

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Misc. App. No.13004/2009 in WP (Crl.) No.551/2009**

Date of Decision: 28th February, 2011

SANGEETA & ANR. Petitioners
Through Mr.Vijay Aggarwal, Advocate for P-1

versus

STATE & ORS. Respondents
Through Mr.Ajay Mehrotra with Mr.Ajeya Bhardwaj
advocates for petitioner no.2
Mr. D. Mudgil, Advocate for Respondent
Nos.3 & 4.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J

Crl. Misc. App. No.13004/2009

1. The present application has been filed under Section 482 of the Code of Criminal Procedure by Smt. Sangeeta, petitioner no.1 in the writ petition praying for recall of the order dated 19th August, 2009 passed by this court on the ground that the same was obtained under fraud.

2. The application is premised on the contention that the writ petition was a result of fraud played on this court by the respondent no.2 and his family. The applicant has stated that on 22nd April, 2009, in order to get the FIR registered by the police against the petitioner no.2 quashed, she was taken away by him with his relatives to the office of the Registrar (Hindu Marriage), Pauri Garhwal, Uttarakhand and a marriage was registered after preparing false and forged documents. The petitioner states that her signatures on several documents were taken by putting her in the fear of

death by the petitioner no.2.

3. Certain essential background facts giving rise to the present petition deserve to be noticed before considering the contentions of the parties.

4. The writ petition was filed by the applicant Smt. Sangeeta as petitioner no.1 along with her husband Sh. Pankaj Dutt as petitioner no.2.

These petitioners had inter alia averred as follows:-

(i) Ms. Sangeeta, petitioner no.1 was born on 31st January, 1982. She thus attained majority in the year 2001.

(ii) The petitioner no.1 was not only a major but was well educated. In the year 2007, Sangeeta had passed her post-graduation in Hindi. She was able to understand the concept of freedom of personal liberty and her fundamental right to live with dignity.

(iii) In para 3 of the writ petition, Ms. Sangeeta had stated that she had got ample opportunity to know and understand the habit, nature and character of the petitioner no.2. She believed the petitioner no.2 to be a good human being having a sense of morality and ethics.

(iv) In para 5, the petitioners had stated that they were acquainted with each other as they were residing in the same locality and maintaining good relations. The petitioner no.1 had decided to marry the petitioner no.2 as she considered her better future prospects and understood the petitioner no.2 as a good and responsible human being.

(v) The writ petitioners stated that Ms. Sangeeta had got knowledge that her father Shri Raj Bahadur, respondent no.3 was planning to marry her to someone else. She was not satisfied with

her father's plan to marry her to a person whom she did not like. Ms. Sangeeta was convinced that her father would never agree and allow her to marry petitioner no.2. She, therefore, decided to leave her parental house with free will and firm determination.

(vi) On 20th April, 2009, the petitioner no.1 had left her parental home. The petitioner no.1 could not get opportunity to collect her educational certificates as they had been withheld by her father.

(vii) The petitioner no.1 married petitioner no.2 on 27th April, 2009 in accordance with Hindu rites and ceremonies at the Arya Samaj Mandir, near Pataleswhar Mahadev Mandir, Civil Lines, ISBT, Delhi – 110 054. It was categorically averred that both the parties fulfilled the requirement of law and consequently, a legal, valid and lawful marriage was solemnized between them on this date.

(viii) In para 6 and elsewhere of the writ petition, Sangeeta had made a categorical statement that she gave her free consent and she was not forced and threatened by anybody else. Sangeeta had confirmed that she had sworn an affidavit disclosing the fact that she was a major and disclosed her intention to marry the petitioner no.2 of her own free will and consent.

A photocopy of the marriage certificate dated 27th April, 2009 and photographs were placed on record along with the writ petition.

(ix) The writ petition also states that Shri Raj Bahadur-Sangeeta's father arrayed as respondent no.3, was working as an Assistant Sub Inspector in the Delhi Police and posted at the Police Station Palam at that time.

(x) Because of such opposition on the part of her father Shri Raj

Bahadur, respondent nos.3 and brother Shri Ravi, respondent no.4 and apprehending threat to life and liberty, on the 27th of April, 2009 itself, the petitioner no.1 has lodged a detailed hand written complaint in Hindi with the police station Palam. A copy of this complaint has been placed on record by the petitioner with the writ petition.

(xi) In the meantime, a complaint was lodged by Smt. Sangeeta's brother Ravi Kumar, respondent no.4 herein with the police station Palam on 20th April, 2009 alleging that his sister had been abducted/kidnapped by Pankaj Dutt, son of Tara Dutt. This complaint was registered as FIR No.147 on the 20th April, 2009 at the police station Palam.

(xii) Learning about the registration of the case by the police station, the petitioners were apprehensive of threat and danger from the respondent nos.3 & 4. The writ petitioners stated that the police was acting in connivance with the respondent no.3 and had visited the house of the family members of the petitioner no.2 and threatened and harassed them ; and that the petitioners apprehended danger to their lives and liberty at the hands of respondent no.3. It was stated that efforts of the petitioners to pacify the respondent no.3 were not successful and that he was hell bent to harass and threaten the petitioner.

(xiii) In ground (F) of the writ petition, the petitioner no.1 has reiterated the above assertions and stated that she left the house of her parents with her own free will and firm determination. She has further stated that she had a dream to live a peaceful and dignified life with the petitioner no.2 and with her planning of a

better future, she left her house and joined the company of petitioner no.2. The petitioner no.1 being able to understand the personal liberty and dignified life, vehemently opposed the plan of respondent no.3 getting her married to someone else.

The petitioner no.1 has categorically that she is fully mature and is able to decide about her marriage and has voluntarily entered into marriage with the petitioner no.2. There is a categorical assertion that the petitioner no.2 has not committed any offence in the eyes of law and that any complaint or FIR, if any registered against the petitioners, was liable to be quashed.

(xiv) The petitioners complained of connivance between the police and the respondent no.2 to 4 in the writ petition. It is stated that on the basis of a wrong and false complaint/FIR, the fundamental rights of the petitioner to live a peaceful and dignified life have been violated.

5. In this background, the writ petition was filed on or about 29th/30th April, 2009 seeking the following directions :-

“(i) issue urgent directions, directing the respondents police to take necessary steps preventing the respondent No.3 & 4 from threatening or causing any harm to the petitioners

(ii) issue urgent directions directing the respondent police to take necessary steps towards the protection of the petitioners.

(iii) to quash FIR/complaint, if any, registered against the petitioners at the false and fabricated allegations of respondent No.3 & 4.”

6. The writ petition came up for the first time on **1st May, 2009** before Reva Khetarpal, J when the following orders were recorded:-

**“The petitioners are present in Court today.
The petitioner No.1 states that she has of her own**

free will and accord married the petitioner No.2 in accordance with Hindu rites and ceremonies and that she has long ago attained the age of majority.

Notice. The learned Additional Standing Counsel for the State accepts notice on behalf of the respondent No.1 & 2. Notice shall now issue to the respondents No.3 & 4, on the petitioners taking the necessary steps, returnable for 24th July, 2009.

List on 24th July, 2009. In the meanwhile, the Station House Officer of the concerned Police Station shall look into the matter and take adequate measures in accordance with law.

A copy of this order be given dasti to the counsel for the petitioners as prayed.”

(Emphasis supplied)

7. On 24th July, 2009 which was the next date of hearing, Shri Raj Bahadur-respondent no.3 and Shri Ravi Kumar, respondent no.4 were present in person. They informed the court that they had not met the petitioner no.1 since 20th April, 2009 and wanted to be only satisfied about her welfare. In this background, the petitioners were directed to remain present on the next date of hearing, the 19th August, 2009. Interim orders prohibiting the police from arresting the petitioners in FIR No.147/2009 were also made.

8. It is noteworthy that the parental and matrimonial home of the parties is within the jurisdiction of police station Palam which is the very police station where the respondent no.3's father of the petitioner no. 1 was posted.

9. The SHO of the police station filed a Status Report dated 21st July, 2009 in the writ proceedings. No allegations against petitioner no. 2 or his family find mention in this status report filed by the police. The SHO in this report has confirmed receipt of the intimation dated 27th April, 2009 from Smt. Sangeeta through post by the police station vide diary no.22891 on 28th April, 2009. The same has been placed on record by the police. The report is handwritten in hindi. Some material statements in this complaint

also deserve to be considered in extenso and are briefly summed up hereafter:-

- (a) On 20th April, 2009, Sangeeta left her home voluntarily without any pressure.
- (b) Her family members had knowledge that she was romantically involved with Pankaj Dutt, son of Tara Chand who was a resident of the same colony and wished to marry her. Her family members were opposed to this relation and wanted to get her married elsewhere.
- (c) Sangeeta had voluntarily without any pressure, married Pankaj Dutt on 27th April, 2009 as per Hindu rites and ceremonies at Arya Samaj Mandir, Civil Lines, Delhi.
- (d) Sangeeta was very happy and wanted to reside with her husband. Photocopy of the marriage certificate was enclosed.
- (e) In case any complaint was lodged by any member of the family, the police should not take any action thereon. The police should act to protect her husband and in-laws from any hardship. In case any damage is occasioned to the petitioners or her in-laws, her family members would be responsible for the same.

10. The petitioners as well as respondent nos.3 & 4 were present in person with counsel in court on 19th August, 2009. After hearing the parties as well as counsels, the following order was recorded :-

“1. Petitioner nos. 1 and 2 are present.

2. Sh. Raj Bahadur and his son Sh. Ravi, respondent nos. 3 and 4 are present in court. It is stated by Mr. Raj Bahadur that the petitioner no. 1 has left the house without any information to the family and that in this background, he was constrained to lodge a complaint.

3. The respondents have filed a status report stating that on a complaint dated 20th April, 2009 received from Sh. Ravi, respondent no. 4 herein FIR No. 147/09 was registered by the police station Palam Colony under section 365 of the Indian Penal Code. Investigation of the complaint is underway.

4. During the pendency of the investigation, information was received vide diary no. LC 891 dated 28th April, 2009 from Ms. Sangeeta, the petitioner no. 1 herein to the effect that she had got married to the petitioner no. 2 and that she had left the house at her own will and without any kind of force or pressure. The petitioner no. 1 had also stated that she was born on 31st January, 1982 and was a post-graduate in Hindi and has married petitioner no. 2 in accordance with Hindu rites and ceremonies on 27th April, 2009. She had prayed that no action be taken on the complaint of her family members

against her husband and in-laws.

5. The petitioner nos. 1 and 2 have been examined in court. The petitioner no.1 states that she is presently aged about 27 years and is a post-graduate in Hindi. She has stated that she has also been working as a language teacher in the past. A further submission is made by her that she had married the petitioner no.2 of her own volition and that she left the house of her father of her own will. The petitioner no.1 submits that she wants to continue to cohabit with the petitioner no. 2.

6. The petitioner no.2 confirms the fact of the marriage and also the fact that the petitioners are cohabiting as husband and wife. An apprehension has been expressed of danger to life and property of these petitioners on account of actions of the respondent nos. 3 and 4.

7. The respondent no. 4 has however disputed that they have in any manner threatened or endangered the lives and properties of the petitioners and have submitted that they have no contact at all with the petitioners since 20th April, 2009.

8. In view of the above, it would appear that the petitioner no. 1 is a major who is well educated and has voluntarily left the house of her father on 20th April, 2009 to join the petitioner no. 2 and get married to him. The petitioners have been cohabiting as husband and wife ever since. Proof of the marriage by way of a marriage certificate issued by the Arya Samaj Mandir at Civil Lines which is dated 27th April, 2009 has been enclosed with the petition and placed before this court.

In view of the above, certainly a case under section 365 of the Indian Penal Code is not made out in the given circumstances.

9. So far as the apprehension of the petitioners with regard to threats and danger to their lives and property by the respondent nos. 3 and 4 are concerned, it is stated by these respondents that they were concerned about the welfare and well being of the petitioner no. 1 who had gone missing from their house. In view of her marriage, they are not interested in prosecution of the complaint which was lodged by the respondent no. 4. These respondents submit that they have not done any act which could be perceived as a threat or danger by the petitioners nor have any intention to do any such action in the future.

In this background, certainly the apprehension which has been expressed by the petitioners are misconceived and unfounded.

In view of the above facts and circumstances, it is directed that all proceedings arising out of FIR No. 147/09 was registered by the police station Palam Colony under section 365 of the Indian Penal Code shall stand quashed.

However, in case of receipt of any complaint from any of

the parties the police shall proceed in the matter in accordance with law.

This petition is disposed of in the above terms.”
(Emphasis supplied)

11. The police placed before this court a copy of the FIR No.147/2009 recorded by the police station Palam on the said complaint made by Shri Ravi, respondent no.4 herein. Perusal thereof would show that the complainant has stated that he had received information from a neighbour to the effect that Pankaj Dutt, petitioner no.2 had forcibly taken Sangeeta from their house. Shri Raj Bahadur, respondent no.3 had explained before this court on 24th of July, 2009 as well as on 19th of August, 2009 that the complaint was lodged because the petitioner no.1 had left the house without any intimation to the family.

12. The respondents had appeared in person in court and stated that concern for the welfare and well being of the petitioner no.1 had guided their action in lodging the complaint and that in view of her marriage to the petitioner no.2, they were not interested in prosecution of the complaint lodged by the respondent no.4. They had reiterated that they had done no act which could be perceived as threat and danger to the petitioners and that they had no intention to do any action in future.

13. It is noteworthy that the petitioner no.1 & 2 and the respondents were examined at length in the proceedings on 19th August, 2009 and the order was recorded after carefully hearing all the parties in person. This court was completely satisfied that the statements made in the writ petition and before this court were uninfluenced, voluntary and not the result of any kind of force or pressure of any kind.

14. In view of the above submissions made by the parties, it was apparent that the FIR had been registered on a complaint which was registered on unsubstantiated facts necessitating the order dated 19th August, 2009

directing quashing of proceedings arising out of FIR No.147/2009.

15. In support of the contention that this court is adequately empowered to review its own order, learned counsel for the applicant places reliance on the pronouncement of the Supreme Court reported at **(2006) 7 SCC 416 Hamza Haji vs. State of Kerala & Anr..** This case arose in the context of adjudication under the Kerala Private Forests (Vesting and Assignment) Act, 1971 in a writ petition under Article 226 of the Constitution of India. In this case, the Supreme Court held that the appellant played a fraud on the court by holding out that he was the title holder of the application schedule property and that he intended to cultivate the same, while procuring the order for exclusion of the application schedule lands. It was not a case of an appellant merely putting forward a false claim or obtaining a judgment based on perjured evidence but was suppression of the most vital fact and the founding of a claim on a non-existent fact which was done knowingly and deliberately with the intention to deceive. The court held that this was a case where on a fundamental fact of entitlement to relief, the appellant had deliberately misled the court by suppressing vital information and put forward a claim which was false to his knowledge and which he knew had no basis either in fact or in law. In this view of the matter, the Supreme Court laid down the principle that a party who had secured a judgment by fraud should not be enable to enjoy the fruits thereof.

16. Learned counsel for the applicant also places reliance on the pronouncement of the Andhra Pradesh High Court reported at **AIR 1980 AP 149 P. Satyanarayana vs. The Land Reforts Tribunal & Ors.** This judgment has been pronounced in the context of Rule 1 of Order 4 and Sections 114, 151 of the Code of Civil Procedure. It specifically records that no court or tribunal can review its own order or judgment unless there is

statutory provision to that effect but that the court or the tribunal has inherent powers to recall orders obtained by practicing fraud or misrepresentation on it.

17. It is now necessary to consider the contentions of the petitioner no. 1 that there was force or pressure or wrongful influence upon her by the petitioner no.2.

18. The petitioner no. 2 has challenged the contentions in the application. He categorically denies that he or his family have ever threatened or ill treated the petitioner no. 1 in any manner. He categorically denies that he has prepared any MMS or video clips of the petitioner no. 1. On the contrary during the course of hearing, the petitioner no.2 appears to be completely besotted with the petitioner no. 1 and nurtures no vengeance against her despite the allegations made by her in this application. It is submitted on his behalf that the application is misguided because of the influence upon the petitioner no.1 by her relatives. He repeatedly reiterates his sincere desire to resume his cohabitation with the petitioner no.1 as his wife.

19. The petitioner no.2 has explained that after the proceedings in court on 19th August, 2009, the petitioner no.2 was forcibly taken away from the court premises by the respondent no.3 and his relatives. He states that in view thereof, he was compelled to immediately call the police control room because of their actions and threats to him. As guided by the officials who came in the PCR van, the petitioner no.2 had immediately lodged the complaint on 19th August, 2009 with the police station Tilak Marg.

It is important to note that the petitioner no. 1 does not dispute the contentions of the petitioner no.2 and has opted not to file a rejoinder to his reply.

20. As against this, the petitioner no.1 has placed reliance on a complaint claimed to have been lodged by her in the evening of the 19th August, 2009 with the SHO of the police station Palam. This complaint has been lodged when the petitioner no.1 was admittedly after pre-meditation long after the court proceedings and under the influence of her family.

21. The complaint dated 19th of August, 2009 makes no reference to any threat by the petitioner no.2 on the 20th April, 2009 when she left her parents with regard to loading of any MMS clip on the internet. On the contrary, it refers an alleged threat given by the petitioner no.2 to the life of the Sangeeta's brother respondent no.4 herein.

22. So far as the alleged MMS recording is concerned, in the complaint dated 19th August, 2009, the complainant has referred allegedly to video clip prepared after the parties had got married which was alleged to have been used by the petitioner no.2 to keep her with him. There is no reference to any video clip before the marriage

23. The petitioner no. 1 had ample opportunity to express herself in court on 1st of May, 2009 as well as 19th of August, 2009 when she made no such grievances. Even after meeting her parents, no mention of any threat, ill treatment or apprehension against the petitioner no. 2 or his family was made in the court.

24. The petitioner's statement about her affair and close relationship with the petitioner no.2 prior to their marriage in the complaint dated 27th April, 2009 to the police and the writ petitioner is manifested from the several photographs including photographs of the parties taken on marriage and even in public places including at the India Gate and other parks. These exhibit that the petitioners knew each other very well. No element of threat, pressure, force and undue influence is suggested. The photos also

show that they were happy in each others company and also that they have been taken over a long period of time. The attire worn therein shows that the photographs have been taken in different seasons ranging from summer to winter whereas the period between April to August, 2009 is clearly summer. The petitioner no.1 appears to be clearly content and happy in her association with the petitioner no.2.

25. The petitioner no.2 has also placed a compact disc of a short film prepared by the parties of their outing which has been taken at the India Gate after the parties marriage. This film stated to have been made by the parties on a mobile phone has been saved on a compact disk ('CD' hereafter) was viewed in court in the presence of the petitioners as well as the respondent no.3 and counsel. The CD also supports the statement made by the petitioner no.1 in the writ petition as well as her communication dated 27th April, 2009 to the police station Palam to the effect that she was happy in her marriage. The CD shows the petitioner moving freely at the India Gate just as several other visitors who are incidentally also visible therein. It also shows that the petitioner no.1 has also filmed the petitioner no.2 in this outing. The petitioner no.2 has stated that this CD was mutually taken after their marriage and after the parties had visited the court for the filing of the writ petition.

26. The petitioner no. 1-Sangeeta has not suggested use of any kind of force or pressure by any person for the photographs or the CD. She has ventured not a whit of an explanation for the same.

27. The above narration shows that before this court in the writ petition the parties have relied only upon the marriage which was performed on the 27th April, 2009. The petitioner no.1 has made categorical statement in the affidavit dated 27th April, 2009 which was attested before the notary public

and filed by Sangeeta prior to marriage wherein she has clearly and unequivocally stated that she was unmarried at the time of deposition of such affidavit. The writ petition reiterates the same statement.

28. The relief sought by the petitioner is not premised on any contention that the marriage on 27th April, 2009 was never performed. Even in the present application, the applicant does not state that no marriage took place on 27th of April, 2009 or that the same was not legal or valid.

29. In answer to a query by the court, the petitioner no.1 informs the court that the parties had travelled more than 350 kms to Garhwal in public transport on the 20th April, 2009. The petitioner no.1 also states that the parties had travelled from the Anand Vihar ISBT. It was stated that the journey entailed travelling for more than ten hours. Judicial notice can be taken that the petitioner no.1 had ample opportunity to flee from the other side if she so wished.

30. So far as the alleged marriage or its registration on the 22nd April, 2009 at Pauri Garhwal is concerned, the same has not been mentioned even in the complaint dated 19th August, 1999 lodged by the petitioner no.1 with the SHO of the Police Station Palam Gaon. This mature, intelligent and educated petitioner no.1 has not explained her conduct after the 20th April, 2009 when such documentation or certification was prepared. On the other hand, she admits her signatures not at one place but according to her on several places on the documents she has chosen to file with the present application. The petitioner no. 1 was over 18 years and the documents reflect that there was no requirement of signature of any father or guardian if the bride was more than 18 years of age. The petitioner no. 1 was also unable to point out any statement of any party that they were residing at Garhwal for more than six months.

31. The petitioner no.1 had been freely moving around in public places, interacting with the pandit who performed the marriage; the members of the police force who were her father's colleagues ; notary public; oath commissioner; lawyers; fellow travellers in her trip to Uttaranchal; tourists at India Gate and has appearances before this court when no grievance as in this application were ever made. If the allegations of threat and coercion against the petitioner no.2 are correct, she certainly had ample opportunity to do so on 1st May, 2009 or 19th August, 2009 before this court.

32. The petitioner no.1 made no mention to the court nor lodged any complaint with the court authority or the nearest police station even on 19th of August, 2009 after joining her father and family when she was in their protection and there was no pressure on her. Her father is an experienced police officer. Clearly after consultation and in hind sight, a complaint was lodged in the evening of the 19th of August, 2009 that too at the police station Palam where her father had been posted. There is also no explanation as to why no action at all was taken by the petitioner after 19th August, 2009 till 5th October, 2009 when the present application was filed. The submission of fear and threats allegedly made by the applicant/petitioner no.1 in the present application are belied by her own complaint dated 19th of August, 2009.

33. It is noteworthy that the SHO of the police station was directed by this court on the 1st May, 2009 to look into the matter. On this date, Sangeeta's father-respondent no.3, is stated to have been an assistant sub-inspector posted with the same police station. The police is expected to have carefully examined the matter. Sangeeta's family does not dispute their submissions before this court on 24th of July, 2009 and 19th August, 2009. The status report dated 24th July, 2009 filed in this court under signatures of

the SHO of the police station is not challenged and it does not disclose any element of force, pressure or fraud in the conduct of the petitioner no.2, his family or the marriage between the parties.

34. The application has been filed by Sangeeta-petitioner no.1 on the bald allegation that she was compelled to make a statement on the 1st May, 2009 by the petitioner no.2 and his family. A similar allegation is made to explain her submissions on 19th August, 2009 before this court. It is further asserted that the applicant was under the impression that her family would not support her and that she was under mental trauma and pressure given by the petitioner no.2 and his family. On these bald assertions, the petitioner no.1 has stated that she was “forced to make such statement”.

35. In the body of the application, the petitioner no.1 has detailed what according to her are the “true facts”. In these facts, the petitioner no.1 makes an assertion that on 20th April, 2009, the petitioner no.2 had threatened her that he had video clips/MMS of the petitioner no.1 in a compromising situation which he could misuse and would upload over the internet if she did not accompany him. The petitioner no.1 states that she, therefore, accompanied the petitioner no.2 “under mental trauma and pressure”. Contradictorily in her complaint dated 19th of August, 2009, the petitioner no. 1 states that she accompanied the petitioner no. 2 because of his threat to the life of her brother.

36. It needs no elaboration that allegations of force, fraud and pressure have to be specific. Bald allegations unsupported by any other particulars even in the context of date and time deserve no credence. The conduct of the petitioner no. 1 before this court and otherwise do not support these contentions. After joining her family on the 19th August, 2009, the petitioner no.1 has improved on her explanations, each time she has filed

any complaint or document.

37. In the entire application running into 22 pages, the petitioner no.1/applicant does not even remotely suggest an explanation for the following:-

(a) An affidavit dated 22nd April, 2009 was filed by Sangeeta prior to her marriage. This affidavit bears her signatures and thumb impression and was duly attested before the notary public. This affidavit contains, inter alia, a categorical statement to the effect that the deponent/Sangeeta was unmarried; that she intended to marry Pankaj Dutt, of her free will and choice without any kind of undue pressure, coercion or force from any side; that after solemnization of such marriage, Pankaj Dutt would be her legal husband and she shall fulfill her duties and live with him.

(b) The marriage certificate dated 27th April, 2009 issued by such Arya Samaj Vavahik Trust contains the signatures and a thumb impression of the petitioner no.1. Apart from the signatures of the petitioner no.2, signatures of the pandit who performed the ceremonies as well as the two witnesses to the marriage are also to be found on this certificate.

(c) The detailed handwritten complaint dated 27th April, 2009 sent by the petitioner no.1 to the SHO of the police station Palam which gives the background to a marriage explaining her romantic attachment with the petitioner no.2; opposition of the respondent no.3 and family to their relationship and the intention of the respondent no.3 to marry her to somebody else. The petitioner no.1 has made a categorical statement that she was

very happy and wanted to live with her husband Pankaj Dutt, the petitioner no.2.

(d) The affidavits accompanying the writ petition and application were signed and duly attested before the oath commissioner of the High Court on 29th April, 2009.

(e) The detailed statement of the events and facts leading to the filing of the writ petition which have been set out hereinabove. The writ petitioner makes no reference to any marriage prior to 27th April, 2009. The petitioner no.1 reiterates repeatedly the fact that she had voluntarily left her parents' home on 20th April, 2009 and so married the petitioner no.2 and that there was no force, pressure or undue influence of any kind for any of the actions.

38. A completely inconsistent plea has been taken at different places by the petitioner. At one place, she has complained that she was in the fear of death while at others, she refers to her actions being a result of threat to her brother's life. At other places, a reference to a MMS is made while at yet another place, a reference to a video prepared after marriage has been suggested. At other places, general allegations that she was forced by the petitioner no. 2 and family to make statements have been made.

39. The conduct and allegations of the petitioner has to be evaluated against the social background and educational qualification of the parties. The petitioner no.1 states that she was born on the 31st of August, 1982 and had completed 27 years of age at the time of her marriage as against her husband petitioner no.2 who was younger to her and was then aged only about 23 years. It is also admitted by and on behalf of the petitioner no.1 before this court that while the petitioner no.1 had completed her post

graduation in Hindi and had also been employed as a teacher, the petitioner no.2 was not so educated or well placed.

40. It now becomes necessary to note an important fact which Sangeeta, petitioner no.1 had admitted in court during the course of hearing of the present application. On 19th August, 2009 when the parties had appeared before the court, efforts were made to reconcile ties between the petitioner no.1 and her family members. Smt. Sangeeta-petitioner no.1 was aggressive in her opposition to having anything to do with her father - the respondent no.3 or her mother and brother. On 19th of August, 2009, she was categorical in her submission that she did not even want to meet her relatives because of their opposition to the marriage. She had reiterated her earlier statement made on 1st of May, 2009 that she was happy in her matrimonial home. It was with difficulty that she agreed to even meet them. Sangeeta was present in court on 8th of October, 2010 when this application was heard, she admitted these facts and also the fact that she had a protracted meeting immediately after the hearing with the respondent no.3 and her family on 19th of August, 2009 in court. It is evident that the present application is clearly a result of a change of heart on the part of the petitioner no. 1 after such meeting.

41. On 19th of August, 2009, there was not even the remotest hint of what has come to pass after the hearing or all that is stated in this application. The petitioner no. 1 is admittedly much older than the petitioner no. 2 and she has the strength of her education and work experience behind her. Even otherwise, she has been articulate and confident with a strong streak of obstinacy in her court appearances on 19th August, 2009 and during the pendency of this application. She has on no occasion till date displayed any element of fear or nervousness or pressure of any kind.

The allegations of threat by the petitioner no.2 or any fear in the mind of the petitioner no.2, which have been made more than six months thereafter inspire no confidence and on their face are incredulous for the detailed facts and circumstances noted hereinabove.

42. The conduct of the petitioner no.1 subsequent to her leaving parents house on the 20th April, 2009 and even before the court on 1st May, 2009 & 19th August, 2009 clearly shows that the petitioner no.1 was voluntarily party to every action relating to her relationship with the petitioner no.2 and the actions she is complaining against in this application. In this background, in case it is to be held that any fraud was played before this court in filing of the writ petition, the petitioner no.1 would clearly be a party to the same and in case action was required to be taken in respect of any fraudulent conduct, the same would be necessitated against her as well.

43. So far as the writ petition is concerned, the same was limited to the grievance that an FIR was registered on a complaint made by respondent no.4 which was completely unwarranted. It is important to note that the respondent no.4 who had lodged the complaint, has made no grievance at all with regard to the proceedings in the writ petition or the order which was recorded on 19th August, 2009 at any point of time. The respondent no. 3 has similarly also made no complaint or grievance.

44. No legal proceedings have been initiated in respect of the marriage performed on the 27th of April, 2009. On the contrary, the marriage performed on 27th of April, 2009 is reiterated not only in the writ petition but also in the present review petition which is under consideration. It is an admitted position that this marriage subsists on date.

45. No litigation has intervened after the passing of the order dated 19th

August, 2009 till the present application was filed on or about the 5th October, 2009.

46. Social existence necessitates nurturing of all bonds and relationships. In cases as the present, it is in the interest of the parties that the bonds of parents and siblings with the petitioner no. 1 be restored. A court seized of such cases has an onerous duty in this regard.

47. The petitioner no. 1 had established new ties of matrimony with the petitioner no. 2, her new family and clearly expressed her happiness and satisfaction with them. Clearly the marriage was a result of a previous long standing relationship between the parties.

48. It had seemed essential for this court to encourage a rapprochements and the conciliation inasmuch as the father – respondent no. 3 and his family had expressed acceptance of the marriage and therefore healing of the expressed hurt of the petitioner no. 1 upon their opposition to the marriage seemed to be in the larger interest of the family.

49. Before parting with the case, I am compelled to record my anguish on the unfortunate turn of events as a result of the meeting which this court had permitted after closure of the proceedings on 19th August, 2009. Had I foreseen such course of events, this court would have let the matter lie after recording the order. But the sincere effort to end acrimony between parents and a daughter has resulted in two young lives being put at stake as a result of what is obviously the outcome the meeting on 19th August, 2009.

50. It needs no elaboration that there is no statutory power of review under the Code of Criminal Procedure. The applicant has relied on the principles laid down in the afore-noticed judgments to press the present application. It is trite even on the principles laid down, inherent power of

recalling a judicial order would be sparingly used that too in a gross case. Mere change of heart qua a relationship by a co-petitioner is certainly not a legally valid or sufficient ground for recall of the order dated 19th of August, 2009. Even if it were permissible, the petitioner no.1 was equally a party to all actions complained of and as such the present proceedings are mala fide and misconceived.

51. No material has been placed before this court to arrive at a conclusion that there is any error in recording of the order dated 19th August, 2009.

I, therefore, find no merit in this application which is hereby dismissed. There shall be no order as to costs having regard to the relationship of the petitioners.

GITA MITTAL, J

February 28, 2011
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