

Dharmesh Kumar @ Dharmender Vs. Anu Arora

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Court : Delhi

Decided On : Jan-30-2013

Judge : Veena Birbal

Appellant : Dharmesh Kumar @ Dharmender

Respondent : Anu Arora

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI MAT.APP. 57/2011 %
Judgment delivered on:

30. 01.2013 DHARMESH KUMAR @ DHARMENDER Appellant Through : Mr. Harish K. Mehra, Adv. along with appellant in person versus ANU ARORA Through : Respondent Mr. Ashwani Kumar Mata, Sr. Adv. with Mr. Gajinder Kumar, Mr. Kiran Jai, Mr. Chandra Shekhar and Ms. Kajal Bhati, Advs. along with respondent in person CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

* 1. By way of the first appeal under Section 28 of Hindu Marriage Act, 1955 (hereinafter referred to as the Act), a challenge has been made to the impugned judgment and decree dated 30.04.2011 passed by learned ADJ, Delhi in HMA No. 497/10/05.

2. Briefly stated the facts of the case are that a petition for annulment of marriage with the appellant under Section 12(1)(c) of the Act was filed before the learned

ADJ by the respondent wherein she had alleged that the appellant was employed as a Driver by her father who is a businessman. She has got two younger brothers and is the only daughter of her parents. The appellant used to drop her at school and also used to bring her back. She had averred that alleged marriage between the parties was solemnized on 27.08.2004 at Arya Samaj Mandir according to Hindu rites and ceremonies which was subsequently registered on 17.09.2004. The date of birth of respondent is 07.08.1986 and had just attained 18 years at the time of alleged marriage.

3. The respondent had alleged that on 09.03.2003 the appellant had picked her up from the school as it was the last day of her 11th class examination and while coming back to the house, the appellant told her that the mother of his friend was not well and he had to go to the house of his friend for giving some money. Thereupon he took her to the house of his friend and asked her to accompany him inside on the pretext that he would not leave her alone in the area. It is alleged that there he made her sit in a room and offered her a cold drink containing some intoxicant and on consuming the same, she became unconscious. Respondent had alleged that when she regained consciousness she found herself lying nude in the bed and had pain in her private part. She also saw appellant standing nude, next to the bed. It is alleged that appellant was having a camera in his hand. He had also told her that he had physically satisfied himself and had taken her objectionable photographs and in case she disclosed the same to anyone he would display her photographs publicly and ruin the reputation of her family. Respondent had alleged that out of fear, she did not disclose the same to anyone.

4. The respondent had further alleged that thereafter whenever appellant had found her alone he tried to indulge with her in an obscene behaviour and sometimes demanded money from her by threatening to defame her. It is alleged that on few occasions he had extracted money from her by giving threats to defame her by showing her photographs.

5. It was further alleged that on 27.08.2004 respondent was waiting for an auto rickshaw as she had to attend the birthday party of her friend. At that point appellant came in Maruti Car. The appellant had asked her to accompany him and

asked her to sign certain papers and had threatened her that in case of refusal by her, his friend who was standing outside her house would distribute the posters of her photographs in the area and would defame her as well as her family members. It was alleged that under the threat given to her, she accompanied the appellant to Yamuna Bazar, opposite Hanuman Mandir where two persons were present i.e., a photographer and a Pandit. It was alleged that there the appellant had forcibly garlanded her. She had alleged that their joint photographs were also taken and she was made to sign certain papers/cards. She had alleged that everything was done there against her wishes as she was threatened to accompany the appellant there under the threat/fear of displaying/distributing her photographs.

6. It was further alleged that on 26.09.2004 her parents had to leave to Shiv Khori. It was alleged that on 24.09.2004 appellant had told her to steal jewellery of her mother and not to accompany her parents and in their absence, he would take her out of Delhi. She had alleged that she was already upset due to the alleged conduct of the appellant and did not act as per his bidding and went with her parents. On 05.10.2004, when she came back with her parents she had come to know that in their absence Police had come and was asking for her as well as her parents. Thereafter, on 06.10.2004, she went to Police Station along with her father where they came to know that a complaint was lodged by the appellant wherein he had alleged that the respondent was his wife and he wanted to take her to his house. Respondent was shocked to know the same and as such the matter was reported to the Police and FIR No. 559/2004 a case under Sections 363/366/328/376/384/385 IPC was registered at P.S. Anand Vihar against the appellant. Her statement under Section 164 Cr.P.C. was recorded before learned MM, Delhi. She had alleged that in order to extort money from her parents the appellant had lodged a false complaint under Section 97/98 of Cr.P.C against them before the learned MM, Karkardooma Courts and notice of the said complaint was sent to her father and uncle wherein appropriate orders were passed and in the meanwhile appellant was arrested in the aforesaid case and was sent to judicial custody. The respondent had alleged that the alleged marriage performed on 27.08.2004 was without her consent and was under pressure and fear of damaging her and her family reputation. Due to alleged force/threats being extended to her by respondent as such the same be annulled by a decree of

nullity.

7. The appellant had opposed the said petition by filing written statement by alleging therein that the respondent had concealed true and material facts from the court. He had alleged that respondent was having love affair with him and they used to present gifts to each other. He had admitted that at the relevant time he was employed as a Driver by the father of respondent. He had alleged that the marriage was solemnized with the consent of respondent on 27.08.2004 at Arya Samaj Mandir according to Hindu rites and ceremonies. There was no pressure, fraud or undue influence as was alleged. The marriage was subsequently registered on 17.09.2004. He had alleged that their marriage was consummated on the night of the marriage i.e. on 27.08.2004 in the bed room of the respondent in her parents house where the respondent had herself called him. Appellant had further alleged that even thereafter he had sex relations with her number of times as she was staying in her parents house due to her 12th class examination. He had further alleged that on 23.09.2004 he got a telephonic call from the respondent. Thereafter he had gone to her house where he came to know that the parents of respondent had come to know of their marriage. Her other relatives were also present. They had all given him beatings and threw him out of the house. Thereupon, he had to file a complaint under Section 97/98 Cr.P.C. before learned ACMM on 27.09.2004 for issuance of search warrant of the premises of the parents of respondent for handing over the custody of the respondent to him. On 29.09.2004 search warrants were issued. However, it is alleged that police officials colluded with her parents and impleaded him in a false case vide FIR registered above. Thereupon appellant was arrested and sent to custody. It was alleged that the respondent had filed the petition under the pressure of her parents.

8. The respondent had filed the replication denying the allegations made by the appellant against him. She had reiterated the averments made in the petition. In the replication she had given the description of her house as well as details of her family members and had alleged that considering the layout of her house it was impossible to enter in her house without being noticed by other family members.

9. On the pleadings of the parties, following issues were framed:1.

2. 10. Whether the consent of the petitioner to this alleged marriage with respondent solemnized on 27.08.2004, was obtained by respondent by force, pressure or fraud as alleged in the petition, if so to what effect? OPP Relief. To substantiate her case, the respondent had filed her own affidavit as well as that of her father Satish Arora. They both were examined as PW1 and 2 respectively. On the other hand, the respondent had filed his affidavit and had examined himself as RW1. Besides himself, he had also examined 4 witnesses i.e. Balbir Kumar RW2, R.K. Singh RW3, Dinesh Kumar RW4 and Ashok Yadav RW5.

11. After hearing the counsel for parties and considering the material on record, the Ld.ADJ allowed the petition. Aggrieved with the same, present appellant is filed.

12. Learned counsel for appellant has contended that allegations against the appellant are that on 09.03.2004 he had raped the respondent and took her photographs in nude condition and on the basis of those alleged photographs, he was blackmailing her by extending threats and got married with her and then got registered the marriage. It is contended that alleged incident had not taken place on 29.3.2004. It is contended that on the basis of aforesaid allegations FIR No. 559/2004 was registered with P.S. Anand Vihar under Sections 363/328/376/366/384 IPC was registered against the appellant and in the said case the appellant has been acquitted by the learned Sessions Court vide judgment dated 20.3.2006 Ex.RW 1/4. It is contended that once the appellant was acquitted in the aforesaid case, the trial court ought not have relied upon the evidence of respondent in respect of aforesaid allegations and thereby allowing the petition by holding that the consent for marriage was obtained by force, fraud and undue influence.

13. It is further contended that even assuming that the said evidence can be taken into consideration, the same does not establish the alleged incident of 09.03.2004. It is contended that alleged photographs are not produced on record by the respondent. Her evidence is also shaky. It is further contended that on the other hand there is ample evidence on record to establish that the respondent was

having love affair with the appellant and she married him of her own consent and thereafter got the same registered vide Ex.PW1/R3. It is contended that the evidence led by the appellant also establishes that their marriage was duly consummated. In these circumstances, finding of the Ld.ADJ that the consent of respondent for marriage was obtained by threat, force and coercion is perverse. It is further contended that the finding of the learned trial court that there was no valid ceremonies for the marriage was not in question and learned ADJ ought not have gone into that aspect of the matter.

14. Learned Senior Counsel for the respondent has contended that finding of the Sessions Court in aforesaid criminal case has no relevancy in the present case. It is contended that same are not binding on the Civil Court. Learned Senior counsel for the respondent has relied upon the judgment of the Supreme Court in Krishan Chand Vs. Gopal Singh 2010(8) SCC 775. It is further contended that there is no perversity or illegality in the impugned order as is alleged.

15. The contention of appellant that finding of criminal court vide judgment dated 20.3.2006 wherein appellant has been acquitted was binding on the learned ADJ, Delhi, has been considered. It may be mentioned that the matrimonial proceedings, under the Hindu Marriage Act are civil in nature where standard of proof is different as compared to criminal proceedings. In civil cases, it is preponderance of probabilities while in the criminal cases, it is proof beyond reasonable doubt. Reference is made to the judgment of the Supreme Court in Krishan Chand Vs. Gopal Singh 2010(8) SCC 775. wherein it is held as under: 18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of

previous judgments in subsequent cases may be taken into consideration. In view of the above legal position, the contention raised has no force.

16. The stand of the respondent before the trial court was that her consent for marriage was obtained by force/fraud whereas the stand of the appellant was that there was no kind of pressure on her and she married him voluntarily. To substantiate her stand, respondent had filed her own affidavit Ex.PW 1/1 wherein she had stated that appellant was a driver of her father and sometimes he used to drop her at school. It is stated that on 9th March, 2004 she was a minor. On that day, appellant had come to pick her up at school as it was a last day of 11th class examination. While coming back, appellant requested her that he had to go to the house of his friend as the mother of his friend was not well and he had to give some money to them. He also told that it would take only half an hour. Thereupon respondent took the car towards Loni Road in U.P. There he stopped the car in front of one of the lined up flats and asked her to accompany her as he would not allow her to remain in the car. She had stated in detail as to how he took her inside the flat and made her sit in the room and had given her something to drink and thereafter she became unconscious. When she regained her consciousness, she found her in a state of shock and respondent told her that he had taken her photographs in an objectionable position and had satisfied himself physically and also threatened not to disclose it to anyone otherwise he would distribute the photographs in public. She had also stated in the affidavit Ex.PW 1/1 as to how appellant misused her later on the pretext of showing her photographs being displayed in the public. She had also stated that on 27.8.2004 when she was going somewhere to attend the birthday of her friend, appellant came in a Maruti car and threatened her that she would accompany her wherever he was taking her. He had also took her signatures on some blank papers. She has deposed that she had agreed for the same as appellant had threatened her that his friends were standing outside her house and they would distribute her photographs in the area and under the threat and fear, she accompanied him to Arya Samaj Mandir Yamuna Bazar opposite Hanuman Mandir where there was one photographer and one pandit. There appellant forcibly garlanded her and drapped dupatta like a marriage dress around her and their joint photographs were taken. She was made to sign some blank papers. At that time, she was too young and she had just

completed 18 years and marriage was performed under threat and fear and she had agreed to whatever she was asked by the appellant as she had a fear that he would distribute her photographs in the area and would defame her and her family members.

17. Appellant had cross-examined her at length. In cross-examination, she had given the colour of camera. She had also stated that appellant had threatened her that if she disclosed the said fact to any one, he would distribute her photographs in the colony. She has also deposed in the crossexamination that appellant was not residing in her house. She had denied having gone to Karkardooma courts before going to Arya Samaj Mandir. She had deposed that her signatures were taken on blank paper i.e., on affidavit Ex.PW 1/R4. She had also denied the stand of appellant taken in written statement which was put to her by way of suggestion in crossexamination. Despite lengthy cross-examination, her material deposition to the effect that her consent was obtained under threat and fear was not demolished in cross-examination.

18. The stand of the appellant was that his marriage was duly consummated on 27.8.2004 with the consent of the respondent. Appellant had stated in affidavit Ex.RW1/A that he had enjoyed conjugal bliss/sex with her for a period of 25 days. He had narrated as to how respondent used to call her in her room in a secret manner. Respondent in her evidence denied having sexual relationship as deposed by the appellant. She had also proved on record site plan of her house. According to the said site plan Ex.PW 1/1, it was not possible to enter in the room of the respondent as was deposed by the appellant. Appellant in his evidence had admitted the correctness of the said site plan.

19. The abovesaid deposition of appellant stand demolished by the stand taken in petition under section 9 of the HMA i.e., RW 1/PX which was filed by the appellant against the respondent on 31.5.2006 wherein he had alleged that their marriage was duly consummated on 27.8.2004 at the parental house of the respondent and the appellant continued to stay in the said house from 29.7.2004 to 20.9.2004 as `Ghar Jamai temporarily on the request of the respondent till her examination. If the above version was to be believed, in that event, had he been living as Ghar

Jamai as was stated in his evidence, there was no occasion for the respondent to call him in her room in a secret manner as was stated by him in affidavit Ex.RW1/A.

20. Further, in the complaint dated 27.9.2004 under section 97/98 of Cr.P.C i.e., Ex.RW1 P/Z1 filed by appellant before learned MM, he had stated that respondent did not join him after marriage as her examination was going on. In the said complaint, nothing was stated about the alleged consummation of marriage between the parties or their alleged cohabitation as was deposed by the appellant in his evidence.

21. The above discussion shows that appellant had taken different stands in different proceedings. In these circumstances, the evidence of appellant about alleged consummation of marriage to show that consent of respondent for marriage was voluntary cannot be taken into consideration.

22. Further, by way of affidavit Ex.RW1/A , appellant had stated that on 23.9.2004, respondent had made a telephonic call to him at about 11 or 11.30 am and called him at his residence. When he reached there, respondent informed that her parents had come to know about the marriage. At that time, family members of the respondent were present there along with uncle, namely, Kamal and two-three persons. The family members of respondent did not accept the marriage and they were very upset and angry and uncle of respondent, namely, Kamal and other two-three persons had given beatings to him and had thrown him out while respondent was confined by them despite the fact that she wants to join him.

23. In the petition Ex.RW1/PX under section 9 of the HMA, the appellant has taken a stand that on 23.9.2004, respondent told her parents and relatives about their marriage in his presence. On hearing this, they became angry and a quarrel had taken place between the appellant and parents of the respondent and they pressurized him to either shift in their house permanently otherwise, they would not accept the marriage. The relevant para of petition Ex.RW1/PX is reproduced as under: That on 23/09/2004, the respondent told to her parents about her marriage in the presence of petitioner and her parents and relatives on hearing the facts of marriage, parents of the respondent became annoyed and angry and a

quarrel took place between petitioner and the parents of the respondent and they pressurized to the petitioner either to shift in their house permanently otherwise they will not accept the said marriage in any manner. On the contrary, petitioner refused to live in the parental house of respondent permanently as Ghar Jamai and during this discussion, some hot talks took place and the parents of the respondent turned out the petitioner from their house.

24. In cross-examination of present case, a version had been given by appellant wherein he had stated that the parents of respondent had come to know of alleged marriage on 23.9.2004 as he received a message on his mobile from respondent at about 2.30 pm. He had also stated that respondent also gave a telephonic call to him from her mobile. He had admitted in cross examination that respondent was not having any mobile phone. He had further stated in cross-examination that when he went to respondents home, he did not find any one. Then he went at the house of her uncle namely Kamal, father of respondent, one Vidya Rattan and few other ladies were present. But respondent was not there as she was taken by her family members. They all had abused him. A quarrel had taken place and he was turned out of the house.

25. It is noted that appellant has also given different versions at different stages as to how the parents of respondent had come to know of alleged marriage. He is not a reliable person. His evidence is not worthy of credence, as such, cannot be taken into consideration.

26. The appellant had also taken a stand that respondent used to send messages him on his mobile phone. Mr.R.K.Singh (RW3) from Bharti Airtel was summoned to produce the relevant record but the said witness could not produce the record as the record was destroyed. The said witness is of no help to the appellant.

27. The appellant had also relied upon greeting card/valentine day card Ex.PW 1/R2 to show that respondent was in love with him and had sent the said cards to him. The appellant in cross-examination admitted that the cards on record did not bear his name. The appellant could not state in the evidence as when the same were given to him. In these circumstances, the Ld.trial court has rightly not taken into consideration the said piece of evidence.

28. To substantiate the stand that respondent had consented for marriage, appellant had relied upon marriage photographs Ex.PW 1/R1 (colly), affidavits of respondent for the alleged marriage dated 27.08.2004 i.e.Ex.PW1/R4. The original affidavits which were attested by the Notary Public RW-5 Sh.Ashok Yadav were not produced before him and only photocopy of the affidavit Ex.PW1/R4 was put to the witness. The evidence of Notary Public Sh. Ashok Yadav, RW-5 was recorded through a Local Commissioner as he had sustained injuries. He had stated that the signatures and thumb impression of parties appear in the Register Ex.RW 5/1 along with photographs of the parties. The stand of respondent was that her signatures were taken on certain blank papers. However, it was observed by the learned trial court that entries in respect of attestation of affidavits of other parties in the register were there maintained by Sh.Ashok Yadav, RW5 but no photographs of other parties were affixed and only in the present case photographs of the parties were affixed which did not bear the signature of the parties nor their thumb impressions were there on the said photographs or behind the same and it was a over doing as such the said evidence was doubtful. In these circumstances even the aforesaid evidence is of no help to the appellant.

29. Even about registration of marriage vide certificate Ex.PW1/R3, RW- 2 had deposed that he had no knowledge as to who had come to their office for submitting the form as well as who was present at the relevant time. Similarly RW-4 could not also tell as to who had filed the relevant affidavits i.e., Ex.PW4/1 and Ex.PW 4/2. He admitted in cross-examination that affidavits Ex.PW4/1 and Ex.PW 4/2 were not prepared or signed in his presence. Further the stand of respondent throughout is that she had signed certain blank papers and had gone with the appellant as he had extended threats of displaying her objectionable photographs in the public. The aforesaid evidence is also of no help to the appellant.

30. The evidence discussed above establishes that consent of respondent for the marriage was not voluntary.

31. The learned ADJ has also held that there were no valid ceremonies for marriage. The evidence on this aspect has also been considered. MAT.APP.No.57/2011 aforesaid finding is based on evidence on record. The

grievance of the appellant is that as the same were not questioned, the learned ADJ ought not have given finding on the same. Even if the said finding has been given, the same is not a ground to set aside the impugned judgment.

32. In Anju Sharma vs. Suresh Kumar:

67. 1997) DLT 127. wherein the facts are almost similar, this court has observed as under: To understand the case of the appellant we must first understand what does the words fraud, force and threat mean. Fraud has been explained under the Marriage Laws (Amendment) Act, 1976 in relation to the nature and ceremonies or as to any material fact or circumstances concerning the respondent. For example, if a person is forced to go through a ceremony of marriage under threat or duress or in state of intoxication without any real consent of marriage, such a marriage is invalid because of practicing fraud. The test of validity is the real consent to the marriage as described by Rayden on Irvance 10th Edition page 98. Consent envisaged by Sub-section 1(c) of Section 12 of the Act is a free and voluntary consent. The above judgment is also relied by the Ld. ADJ in the impugned judgment.

33. In Kunta Devi vs. Siri Ram Kulu Ram : AIR 196.PH 235. the Punjab and Haryana High Court has held as under: 13. It is no marriage in law where one of the parties was induced to enter into a matrimonial alliance under coercion, duress, fraud, evidencing want of free consent. A marriage procured by abduction, terror or coercion has no sanctity and is voidable at the election of the injured party. In this case, the marriage has not been ratified by voluntary cohabitation which might have neutralized the effect of early coercive and fraudulent acts.

14. A marriage procured through fraud is equally avoidable and is liable to annulment. Fraud perpetrated at, or before the marriage, which has the characteristic of affecting the free consent of the injured party and calculated or intended to induce the marriage, is within the reach of the long arm of law and furnishes a good ground for annulment. Courts take into consideration, in any enquiry as to the existence of fraud, the capacity, the age and the mental condition of the party which is the victim of fraud, coercion etc.

34. In *Brijender Bir Singh vs. Mst.Vinod alias Parinder*: AIR 199.P&H 42.while deciding an appeal challenging dismissal of petition filed for annulment of marriage under section 12(1)(c) of the Act, it has been held that it is not necessary that consent is obtained by practicing fraud at the time of solemnization of marriage. It is enough if it was obtained even at earlier stage.

35. Considering the totality of evidence on record including the age of respondent at the relevant time, the finding of the learned ADJ that the consent of respondent for marriage was not free and same was obtained by force and coercion cannot be said to be perverse. On the basis of evidence, the learned ADJ has rightly annulled the marriage. No illegality or perversity is seen in the impugned order. The appeal stands dismissed. There is no order as to costs. VEENA BIRBAL, J
January 30, 2013 ssb/kks

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