

Rahima Bibi Vs. A.K. Sherfuddin

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Court : Chennai

Decided On : Aug-01-1946

Reported in : AIR1947Mad155; (1946)2MLJ305

Appellant : Rahima Bibi

Respondent : A.K. Sherfuddin

Judgement :

Horwill, J.

1. The appellant (the second defendant) was at all relevant times a minor Muhammadan girl. The first defendant is her brother and the third defendant her father. Both her father and brother were desirous of getting the girl married; and an opportunity arose of marrying her to a rich man, her guardian-ad-litem in this suit. The parents, however, were unable to raise sufficient funds to conduct the marriage and so approached the plaintiff, the girl's maternal uncle, and told him of their need. Although he did not enter into a contract with the first and third defendants, yet he expressed his willingness to spend such money as was necessary for the marriage. He did not intend to do so gratuitously and as the money was not repaid, he brought this suit impleading the girl, her father and her brother. The trial Court granted him relief under Section 68 of the Contract Act. The lower appellate Court upheld the finding of the trial Court.

2. Although the principle enunciated in Section 68 of the Contract Act would not apply to the expenses of marriage of a minor under English law, the principle has been extended in India to cover the marriage expenses of Hindu minors. The learned advocate for the appellant referred to two cases in which the reasons for applying the principle of Section 68 to the expenses of marriage of a Hindu minor girl are said to have been accurately given. In *Nandan Prasad v. Ajudhia Prasad* I.L.R.(1910)All. 335 reference was made to the dire spiritual penalties incurred by a father who did not marry his daughter before she attained the age of puberty and therefore to the urgent necessity of getting a girl married before she attained that age. In *Tikilal v. Kamalchand and Ors.* I.L.R. 1940 Nag. 632 Puranik, J., had to consider whether it was necessary to marry a Hindu male minor. He held that the case of a male minor could not be compared with that of a female minor for the reason given above; and so held that Section 68 could not be applied to the expenses incurred in marrying a male Hindu minor. It is argued on behalf of the appellant that if a person who supplies funds to a male Hindu minor cannot invoke the provisions of Section 68, a fortiori a Muslim who advances monies for the marriage of a Muslim minor girl could not. It is argued that a marriage amongst Muslims is of the nature of a contract rather than of a spiritual ceremony, and that therefore all the circumstances which would make it a religious necessity to provide for the marriage of a Hindu minor girl are absent in the case of a Muslim minor girl.

3. In the first place, it may be pointed out that although Puranik, J., in the Nagpur case cited above held that advances for the marriage of a Hindu male minor would not be necessary, that is not the view generally held by the High Courts in India. A Bench of the Patna High Court in *Pathak Kali Charan Ram v. Ram Deni Ram* (1917) 2 Pat.L.J. 627 dealt with a claim under Section 68 of the Contract Act connected with the marriage of a Hindu male minor, and it was held that it was necessary. So did this Court in *Annamalai v. Muthuswami* : AIR1939 Mad538 . If these decisions are correct, the argument based on the religious necessity of marrying a Hindu girl before she attains puberty has no application. When we compare the case of a Hindu male minor with that of a Muslim minor girl, there is very little that can be said in support of a view that it is a necessity for the one that could not be said in favour of a contention that it is necessary for the other. It is

argued that there is no objection under the Muhammadan law to a woman's contracting a marriage herself, and that therefore no person is justified in having recourse to a minor's estate for getting a Muslim girl married while a minor. It is suggested that the girl should be allowed to become a major and then to enter into a contract of marriage herself. Such a suggestion seems to me utterly impracticable in Muslim society as we know it; and I do not believe that Muslim law countenances such detachment by the girl's relations, which might well lead to the girl's ruin. It is true that in modern society, educated and advanced Muslims may not, in some cases, marry their daughters while they are still minors and may allow them to exercise some choice after they attain majority; but such cases are the exception and not the rule. In rural society, and even in ordinary urban society, there can be no doubt that such conduct on the part of the parents as is suggested as proper by the learned Counsel of the appellant would be severely condemned.

4. The learned author of the ' Translation of the Holy Quran ' (Muhammad Ali) quotes the text of the Quran ' Marry those among you who are single.' In a footnote the learned author says:

The Holy Quran looks upon the married state as the normal state, and hence it enjoins that so far as possible those who are single should be married.

A similar sentiment is expressed by Abdur Rahman, J., in *Muhaidin Tharaganar v. Sainambu Ammal* : AIR1941 Mad582 where the learned Judge said that according to the Muhammadah practice and tradition, a girl was expected to be married as soon after she attained puberty as possible. He refers to the change that has gradually crept over Muslim society on account of western influence, but regards that practice as still the normal one. A Kazi examined as P.W. 3 referred to a passage in the Hadiz in which it is stated ' Muslims perform early marriage of a girl.' He seems to have referred the question arising in this very case to the Head Kazi of the community in Madras, and a fatwa was sent in reply roughly to the effect that whether a girl had attained puberty or not, her father could get her married and meet the connected expenses, such as invitations, cloths and jewels, either from his own estate or from hers. P.W. 3 deposed--and I have no doubt that he was speaking the truth--that there were no unmarried girls in his society. I -

therefore have no doubt that the Courts below were right in holding that marriage was a necessary for a Muslim minor girl that would come within the purview of Section 68 of the Contract Act.

5. It is argued that there was no sufficient proof of the expenses incurred by the plaintiff. He produced accounts and was able to speak to all the principal items of expenditure, because he himself was responsible for the conduct of the marriage and all the expenses were incurred according to his personal directions. The fact that the total amount spent was a very moderate one is in itself an indication that the various items of expenditure claimed by him were true.

6. An objection has been taken in this Court to the necessity for such a large expenditure as Rs. 3,000; but we do not find anything in the written statements which suggests that even if it be true that the plaintiff had spent this money, such a large expenditure was not necessary. As on account of the plaintiff's advancing this money the girl has been able to make a very good marriage with a well-to-do young man, it cannot be said that an expenditure of Rs. 3,000 is at all excessive.

7. The appeal is dismissed with costs.