

Smt. Manju Vs. Prem Kumar

Smt. Manju Vs. Prem Kumar

SooperKanoon Citation : sooperkanoon.com/755336

Court : Rajasthan

Decided On : Jan-13-1982

Reported in : 1982WLN47

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Misc. Appeal No. 102/1981

Appellant : Smt. Manju

Respondent : Prem Kumar

Advocate for Def. : Mr. M.L. Kala

Disposition : Appeal dismissed

Judgement :

S.K. Mal Lodha, J.

1. This appeal under Section 28 of the Hindu Marriage Act (No XXV of 1955) (for short 'the Act' hereinafter) has been filed by the wife who was non-petitioner against the decree dated August II, 1981 of the Addl. District Judge No. 2, Jodhpur by which he declared the marriage between the husband-petitioner (respondent) and the wife non-petitioner (appellant) as voidable and annulled it by a decree of nullity under Section 12(1)(d) of the Act. The petitioner-respondent and the non-petitioner appellant will be referred to hereinafter as the husband and the wife

respectively.

2. The facts leading to this appeal may succinctly be stated as under: The husband filed a petition under Section 12(1)(d) of the Act in the Court of District Judge, Jodhpur on November 26, 1979. The marriage between the husband and the wife was solemnized according to Hindu rites on June 29, 1979 at Nagaur. Both the husband and wife lived together at Jodhpur. The wife gave birth to a female child on November 18, 1979 in Ummaid Hospital, Jodhpur. She remained as an indoor patient in connection with the delivery from November 18, 1979. The case of the husband is that the wife was at the time of the marriage, pregnant by some person other than husband and that he was ignorant about it at the time of the marriage. The female child that was born on November 18, 1979 was normal and alive. The delivery was normal. It was alleged that the fact that the wife was pregnant at the time of the marriage was concealed by her as well as her parents and on account of the fraud, the husband married the wife. The petition for annulment of the marriage was filed on the ground that the marriage between the parties was voidable and, therefore, it should be annulled by the court by a decree of nullity under Section 12(1)(d) of the Act. The petition was contested by the wife by filing a reply on May 29, 1980. The case as disclosed in the reply by the wife was that the female child born on November 18, 1979 was out of the union of the parties. It was pleaded that knowing well that the wife was pregnant and she was to deliver a child, the husband got her admitted in the Ummaid Hospital on November 18, 1979 and that even prior to that she was shown to the doctor three to four times in connection with her pregnancy. As the husband had not disclosed about the sexual relations between them prior to the marriage before his family members and friends, he has filed this false petition. The wife has come forward with a case as is apparent from paras 4 and 6 of the reply that the husband as well as the members of his family were well aware that it was on account of the pre-marital relations between the parties that the wife remained pregnant and, therefore, an early date of marriage was fixed and solemnised. She denied the facts that she suppressed the fact of pregnancy. It was alleged that the marriage had taken place with consent. Before framing issues arising out of the petition and the reply thereof, a rejoinder was filed by the husband controverting the allegations made by wife in the reply on July 23, 1980. The following issues were framed on

July 23, 1980 by the District Judge:

- (1) Whether the respondent (wife) was at the time of the marriage pregnant by some person other than the petitioner (husband) ?
- (2) Whether the petitioner (husband) was at the time of the marriage ignorant of the fact of the respondent (wife) being pregnant ?
- (3) Whether the marital intercourse with the petitioner (husband) has not taken place since the discovery by the petitioner (husband) of the respondent (wife) being pregnant ?
- (4) Whether the petition is not triable by this Court ?
- (5) Whether the petition is not maintainable ?
- (6) Relief to follow ?

Efforts for re-conciliation between the parties were made on November 11, 1980 but they did not succeed. The husband examined himself as P.W.1, P.W. 2 Smt Raj. Kapoor, P.W. 3 Smt. Pana Devi (mother of the husband! P.W. 4 Jeetmal, P.W. 5 Sarla (sister of the husband), P.W. 6 Udajraj and P.W.7 Gopal. In rebuttal, the wife examined herself as D.W 1, D.W. 2 Kashiram, D.W. 3 Inderraj, D.W 4 Satyanarain, D.W. 5 Vishnulal, D.W. 6 Nathmal & D.W. 7 Balkishan. On behalf of the husband, the following documents were exhibited : (1) Ex.1, application dated December 10, 1979 for supply of certified copies, (2) Ex. 2, postal receipt, (3) Ex. 3, acknowledgment, (4) Ex. 4 photo of the female child, (5) Ex. 5, application dated December 5, 1979 of the wife addressed to the City Magistrate, Jodhpur, (6) Ex. 6, Out-patient Ticket dated December 5, 1979, (7) Ex. 7, letter dated December 10, 1979 from the Superintendent to the City Magistrate, Jodhpur, (8) Ex. 8, Discharge ticket, (9) Ex. 9, Discharge ticket, (10) Ex. 10, certificate showing that the female child born on November 18, 1979 had expired on March 23, 1980 at 3.30 a m., (11) Ex. 11, Entry from the register dated November 18, 1979 of the Indoor Patients of Ummaid Hospital, (12) Ex. 12, Indoor Patient Bed Ticket and (13) Ex. 13, Photo.

3. The learned Addl. District Judge has recorded the following findings:

(1) That the wife was pregnant from a person other than the husband at the time of the marriage and that the husband was ignorant about it. Issues No. 1 and 2 were decided in favour of the husband.

(2) that the husband had no sexual intercourse with the wife after the delivery of the fully developed female child after 142 days of the marriage, i.e. after the day on which the husband came to know about the pregnancy of the wife at the time of the marriage. Issue No. 3 was decided in favour of the husband.

(3) that the District Judge, Jodhpur has jurisdiction to entertain and decide the petition. Issue No. 4 was decided against the wife, and

(4) that the petition as instituted is maintainable and does not affect the right of the husband adversely. Issue No. 5 was decided against the wife.

4. In view of the findings arrived at in respect of issues No. 1, 2 and 3, the learned Addl. District Judge to whom the petition was transferred for disposal, held the marriage between the parties to be voidable and annulled it by a decree of nullity under Section 12(1)(d) of the Act. Aggrieved, the wife has filed this appeal under Section 28 of the Act.

5. I have heard Mr. N.N. Mathur for the appellant (wife) and Mr. M.L. Kala for the respondent (husband) and have also considered the record.

6. In this appeal, learned Counsel appearing for the wife has assailed findings on issues No. 1 to 3. On the other hand, Mr. M.L. Kala learned Counsel for the respondent had supported the decree under appeal.

7. The learned Addl. District Judge has dealt with issues No. 1 and 2 together and found that the wife was pregnant at the time of the marriage from some other person other than the husband and the latter was ignorant about it. It is not in dispute that the marriage between the parties had taken place on June 29, 1979. It is also not in dispute that the female child (girl) was born on November 18, 1979. The petition for annulling the marriage was filed on November 26, 1979. It is, thus,

clear that the girl was born after 142 days from the date of the marriage. From statement of P.W. 4 Jeetmal, who has produced the entry Ex. 11 from the register Ex. 11 and the Indoor Patient Bed ticket, Ex. 12 is clear that girl was born on November 18, 1979 at 1.58 p.m. whose weight was 4 1/2 lbs. and it was a normal delivery. The girl that was born was got admitted by the wife and her father in the Children's Home, Social and Welfare Department, Jodhpur. P.W. 2 Smt. Raj Kapoor, Superintendent of the Children's Home has stated that the photo of the girl is Ex. 4 and that the girl was admitted to the Home on December 5, 1979 on the orders of the City Magistrate. The girl that was born on November 18, 1979, was sent to the hospital for admission by the Superintendent Children's Home as is evidenced by the application Ex. 7. The girl died as is evident by the certificate Ex. 10 dated March 23, 1980. After the death of the child and during the period when the girl was admitted to the hospital, the wife had not gone to the hospital to take care of the child. The explanation given by her is that she thought that the husband and the members of his family would defame her. The statement of the husband Prem Kumar as P.W. 1 is that it was on November 18, 1979 when the wife told him that she is having a stomachache, she was sent with his mother to the hospital from where he learnt that a girl was born to her' He has denied that he knew about the wife being pregnant at the time of the marriage. In other words, he has pleaded ignorance about it. He has denied that he had any sexual meet with the wife prior to the solemnization of the marriage. Evidence has been led by the husband to show that prior to the marriage, the husband had no access to the wife and there was no occasion for sexual meet between them. In this connection, P.W. 3 Pana Devi (mother of the husband), P.W. 5 Sarla (sister of the husband), P.W.6 Udairaj (neighbour of the wife at Nagaur) and P.W 7 Shri Gopal (neighbour of the wife at Nagaur) were examined, On the other band, the wife Smt. Manju as D.W.1 has stated that the betrothal between the husband and the wife took place two years before the marriage, and that during that period the husband had come to Nagaur five times and used to meet her and during their meetings, they had some times sexual intercourse. She has narrated the instances when the husband had coitus with her prior to the marriage. According to the wife, on three occasions the husband had sexual intercourse with her. On the third occasion, at the time of coitus, she became aware that she was pregnant. She told the husband that there

is pregnancy of two months. The third act of coitus according to the wife was at the house of P.W. 5 Sarla. It is revealed from her cross examination that first time the, husband had met her at the house of P.W. 5 Sarla and at that time they had no sexual intercourse. Second time, she met the husband six months before the marriage at the house of P.W. 5 Sarla. At that time, the husband took her to Sarala where an entry was made as they were seen by the Manager. She was cross-examined on the facts relating to sexual intercourse on three occasions but she has not been able to withstand the cross-examination. The learned Addl, District Judge critically examined the statements of the wife as D.W. 1, D.W. 2 Kashiram, D.W. 4 Satyanarain, D.W. 6 Nathmal and D.W. 7 Balkishan and having noticed the contradictions and infirmities therein, refused to place reliance on them. I have examined the reasons given by him and I agree with him in this regard. The conduct of the wife was also taken due notice of the learned Addl. District Judge. He was of the opinion that from the statements of P W. 5 Sarla, P.W. 6 Udairaj and P.W. 7 Shri Gopal, the version of the wife that prior to the marriage, the husband used to meet her and this afforded opportunity/opportunities to have sexual intercourse with her, is not correct as admittedly P.W. 6 Udairaj and P.W. 7 Shri Gopal are neighbours of the wife at Nagaur. Nothing was shown to me by the learned Counsel, appearing for the appellant that the evidence of the husband as P.W. 1 which was believed by the learned Addl, District Judge is not trustworthy. From the evidence that has been referred to here in above it is established that wife was pregnant at the time of the marriage and that as the husband had no access to have sexual intercourse with the wife prior to the marriage, it follows that she was pregnant by some person other than the husband at that time.

8. Now, the further question that requires to be determined is whether the husband was ignorant about her pregnancy at the time of marriage. The contention raised in this regard is that at the time of marriage there was pregnancy of about of 4 1/2 months and so there must be perceptible abdo- minal enlargement indicating that the wife was pregnant and as such on the ground of premarital pregnancy the marriage can be avoided.

9. Alan Brews has stated in his 'Manual of Obstetrics', 1957 Edition, P. 84 as under:

Enlargement of the abdomen usually does not become manifest to the patient until the uterus rises well above the pubs, and therefore seldom attracts attention until the close of the first half of pregnancy, A multigravida owing to the laxity of the abdominal wall, usually notices abdominal enlargement earlier than a primigravida.

There is no material placed placed on record by the wife that at the time of marriage she had such ostensible symptoms which could have led the husband discover that she had been pregnant at the time of the marriage. No medical evidence has been produced by the wife in this regard also. In these circumstances the learned Addl. District Judge was right in holding that the husband was ignorant about the wife's pregnancy at the time of the marriage. The learned Addl. District Judge was, therefore, right in my opinion, in deciding issues No. 1 and 2 in favour of the husband.

10. It was pressed by the learned Counsel for the appellant to persuade me to bold that it is established from the record that the husband had marital intercourse with the wife after the discovery of the fact that the wife was pregnant and, therefore, in view of Section 12(2)(d), the petition for annulling the marriage should not be entertained. Here it will be necessary to notice the material portion of Section 12:

Voidable Marriages: (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

(a) ...

(b) ...

(c) ...

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in Sub-section (1), no petition for annulling a marriage:

(a) ...

(b) on the ground specified in Clause (d) of Sub-section (1) shall be entertained unless the court is satisfied:

(i) that the petitioner was at the time of marriage ignorant of the fact alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriage solemnised after such commencement within one year from the date of the marriage and

(iii) that marital intercourse with the consent of (he petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.'

11. It is clear from Section 12(2)(d) that the husband must not only show the existence of pregnancy at the time of marriage but should also prove that he was ignorant of the fact at time of the marriage, that the proceedings were instituted within a period of one year from the date of the marriage and that he did not have marital intercourse with the wife when he had come to know about pregnancy. The husband has stated in para 7 of the petition that it was only after the delivery that he came to know about the pregnaney of the wife at the time of the marriage and that there was no marital intercourse he had known about the pregnancy. There is no dispute that the petition was filed soon after the delivery of child, for, the child was born on November 18, 1979 and petition was filed on November 26, 1979. Mr. Mathur submitted that it cannot be said that the husband had no marital intercourse with the wife with his consent after the discovery by him of the existence of the pregnancy, in this connection, he relied on the statement of the husband as P.W. 1. P.W. 1 Prem Kumar has stated in the cross-examination as under:

'kknh ds ckn eSus eUtw ds lkFk fu;fer :lk ls laHkksx fd;k Fkk A ;kn ugh fd 18&11&79 ds fdrus fnu iwoZ eUtw ls eSus laHkksx fd;k Fkk A 4&5 fnu iwoZ laHkksx fd;k gksxk A

According to Mr. Mathur the husband had coitus during advanced stage of pregnancy then there must have been enlargement of abdomen. It was pressed for my consideration that the husband as P.W. 1 had admitted that after marriage, he has had coitus with the wife on several occasions, and so he must have known that she was pregnant as the delivery which had taken place on November 18, 1979, was normal and the marriage had taken place on June 29, 1979. Much emphasis was laid that the husband has admitted that he might have had sexual intercourse with the wife 4 to 5 days prior to November 18, 1979. The wife as D.W. 1 has stated that even prior to the marriage, the husband, her mother in law and the sister in law were knowing that she was pregnant. She has also admitted that two months before the marriage, she was aware that she is carrying a child and this was known to her husband and her in laws. According to the wife, she had last coitus with the husband two or three days prior to November 18, 1972. It was a first pregnancy. The abdominal tissues of a woman who is pregnant for the first time are so tense that a non-medical person coming into her contact by act of coitus might not be able to detect the enlargement of the abdomen. Williams in 'Obstetrics', 12 Edition, at P. 270 has stated as under:

It should be borne in mind that the abdomen changes its shape materially according as the woman is in the upright or horizontal position, being much less prominent when she is lying down.

It may not be possible for the husband to detect that the wife was pregnant if the coitus alleged had taken place in darkness. On the basis of the excerpted statement of the husband (P.W. 1) on which reliance has been placed it will not be safe to hold that the husband having come to know about the pregnancy did not stop having any sexual connection with her. It cannot be said that the husband had marital intercourse with consent after he had known that the wife was pregnant by some other person other than him. Admittedly, he had no sexual intercourse with the wife after November 18, 1979, for, the wife was admitted to the hospital on November 18, 1979, and after her discharge, she had gone to her parents house. It is not the case that after November 18, 1979, the husband had any sexual intercourse with the wife after that date. In these circumstances, issue No. 3 was rightly decided by the learned Addl. District Judge and I affirm the

finding that there was no marital intercourse by the husband with his consent after he had come to know that the wife was pregnant by some other person.

12. The net result of the discussion made here in above is : (1) that the wife was pregnant by some person other than the husband at the time of the marriage, (2) that the husband was ignorant of the fact of the pregnancy of the wife at the time of the marriage and (3) that the husband had no marital intercourse with the wife after he had discovered that the wife was pregnant. The petition for annulment of the marriage has admittedly been filed within a period of one year from the date of the solemnization of the marriage on June 29, 1979.

13. The husband has been successful in establishing the ground mentioned in Section 12(1)(d) of the Act. The learned Addl. District Judge was, therefore, right in annulling the marriage as it was voidable under Section 12(1) of the Act. I, therefore, affirm the decree of nullity of marriage passed by the learned Addl. District Judge No. 2 Jodhpur.

14. There is no merit in this appeal and it is, accordingly, dismissed without any order as to costs.