that the motorcycle, which he was riding, is not of his own. The said aspects are very vital for any person, be it a lady or a gent, and the husband made wrong statement of facts and, therefore, we are of the view that fraudulently, the lady had been lured with his misrepresentation and deception making her to marry him. It is rather unusual for any young lady, who was about to complete her Engineering graduation, having much expectation about her life partner. Satisfaction from different angles is not only essential, but also should be truthful. Further, both parties to the marriage should not only be truthful to each other, but also to the others before marriage and after marriage as well.

19. Now, the question is how truthful the husband was towards the wife before marriage?

20. We do not go to the extent of branding the husband as a cheat or a person of deceitful nature, but we would only say that with a strong intention of marrying the wife, he concealed the material facts, which are very much relevant for smooth relationship between the spouses after marriage, let alone before marriage.

Slightly to put it in a different way, if certain things are concealed before marriage, realization of true facts would make the life of the other spouse miserable and regretful. Further, leading a regretful life all along is more miserable. These are the aspects, which are absolutely and explicitly clear from the record in the shape of statement of the husband made in the chief-affidavit and admissions made in the cross-examination. The Court below did not attach much importance to these aspects, but shifted its stand to Section 7 of the Act, which deals with ceremonies to be observed for a Hindu Marriage. Even, the evidence on record does not disclose that though the marriage was performed, the same was not proved to be a valid marriage and on that score the marriage was held to be invalid and accordingly granted the decree as prayed for.

21. But, we are of the considered view that the findings recorded by the Court below are not sufficient to grant a decree in favour of the wife. In other words, the Court below ought not to have taken into consideration or rely much upon the ingredients of Section 7 of the Act before granting the relief of declaration of the marriage as null and void.

22. As a matter of fact, the Court below ought to have relied upon the ingredients of Section 12 of the Act and tested the present case in the light of the evidence on record.

23. The evidence, which had already been discussed by us, would only disclose that there was concealment and misrepresentation of material facts about his self as well as on all other aspects - like educational qualification, social and economic status, which would entitle the wife to seek a declaration that the marriage is null and void.

24. Further, our view is supported by the view expressed by various High Courts.

25. In *Bindu Sharma v. Ram Prakash Sharma* : AIR1997 All429 , a Division Bench of Allahabad High Court, while dealing with the scope of Section 12(1)(c) of the [Hindu Marriage Act, 1955](#), held that fraud or misrepresentation as to the material fact viz., wife having much higher academic qualifications than husband, giving consent to marriage on representation by husband that he was having attractive

job, which finally found to be incorrect, are grounds for annulment of marriage.

26. Similarly, in *Anurag Anand v. Sunita Anand* : AIR1997 Delhi94 , a learned Single Judge of the Delhi High Court, while dealing with annulment of marriage, on the ground of fraud, held that misquoting monthly income and property status of husband can be called material facts and such material facts and circumstances, if ultimately found to be false, annulment of marriage is warranted.

27. In *Sh. Brijinder Bir Singh v. Mst. Vinod Alias Parminder* , rendered by the High Court of Punjab and Haryana, it was pleaded that the wife was a graduate, but, in fact, she was not. Further, in the said case, it appears that the wife was a divorcee, but wrongly styled as Kumari Vinod Sharma (unmarried). Such conflicting statements would amount to acts of fraud. In such circumstances also, annulment of marriage is warranted.

28. Similarly, there are other judgments also, which we do not propose to cite. But, the unanimous view expressed by various High Courts, which was not deviated by any other High Court, appears to be that the facts relating to social status, financial status and other material aspects, if concealed, are wrong statement of facts, which were made in order to encourage the other partner to marry, and such conduct would certainly entitle the other spouse to seek a decree of nullity of marriage.

29. Insofar as the observations made by the Court below, there appears to be overlapping on the circumstances. The said overlapping also touches upon the material facts.

30. It is the contention of the husband that the marriage was performed at A.P. Cosmopolitan Marriage Bureau, which is a registered body. It is also his contention that the Marriage Certificate, under Ex.R-8, was issued by the A.P. Cosmopolitan Marriage Bureau. But, we are of the view that no evidence was placed on record to show as to the validity or otherwise of such certificate issued by the said organisation. The Court below also found that there was a deviation about the description of the caste of the husband. Eventually, the Court below arrived at the conclusion that there was nothing on record to show that though the

marriage was said to have been performed, nothing was placed on record to show that the marriage was performed as per the Hindu rites and caste custom, as envisaged under Section 7 of the Act, and consequently the decree sought for was granted.

31. As already pointed out and noticed by us, the reasoning, given by the Court below, on the aspect of applicability of Section 7 and the fulfilment of the ingredients of such provision, is not relevant to the present case.

32. Since serious and specific averments have been made and the O.P., was filed under Section 12 of the Act, the Court below ought to have gone into the aspects of fraud and misrepresentation on the part of the husband, while granting the decree as sought for. But, unfortunately, those aspects have been ignored and the Court below drifted into other area, which was actually not in dispute.

33. In our view, it was not the contention of the wife that the marriage was not performed in accordance with the Hindu rites and caste customs, but it is her specific case that there was suppression of material facts about his person and status etc., by the husband, prior to the marriage, which actually culminated into marital tie. Such representations about various aspects of his personality, social status, educational qualifications, were found to be encouraging factors for the other spouse to enter into marital relationship and on disclosure of true facts, at a later point of time, even after marriage, an application can be made under Section 12 of the Act pleading fraud and misrepresentation and, in such a case, the Courts are not precluded from interfering with such marriage with little hesitation and to pass a decree declaring the marriage as null and void.

34. However, the learned Counsel appearing for the husband relied upon a judgment of the Division Bench of the Kerala High Court in *V.M. Mathew v. Eliswa and Ors.* AIR 1989 NOC 27 (Ker.). It was a case where the controversy regarding tying of 'thali' and the Division Bench held that tying of 'thali' is the crucial act of marriage ceremony. It appears to be basically on the ground of custom. That is the question that fell for consideration in that case. Hence, the ratio laid down in the said case, though unexceptional, cannot be applied to the facts of the present case.

35. The learned Counsel appearing for the husband has also placed reliance on another judgment of the Madras High Court in *Annathai v. Murugaiah* 2001 (1) HLR 133. The said judgment was rendered, while dealing with customary rites and ceremonies to be performed by either party, as contemplated under Section 7 of the Act.

36. In another judgment in *S.V.A. Balakrishna v. S. Kanakavalli* 2006 (1) HLR 135, rendered by a Division Bench of this Court, to which both of us are parties, it was held that in the facts and circumstances of that case, petition for divorce was not filed immediately or within a reasonable time, and because the same was filed after a long lapse of time, the Court cannot agree with the contention that there was fraud on the part of the spouse. Therefore, the facts and circumstances of the said case are totally inapplicable to the facts of the present case.

37. It is to be seen from the averments of the O.P., that fraud and misrepresentation came to the knowledge of the wife on 2nd and 3rd June, 2005, and the O.P., was filed on 6.12.2005. Therefore, the O.P., filed by the wife, is held to be within the period of limitation. This is not actually the question raised by the learned Counsel appearing for the husband, but still we feel it incidentally apposite to refer to the same in this judgment, since it touches upon the question of limitation.

38. The relief of annulment of marriage sought for in the present case was totally on a different ground. The question of time is not relevant in the present facts and circumstances. The source of grievance for the wife had arisen from the factum of concealment of certain vital material facts, which were expected to be revealed to the prospective spouse.

Though we do not agree with the reasoning accorded by the Court below, for the aforesaid reasons, we do feel that it is eminently a fit case where the decree for declaration of marriage between the wife and the husband, performed at A.P. Cosmopolitan Marriage Bureau, Mehdipatnam, on 15.10.2004, as null and void is absolutely warranted.

39. For the foregoing, the appeal fails and is liable to be dismissed and the Cross-objections are liable to be allowed.

40. In the result, the appeal is dismissed and the cross-objections are allowed. However, there shall be no order as to costs.

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