

A. Premchand Vs. V. Padmapriya

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Court : Chennai

Decided On : Nov-01-1996

Reported in : AIR1997Mad135; 1996(2)CTC620; I(1997)DMC285

Judge : A. Abdul Hadi and; P. Sathasivam, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 12(1); Family Court Act, 1984 - Sections 14; Child Marriage Restraint (Amendment) Act, 1978 - Sections 5; [Indian Contract Act, 1872](#) - Sections 17; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Civil Misc. Appeal No. 816 of 1992

Appellant : A. Premchand

Respondent : V. Padmapriya

Advocate for Def. : S. Sampath Kumar, Adv.

Advocate for Pet/Ap. : R. Sundar Rajan, Adv.

Judgement :

ORDER

P. Sathasivam, J.

1. The Husband against the dismissal of this H.M.O.P.1007 of 1988 on the file of Principal Family Court, Madras, under Section 12 of the [Hindu Marriage Act, 1955](#) praying for a decree of nullity by annulling the marriage solemnised between the appellant and the respondent on 8-3-1987 at Madras is the appellant in the above appeal before this Court.

2. The case of the appellant is briefly stated hereunder:--

The appellant (husband) and the respondent (wife) got married on 8-3-1987 at Madras as per Hindu rites and customs. The marriage has not been consummated till the date of filing of the present petition. It is averred that based on the bio-data and horoscope of the respondent showing the date of birth as 15-2-1963 sent in the month of September, 1986 by respondent's father to the appellant's father seeking alliance for his daughter, the appellant gave his consent for the marriage. The respondent was evasive to produce her educational certificates to get employment through him. Only in November, 1987, the respondent disclosed that her father gave false horoscope mis-representing her year of birth as 1963 whereas it was actually 1961 and so she did not produce her educational certificates, in order to cover up the fraud, the appellant learnt that the respondent's date of birth was shown as 6-3-1961 as per school leaving certificate. Thereafter, the respondent's father wrote a letter on 11-11-87 showing the true horoscope of the respondent wherein it is mentioned the date of birth as 6-1-1961. After knowing the true date of birth of the respondent and when questioned, it was asserted by the respondent's father by letter dated 22-11-87 that the correct date of birth is 6-1-1961 and not the other two dates and apologised for the same. It is further averred that the original horoscope of the respondent showing the date of birth as 6-1-1961 and the horoscope of the appellant do not tally on certain vital aspects, as expressed by their astrologer. The appellant and his family members have belief in horoscope. As per the statement of the astrologer, the appellant cannot live with the respondent any more. The respondent disclosed the above said fraud only in November, 1987. The respondent is a Homoeopathy Doctor, she was unable to explain the fraud. Since the appellant was the victim, they cannot live together. Suppressing the said fraud, the respondent has also filed M.C. No. 285 of 1988 on the file of Additional Chief Metropolitan Magistrate, Hyderabad,

claiming maintenance and the same is being contested by the appellant.

3. The respondent filed counter with the following contentions:-- She has admitted the marriage. Due to the greedy behaviour and delaying tactics of the appellant to extract more money, gold jewels and assets from the respondent's parents, all the assets were handed over to him before the celebration of the marriage. She has denied all the other averments relating to furnishing of bio-data and particulars relating to her. She further averred that her elder brother V. Lakshminarayanan and her elder sister-in-law V. Latha on 15-2-1987 when giving invitations for the marriage, informed the appellant's parents that the respondent's year of birth was 1961. As instructed by the petitioner /appellant's father, the appellant came to Hyderabad on 22-2-87, who was then working in Kainadu and telephoned to respondent's residence to know the age of the respondent. As desired by the appellant, the respondent accompanied by her second brother went to Paradise Cinema premises in Secunderabad and thereafter, both the appellant and the respondent went to Hotel Asrani International at about 7.30 p.m., on 22-2-87. and the respondent gave all information to the petitioner/appellant about her year of birth of 1961 and years of passing her S.S.L.C., Inter and M.B.B.S. (Homoeo) examinations. The appellant was very much satisfied and he did not raise any objection for celebrating the marriage in the first week of March, 1987. Thereafter, neither the appellant nor his father raised any talk with the respondent's father about her date of birth. The respondent has given Streedhana for a total value of Rs. 1,59,995/- to the appellant between November, 1986 till 8-3-1987 and thereafter up to 8-11-1987 in the form of cash, gold and silver articles, silk sarees, house-hold articles etc., by their parents as agreed upon in the presence of mediator. On 15-3-87 when the appellant along with his parents visited respondent's house at Hyderabad to attend a reception, they again demanded additional amount of Rs. 10,000/- and left respondent at Hyderabad and went away in anger. On 2-7-87 a sum of Rs. 5,000/- was paid to the appellant by way of cash and another sum of Rs. 2,500/- by way of Demand Draft. Still they were not satisfied. She further averred that when the respondent went to the appellant's house in June, 1987 and lived in their house for about a month, they did not raise any objection about her date of birth. On the other hand, the appellant demanded further amounts and sent the respondent away to her father's house by refusing to

set up a family at Nellore. Again, the appellant demanded further amounts, besides his father wrote separate letters demanding more amounts and gold chain from the respondent's father. During the short stay with the appellant, she was ill-treated by the appellant as well as by his father. On 7-11-87 the respondent's father and her elder brother gave another sum of Rs. 7,500/- and gold chain and all educational certificates as desired by her husband. On 8-11-87 the appellant asked the respondent to go to her father's house. Thereupon the respondent is living at Ammerpet, Hyderabad, by getting help of her father. The respondent wrote several letters to the appellant and his parents to join the petitioner/ appellant, besides herself and mediators went to appellant's house on 12-12-1987 and on 17-1-1988 for which the appellant refused. A negative reply was sent for the lawyer's notice given in May, 1988. Thereupon, the respondent filed maintenance case under Section 125 of the Code of Criminal Procedure in Mahila Court, Hyderabad. On 16-8-88 an order of interim maintenance at Rs. 300/- per month was passed. Thereafter, the appellant filed the present case as a counter blast to respondent's M.C. No. 285 of 1988. It is also averred that after knowing the views of the astrologer from the appellant's side, the respondent and her father enquired the same and ascertained that there is nothing wrong in the respondent's horoscope and the appellant would not be affected due to the impact of her horoscope. The same thing was conveyed to the appellant's father after ascertaining the second opinion from the Crystal Computing Centre, No. 11, 2nd Street, Madras-86. Hence the allegation that the wife is not having Mangalyabalam is denied and there is no basis and proof. The marriage could not be annulled on the ground of over age, since the respondent is younger to the appellant with reference to the appellant's horoscope given by him and in accordance with his date of birth. The respondent is not suffering from any disease. After sending the respondent out, the husband has filed the present case inflicting more harassment and legal cruelty to the respondent. Absolutely there is no ground for declaring the marriage null and void, hence she prays for dismissal of the case.

4. The appellant was examined as P.W.1 and he has marked 24 documents as Exs.P-1 to P-24. On the side of the respondent, she was examined as R.W.1 and Exs.R-1 to R-29 were marked.

5. According to the appellant/husband/ the basic thing for filing the present petition is that his consent was obtained by giving wrong date of birth of the respondent/wife prior to the date of marriage. He further contended that if the said fact is known, namely, the true date of birth as 6-1-61, he could not have given consent because the difference of age is only few months. The date of birth of the husband is 24-4-60 and the age of the wife, as seen from Ex.R-20, is 6-1-1961. In those circumstance, we have to find out whether the consent of the appellant has been obtained by fraud and so the marriage has been annulled by a decree of nullity. It is the evidence of P.W.I that under Exs.P-5, P-6 and P-7, the father of the wife informed that the date of birth of the respondent is 15-2-1963 and on that basis, consent of the husband has been obtained, on the other hand, the correct date of birth is 6-1-1961, as admitted in Exs.P-1, P-3 and P-4. As far as this aspect, even the court below, on the basis of Exs.P-5, P-6 and P-7, which are letters written by the father of the respondent to the father of the appellant and in the light of the oral evidence of P.W.1 and R.W.I, came to the conclusion that consent of the petitioner/ appellant was obtained on the basis that the respondent was born on 15-2-1963. Since this aspect is found by the court below in favour of the petitioner/ appellant, there is no need for us to elaborate once again.

6. Now we have to consider the case of the respondent that the appellant was made aware of the correct date of birth as 6-1-1961 prior to the date of marriage on 8-3-87. For this, the respondent has very much relied on the necessary averment made in her counter affidavit filed before the court below, which is extracted hereunder:-- -

'I deny the allegations contained in paragraph (5) or of the petition, prior to the celebration of our marriage, my elder brother Sri V. Lakshminarayana and my elder sister-in-law Smt. V. Latha visited the house of the petitioner in M.K.B. Nagar on 15-2-87 for extending personal Invitation for our marriage. At that time my elder brother informed the petitioner's father and mother on an enquiry made by them regarding my age that my year of birth is 1961 and not 1963. Thereafter, the petitioner's father asked the petitioner, who was then working at Kakinada, to ascertain from me full facts regarding my age. Accordingly the petitioner came to Hyderabad on 22-2-1987, he telephoned to my residence telephone No. 227498.

My second brother Sri V. Chandrasekhar received the telephone call. The petitioner desired that I should go over to paradise cinema theatre premises in Secunderabad and meet the petitioner. Accordingly my second brother took me to paradise cinema premises in Secunderabad. Then myself and the petitioner went to Hotel Asrani International at about 7-30 p.m., on 22-2-1987. There the petitioner enquired from me all the details regarding my age and years of passing my S.S.L.C., Inter and M.B.B.S. (Homoeo) examinations. I gave him all the required information and informed him that my year of birth was 1961 and also about my age. The petitioner was then satisfied that I am younger to him and he then did not raise any objection for celebrating our marriage in the first week of March, 1987.'

Admittedly there is no reply affidavit by the petitioner/appellant disputing the above mentioned specific averments found in para 5 of the counter. In the same way, the respondent, wife as R.W.I deposed in chief examination thus:--

'On 22-2-1987 P.W.I came to Hyderabad and met me at Asrani International Hotel. Before that he rang up to me and asked me to come to the Hotel We had discussion. Another brother accompanied me. I told P.W.I that the correct date of birth is 6-1-1961. I gave other details also including qualification also.'

Again she deposed,

'Exs.P-5 and P-6 were not given by my father with any intention to cheat my husband or defraud my husband or my husband's party. It was sent by mistake. On 15-2-1987 my brother brought to the notice of myfather-in-law that the real date of birth was 6-1-1961 and to my husband on 22-2-1987 at Hyderabad by' me at Hotel Asrani International. Before the date of marriage my husband and my father-in-law knew the truth.'

In the light of the specific pleadings in the counter affidavit, which has not been denied by way of filing a reply by the husband, as well as the oral evidence of the wife that the appellant was aware of the correct date of birth as 6-1-1961 prior to the date of marriage, i.e., on 8-3-87, it is not open to the appellant to contend that his consent was obtained fraudulently. It is not the case of the appellant that the

said V. Lakshminarayanan is not the elder brother of R.W.1 (wife) and V. Latha is not the elder sister-in-law of R.W.1. At this stage it is relevant to mention the admission of the appellant in the cross-examination, namely,

'On 15-2-1987 the brother of my wife and his wife came to our house at Vysarpadi.'

It is also not uncommon in extending marriage invitation to the bride-groom by the wife's relatives and the bride. As rightly observed by the court below, the brother of the respondent herein who was not a party to the earlier correspondence (Exs.P-5, P-6 and P-7). In order to rectify the mistake, it is probable that he along with his wife could have visited the husband's house and informed the correct date of birth of the wife on 15-2-1987. Considering the pleadings and the evidence on this aspect, we are in entire agreement with the conclusion reached by the court below on this aspect. In other words, we hold that the husband was aware that even on 15-2-87 the real date of birth of his wife was 6-1-1961 and he has not raised any protest or objection. In the light of the admission of P.W.I in his evidence as mentioned above with regard to the presence of his brother-in-law along with his wife, it is safe to accept the conclusion of the court below that there was disclosure that 15-2-63 was not the real date of birth of the wife. If it is established that before the date of marriage, the bursting or exposition of fraud has taken place, there is no question of fraud existing on the date of marriage, namely, 8-3-87. The appellant wants to annul the marriage by a decree of nullity seeking an aid of Section 12(1)(c) of the Hindu Marriage Act (hereinafter referred to as 'the Act'), which is extracted here-under:--

'12, Voidable Marriage.-- (1) Any marriage solemnized, 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) and (b) x x x x x x x x x x x x

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under S. 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of

1978) the consent of such guardian was obtained by force (or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent.....'

A reading of the above said section clearly shows that the consent of one party was obtained by fraud as to any material fact or circumstance concerning the other party for (he marriage, before the marriage and the same is subsisting even at the time of marriage. In other words, the consent obtained by way of fraud must be prior to the marriage and the same was very well subsisting on the date of the marriage. As mentioned above, before the date of marriage, there was no subsisting fraud, since the appellant was aware of the correct date of birth of R.W.I well in advance (on 15-2-63) yet the marriage was performed without any objection. If that is so, S. 12(1)(c) of the Act has no application. To put it very briefly, S. 12(1)(c) of the Act will apply only if the fraud subsists on the date of the marriage. In this case the evidence adduced on the side of the respondent clearly shows that the appellant was aware of the correct date of birth well in advance, hence there is no question of any concealment or fraud with regard to the age of the wife and it is not possible for the appellant to seek the aid of S. 12(1)(c) of the Act for annulment of the marriage which took place on 8-3-87. Admittedly, both the parties have not examined any other witness except their own evidence. We are satisfied that in the light of the specific stand taken in the counter affidavit in the absence of any reply, we accept the case of the respondent that the appellant was aware of the correct date of birth prior to the date of marriage through the brother of the wife who met the appellant on 15-2-87 in the matrimonial home at Vysarpadi, Madras-39. If we analyse the said evidence in the light of the provisions in the Family Court Act, more particularly with reference to S. 14, as rightly observed by the court below, the conclusion reached by the court below cannot be said to be either erroneous or improper.

7. Since the husband raised the only contention before the court below as well as before us that the respondent and her father committed a fraud in getting his consent for marriage by furnishing wrong date of birth, it is unnecessary for us to go into the other factual position. Before winding up, it is useful to refer some of the decisions cited by both sides.

8. In *Babui Panmato v. Ram Agya Singh*, : AIR1968 Pat190 , where the father represented to his wife within the hearing of the appellant, his daughter, who was sui juris, that the proposed bridegroom was a young man, although in fact he was of advanced age and the appellant believing the representation gave her consent to the marriage.

'Held, that though there was no misrepresentation directly made to the appellant the purpose of the talk between appellant's father and her mother was to secure her consent to the marriage. The appellant's father ought to know the true facts about the bridegroom's age. Hence, by making a false statement in his talk with appellant's mother, who in the circumstances was acting as the agent of the daughter he had suppressed true facts and made false representation. Thereby he had actively concealed a fact which was within his knowledge or belief, contrary to his duty which he owed to his daughter in view of his relationship. Believing it to be true the appellant had raised no objection and hence her consent was obtained by fraudulent misrepresentation. Since the appellant was underveil she could not see her husband at the time of marriage so as to withdraw her consent. Therefore, the case fell under S. 12(1)(c) and the appellant was entitled to dissolution of marriage.'

9. In *Rajinder Singh v. Pomilla*, : AIR1987 Delhi285 , a Division Bench of the Delhi High Court has held thus,

'Where it was proved that the consent of the wife in bringing about the marriage was obtained by deception, mis-representation and concealment of material fact as to premarital status of the husband-appellant the wife was entitled to the relief claimed for annulling the marriage under clause (c) of sub-sec. (1) of S. 12.'

10. In *Som Dutt v. Smt. Raj Kumari*, , husband sought annulment of marriage for fraud committed upon him by his wife in concealing her true age from him and thereby inducing him to marry a woman much older than him in age. Date of birth of wife as mentioned in her horoscope compared with that of her husband showed her to be a year younger than her husband. She admitted her date of birth which made her three years older than her husband. Her date of birth as recorded in her matriculation certificate made her seven years older than her husband. No effort

was made to get the date corrected in case of any error in it. Wife was also suffering from recurrent attacks of hysteria and garrulity. In an attack after marriage she was found to be anxious and irritable and had suicidal feelings and there was also disturbance of her memory and intelligence. In these circumstance, a single Judge has held,

'marriage was liable to be annulled due to gross matrimonial fraud committed upon husband both with regard to age of his wife as also her mental state.'

Again it is further held,

'What emerges from the evidence on record therefore, is that Raj Kumari was indeed suffering from some mental ailment and that she suffered an attack of hysteria and garrulity on August 3, 1980 and her behaviour on that account thereafter became abnormal. She had similar attacks earlier too. Hysteria is not always a curable disease. According to Dr. P. L. Narang, it can be of an incurable type too. What it was in the case of Raj Kumari as also the nature and extent of her mental ailment could not, however, be discovered as contrary to the advice of the doctor, her parents did not permit her to be admitted in the hospital for proper investigation and treatment. This conduct of the parents cannot, but raise an adverse inference regarding the mental condition of Raj Kumari. Relevant in this context is what was noted in her medical record Exhibit A/1, namely, that she was found to be anxious and irritable and had suicidal feelings and there was also disturbance of her memory and intelligence. These being the circumstances, the assumption that her mental condition was such as would warrant annulment of marriage on that account, would indeed be an irresistible conclusion.'

11. In *Rajaram v. Deepabai*, : AIR 1974 MP52 , a Division Bench of Madhya Pradesh High Court has gone to the extent of saying that,

'the concealment of the fact that the appellant had been once married to another woman cannot be a ground for annulment of the marriage.'

12. In *Sivaraman v. Padmaja* ILR(1975) 1 Ker 469, a Division Bench of Kerala High Court with reference to S. 12(1)(c) of the Act has held that even if there was mis-

representation at the time when consent was obtained from, one party to the marriage by the other party, if the solemnization is not vitiated by any fraud or force, there is no scope for seeking annulment of the marriage. Since the Division Bench has considered various decisions of other High Courts, we are extracting some of the relevant paragraphs hereunder:

'11. The term 'fraud' is not defined in the Hindu Marriage Act. Fraud cannot be taken to mean the same as what is indicated by the definition of that term in S. 17 of the Indian Contract Act. The relevant part of S. 12 of the Hindu Marriage Act reads:

'Any marriage solemnized..... shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely --

XXX XXX XXX(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under S. 5 , the consent of such guardian was obtained by force or fraud.'

If any marriage solemnized may be annulled on the ground that the 'consent' was obtained by fraud the consent must have been to such solemnization. Normally parties agree upon the marriage proposal prior to the solemnization ceremony. There would be proposal and acceptance and it is after such acceptance that the parties agree upon a date and time for the marriage ceremony. Therefore even prior to the solemnization there is a stage at which consent is given by one party to the other. May be there is fraudulent misrepresentation at that stage. That may be with regard to the status of the party, educational qualifications, financial situation, state of health, or even virginity. But at the time when solemnization takes place pursuant to such consent there is no question of any misrepresentation on any of the above grounds. There could be fraud or there could be force in the matter of solemnization, independent of these matters. To these cases S. 12(1)(c) will be attracted but not to a case where though there is no fraud or force in the solemnization of the marriage there is fraud or misrepresentation for obtaining consent to the proposal for the marriage.

12-A. The view as taken by us here is supported by the view of several High Courts in India. The High Court of Calcutta in the decision in Anath Nath De v. Smt. Lajjabati Devi, : AIR1959 Cal778 thus:

'12. The question of consent of the parties to the marriage arise at two stages; firstly at the time when the parties consent to solemnize the marriage and secondly at the time when the marriage itself is solemnized.'

13. The marriage according to Hindu law not being a contract, the consent at the first stage though obtained by fraud cannot affect the validity of the marriage. The consent at the time of the solemnization is the material consent. It is well settled that the consent at the time of solemnization of marriage though a marriage is a sacrament according to the Hindus, if obtained by fraud, affects the validity of the marriage.

The same view has been taken by the Punjab High Court in Harbhajan Singh v. Smt. Brij Balab AIR 1964 Pun 359. Pandit, J. said in that case thus:

'The word 'fraud' as a ground for the annulment of the marriage under the Hindu law is limited only to those cases where the consent of the petitioner at the solemnization of the marriage was obtained by some sort of deception. For example, take a case where A was given to understand that he was being married to B and, in fact, he was married to C. Again, where the marriage of the petitioner was solemnized when he or she, as the case may be, was under the influence of liquor. In case of a marriage under the Hindu law, 'fraud' is not used in a general way and on every misrepresentation or concealment, the marriage cannot be dissolved. If the term 'fraud' is to be interpreted according to the definition given in the Indian Contract Act, then it would become impossible to maintain the sanctity of the marriage. All sorts of misrepresentation will be alleged by the petitioners in order to break the marriage tie. This, obviously could not be the intention of the Legislature. The fact that the respondent was of bad character before the solemnization of the marriage cannot be a ground for the annulment of the marriage, because there is a specific clause (d) of this very section dealing with this matter. Under that, if the respondent was pregnant by some persons other than the petitioner at the time of the marriage, then this can afford a ground for the

annulment of the same. It means that the Legislature did not intend that the past conduct of the respondent, except what is mentioned in clause (d), should become a ground for the dissolution of the marriage.'

Malvankar, J. of the High Court of Bombay in *Raghunath v. Vijaya*, : AIR1972 Bom132 , considered this question in rather elaborate detail and at paragraph 12 the learned Judge said :

'It would thus be seen that the word 'fraud' used in S. 12(1)(c) of the Hindu Marriage Act does not speak of fraud in any general way, nor does it mean every misrepresentation or concealment which may be fraudulent. If the consent given by the parties in a real consent to the solemnization of the marriage, the same cannot be avoided on the ground of fraud.'

13. A different view has been expressed by the High Court of Patna in *Babui Panmato v. Ram Agya Singh*, : AIR1968 Pat190 , it is evident that the definition of 'fraud' in the Contract Act has been adopted by the learned Judge and the learned Judge seems to have supported his view on the basis of the absence of the words 'at the time of the marriage' under S. 12(1)(c). According to the learned Judge if the intention was to limit the plea of fraud to the solemnization the Legislature could have used the words 'at the time of the marriage' to indicate that it is only such that would vitiate the marriage. We do not think this is necessary or that its absence, justifies the reading of the term 'fraud' in the manner it has been done by the Judge of the Patna High Court.

14. Mulla, in *Principles of Hindu Law*, 11th Edition, deals with this aspect at page 739 thus:

'Fraud:-- It is essential to note that the section does not speak of fraud in any general way or of every misrepresentation or concealment which may be fraudulent but fraud whereby the consent of the petitioner was obtained to the solemnization of the marriage. If there was actual consent to the solemnization of the marriage with the respondent the marriage cannot be annulled on the ground of fraud. In matrimonial law when fraud is spoken of as a ground for avoiding a marriage, it does not include such fraud as induces a consent but is limited to such

fraud as procures the appearance without the reality of consent. This distinction is clearly brought out by the case where it was held that concealment by a woman from her husband at the time of her marriage of the fact that she was then pregnant by another man was no ground for avoiding the marriage on the plea that the consent was obtained by clause (d). It will be noticed that the Legislature has in view of this expressly provided in clause (d) that in such a case the marriage may be annulled if the petitioner was at the time of the marriage ignorant of that fact. In another case, which seems to illustrate the rule it was held that concealment of the fact that the wife had been a naikin by profession and even in the keeping of more than one person prior to the marriage was not fraud if there was consent to the marriage (e). A person who freely consents to a solemnization of the marriage with the other party in accordance with customary ceremonies, that is, with knowledge of the nature of the ceremonies and intention to marry, cannot raise an objection to the validity of the marriage on the ground of any fraudulent representation or concealment. Thus for instance a marriage cannot be avoided by showing that the petitioner was induced to marry the respondent by fraudulent statements relating to family or fortune or caste or religion or age or character of the respondent (cl). The test is that there should be real consent to solemnization of marriage and consent to marry the particular person. Where, however, there is no real consent, as for instance where a party is kept under the impression that what is being performed is only a betrothal or there is deception as to the identity of the other party, that would be fraud which affords a ground for annulment of the marriage under the rule laid down in this clause.'

15. The position therefore is that even if there was misrepresentation at the time when consent was obtained from one party to the marriage by the other party, if the solemnization is not vitiated by any fraud or force, there is no scope for seeking annulment of the marriage. Therefore even if the act of substitution of horoscope of another girl amounts to fraud on the part of the girl or her parents, that may not be sufficient in this case to hold that the marriage should be annulled. Therefore it follows that the appellant herein should fall.'

15-A. With regard to concealment of material fact, the Division Bench of this Court in *Sujatha v. Hariharan* : (1995)2MLJ327 has held that it must be of such a nature

which affects ordinary marital life of the parties. In the said case there was an eye defect curable by proper treatment. Concealment of such fact at the time of the marriage cannot said to be fraud, hence annulment of marriage on that ground cannot be granted. After analysing various earlier case laws of other High Court as well as this Court and in the light of Section 12(1)(c) of the Act, the Bench has come to the following conclusion:--

'To summarise the above case law, to have a cause of action for annulling a marriage under Section 12(1)(c) of the Hindu Marriage Act, to constitute fraud there must be some abuse of confidential position, some intentional imposition or some deliberate concealment of material facts which are the fundamental basis of the marriage contract. (See laws of Marriage and Divorce by H.K. Saharay, second edition at page 127). The above case law makes it clear that the concealment, even if any, must be of such nature which affects the ordinary marital life of the parties. In this case, it has come out in evidence that the appellant is a post-graduate. She is now undergoing B.Ed. course and has also studied Hindi for three courses. It has also come out in evidence that while she was in her husband's house, she was doing all manual and household work and the petitioner has even taken her to a cinema. How far the marital life is affected, is not explained by the petitioner. He only says that he had did not like the respondent (wife) and hence there is no consummation of marriage. Pending trial, the Family Court has got a report from another doctor where also the eye defect was stated to be minus 15 and minus 17. No attempt was made by the petitioner to give treatment to the wife, and he has not even ascertained whether it can be cured or not. Unless it is incurable, as observed in the earlier case law, any concealment of the same, will not amount to concealment of a material fact which will give a cause of action for annulling the marriage. According to the appellant and her father, the eye defect is curable if proper treatment is given. Even in the present state, it does not affect her marital life. She says that the marriage was consummated and they had physical contact on many days. If the eye defect is not a material fact which does not affect the marital life, the petitioner cannot have any cause of action for annulling the marriage. In this case, he has not adduced any evidence whether the eye defect is curable or not, and whether the decree of the defect could be reduced, he takes her to the doctor only for the purpose of

ascertaining and assessing the defect, and not to get it cured. That also show that his intention is not bona fide. We have stated that even according to his own showing, he did not consider the eye defect is a material fact. According to him, it is alleged mental illness of the respondent that causes him concern and if it is for that reason he wanted the annulment of marriage. To say that he has taken her to a Psychiatrist, but that is a evidence regarding her alleged mental defect. On the contrary, we have the oral evidence of R.W. I herself where she ably speaks before court about her mental condition.'

16. The term 'fraud' is not defined in the Hindu Marriage Act. In the absence of any definition in the relevant Act 'fraud' cannot be deemed to mean the same as what is mentioned by the definition of that term in Section 17 of the Indian Contract Act. Normally parties to the marriage agree upon the marriage proposal prior to the solemnization ceremony. There would be proposal and acceptance and it is after such acceptance that the parties agree upon a date and lime for the marriage ceremony. In our case also number of letters have been sent by either parties and both the parties agree to conduct the marriage on 8-3-1987. According to the appellant, by fraudulent misrepresentation, his consent was obtained by the respondent and her father. It is already established that prior to the soleemnization of the marriage, the appellant, husband was aware of the truth and the marriage was solemnized. It is evident from the fact that at the time of the solemnizationof the marriage, the alleged fraud did not exist, hence we are in agreement with the proposition of law rendered by the Division Bench of the Kerala High Court reported in ILR (1975) Ker 469 cited supra and hold that there is no scope for seeking annulment of marriage if the solemnization is not vitiated by any fraud or force. In view of this, with great respect, we are unable to follow the contrary views taken by various other High Courts, after than the Kerala case referred above.

16-A. The other faint argument of the learned counsel for the appellant is that the court below failed to consider some of the documents filed on the side of the husband and erroneously entertained Ex. R.29 filed on the side of the wife. In view of the submission made by the counsel, we have carefully considered the entire documents which are various correspondences between the parties prior to the marriage and in the right of the reasons stated above, we are not persuaded to

take a different view than that of the court below. It is seen that Ex., R. 29 dated 25-11-1991 which is an affidavit duly sworn by V. Lakshmi-narayanan, brother of the respondent herein has been marked on the side of the wife and the same has been considered by the Court below. A perusal of Ex. R. 29 shows that it is an affidavit filed by V. Lakshminaryanan, brother of the respondent herein. The said affidavit has been filed by him in person before the court on 25-11-1991. The docket endorsement of the said document also shows that a copy of the said affidavit has been received by the appellant on the very same day. No doubt, R.W. 1 has not spoken to about Ex. R. 29. But the reading of the provisions of the Family Court Act clearly shows that it has ample power to receive such document or documents for the disposal of the case and in the interest of rendering justice to the parties. Hence we are unable to accept the objection of the learned counsel for the appellant in this regard.

16-B. The other important fact to be noted in this case, as seen from the records, is that the appellant, husband had agreed for a divorce by mutual consent. Likewise, he had also agreed to pay maintenance in a petition filed by the respondent under Section 125 of the Code of Criminal Procedure on the file of Mahila Court, Hyderabad and paid maintenance also. As rightly pointed out by the learned counsel for the respondent, if there was no valid marriage, questions of divorce or payment of maintenance will not arise.

17. Finally presuming there was misrepresentation with regard to the date of birth, that will not, in any way, affect the 'ordinary marital life' so that it amounts to 'fraud' under Section 12(1)(c) of the Act. The various decisions referred to in *Sujatha v. Hariharan* : (1995)2MLJ327 crystallise the above said legal position. As already said, we are also in entire agreement with the view expressed by the Division Bench of the Kerala High Court in ILR 1975 (1) Ker 469. Even on the factual aspect for the sake of repetition, we are right in saying that the appellant was aware of the wife's true date of birth even on 15-2-1987 that is well prior to the date of marriage on 8-3-1987. We are also satisfied that the appellant was aware and known of the true age of the wife before the marriage. Hence looking at any angle, in the light of the specific defence taken in the counter, in the absence of any reply by the husband, coupled with the oral evidence and other documents,

we are unable to accept any one of the arguments advanced by the learned counsel for the appellant consequently, the appeal fails and the same is dismissed. However, there will be no order as to costs.

16. Appeal dismissed.

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