

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 28.02.2011
Judgment delivered on: 08.04.2011

MAT.APP.13/2009

FAHEEM AHMED Appellant
Through: Mr.S.C.Sagar, Advocate.

Versus

MAVIYA @ LUXMI Respondent
Through: Mr.Dharmendra Kumar Vashishta,
Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. By this appeal filed under Section 39 of the Special Marriage Act, 1954, the appellant seeks to challenge the judgment and decree dated 18.11.2008 passed by the learned trial court, whereby the petition filed by the

respondent under Section 24(2) of the Special Marriage Act was allowed.

2. Brief facts of the case as set out in the petition relevant for deciding the present appeal are that the parties were friends since college days and were also subsequently classmates, pursuing a course together at the Gems Craft Jewellery Institute, Lajpat Nagar, New Delhi. As per the case of the respondent, she wanted to get the membership of the library in Jama Masjid and on the assurance of the appellant in helping her get the same, he persuaded her to convert to Islam for this purpose. That for this purpose, the respondent signed and executed certain documents which the appellant claimed to be the registration of marriage and conversion certificate and that by virtue of those the respondent became his wife. The respondent hence preferred a petition under section 24(2) of the Special Marriage Act, 1954 for having the registration of the marriage declared to be of no effect which vide judgment and decree dated 18.11.08 was decreed in

favour of the respondent. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Assailing the impugned judgment and decree, Mr.S.C.Sagar, learned counsel appearing for the appellant submitted that the learned trial court committed a jurisdictional error in entertaining the suit of the respondent under Section 24(2) of the Special Marriage Act. The contention of counsel for the appellant was that the said suit at best could have been treated by the learned trial court under Section 25 (iii) (a & b) of the Special Marriage Act, for which the prescribed period of limitation is one year from the date of the alleged discovery of fraud by the respondent and reckoning the said period of one year from the date of the registration of the marriage i.e. 28.11.2005, the said suit filed by the respondent on 08.05.2007 was clearly barred by time. Counsel for the appellant further submitted that the learned trial court ignored the documentary evidence which was proved on record by the appellant to prove the conversion of the respondent from Hindu religion to Muslim religion and

also solemnization of the marriage between the parties according to Muslim religion. The contention of counsel for the appellant was that the conversion affidavit dated 22.11.2005 was duly proved on record by the appellant vide Ex.PW-1/R-9, *Nikahnama* as Ex.PW-1/R-11 and public notice about the change of name of the respondent from Luxmi to Maviya vide Ex.PW-1/R-21. Counsel for the appellant further submitted that even a complaint in writing dated 09.02.2007 Ex.PW-1/R-12 was addressed by the respondent to the SHO, P.S. Gandhi Nagar wherein she had disclosed the fact of her marriage with the appellant and sought her safety from her parents. Counsel thus contended that these vital documents could not have been ignored by the learned trial court which clearly establishes the factum of conversion as well as the marriage between the parties. Counsel for the appellant further argued that the respondent is a well-educated lady and she fell in love with the appellant and voluntarily came forward to agree for the conversion as well as for the said marriage according to Muslim customs. Counsel further

submitted that all the said facts were well within the knowledge of the parents of the respondent and the same were duly established during the cross-examination of the witnesses produced by the respondent. Counsel for the appellant further submitted that no suggestion was given by the respondent in the cross-examination of the appellant who examined himself as RW-1 to suggest that he forced the respondent for the said conversion from Hindu to Muslim religion or even any fraud was played by him upon the respondent to seek registration of the marriage. Counsel for the appellant also submitted that the said marriage was duly proved on record by the appellant through the evidence of RW-2 Mr.Sadakat Ali, who witnessed the said marriage between the parties. Counsel also submitted that the registration of the marriage was also proved by the respondent herself through the evidence of PW-4 Ajit Kumar, Steno, Additional District Magistrate Office, Saket. Counsel for the appellant further submitted that no evidence was adduced by the respondent to prove the alleged fraud on the

part of the appellant or on the part of the staff of the Registrar of Marriages which could establish any kind of fraud being played by them upon the respondent. Counsel also submitted that the suit filed by the respondent was not maintainable on account of non-impleadment of the Registrar of Marriages as a party. Counsel also submitted that the respondent did not file any objection under Section 8 read with Section 16 of the Special Marriage Act and in the absence of the same, the registration of the marriage could not have been challenged by the respondent.

4. Based on the above submissions, counsel for the appellant submitted that the appellant successfully proved on record the conversion of the respondent from Hindu religion to Muslim religion and also the registration of the marriage in accordance with Section 15 of the Special Marriage Act and in the face of the documentary and oral evidence led by the parties there was no room for the learned trial court to have disbelieved the defence of the appellant and thus there is a clear illegality and perversity in the findings given by the

learned trial court and hence the impugned judgment deserves to be set aside.

5. Counsel for the respondent, on the other hand, supported the findings of the learned trial court but, however, took an exception to the finding arrived at by the learned trial court holding that the respondent wanted to convert her religion from Hinduism to Islam. The contention of counsel for the respondent was that the learned trial court inadvertently overlooked the facts proved on record by the respondent to establish the fact that as to how the appellant had taken undue advantage of his proximity with a gullible girl from whom the appellant got signed various papers. Counsel for the respondent further submitted that the respondent-petitioner had correctly filed the petition under Section 24(2) of the Special Marriage Act and not under Section 25(iii) (b) of the Act, as the case set up by the respondent was that she had never married the respondent and the marriage registration certificate was obtained by the appellant in violation of the conditions specified in Section 15(a) of the

Special Marriage Act. Counsel for the respondent also submitted that since the respondent had filed the petition under Section 24(2) of the Special Marriage Act, therefore, the bar of limitation of one year would not arise in the present case. Counsel for the respondent further submitted that there was no legal requirement to implead the Registrar of Marriages as a party to the suit under the High Court Rules and, therefore, the objection raised by the appellant in this regard is not tenable.

6. On merits, counsel for the respondent re-asserted that the respondent had never changed her religion from Hinduism to Islam as she neither had any faith in Islam nor had she given her free consent to undergo the said change of religion. Counsel thus submitted that once the respondent had not changed her religion, therefore, there is no marriage which can be said to have taken place between the appellant and the respondent under the Special Marriage Act.

7. I have heard the learned counsel for the parties at considerable length and gone through the records.

8. Based on the pleadings of the parties, the learned trial court framed the following issues:-

- (1) *Whether there was no valid conversion of the petitioner from Hinduism to Islam? OPP*
- (2) *Whether there was no proper solemnization of marriage between the parties? OPP*
- (3) *Whether the parties after the alleged marriage and before its registration did not live together as husband and wife? OPP*
- (4) *Whether the registration of the marriage of the parties was in contravention of the condition specified in Section 15(a) of the Special Marriage Act, 1954. If so its effect? OPP*
- (5) *Whether the registration of the marriage has been obtained by fraud? OPP*
- (6) *Relief.*

9. In support of her case, the respondent-petitioner examined herself as PW-1 and she had also examined PW-2 Mr.R.K.Singh, Nodal Officer, Bharti Airtel Ltd., who proved on record the call records of the mobile phone of the respondent as Ex.PW-2/1 and of the appellant as Ex.PW-2/2. PW-2 also proved on record the Site ID chart (Tower location) of the appellant's mobile phone as Ex.PW-2/3. The respondent also examined her father Mr.Pitamber Dutt Bhadri as PW-3, Mr.Ajit Kumar, Stenographer from the Office of the Additional

District Magistrate Office, Saket, New Delhi as PW-4. The respondent also examined her brother Mr.Binod Bhadri as PW-5 and her friend Ms.Arti Mishra as PW-6. The appellant on the other hand examined himself as RW-1 and his friend Mr. Sadakat Ali as RW-2.

10. On issue No.1, the learned trial court did not believe the story set up by the respondent that to get the membership of the library in Jama Masjid, she had agreed to convert herself to Islam. The learned trial court in para-25 of the impugned judgment has observed that it is too incredible to believe that a city bred and educated girl of 21 years would fall for the alleged bait of a library membership to convert her religion. The learned counsel for the respondent raised a dispute about the said finding of the learned trial court on the ground that the learned trial court totally failed to appreciate the evidence produced by the respondent to prove the fact that she was entrapped by the appellant to sign and execute some documents without coming to know about the sinister plans of the appellant.

11. Without going into some of the discrepancies pointed out by the learned counsel for the respondent in the findings of the learned trial court on issue No.1, I do not find any perversity in the reasoning given by the learned trial court to disbelieve the story put forth by the respondent that for taking some membership in a library in Jama Masjid she agreed to convert herself from Hinduism to Islam. The learned trial court rightly observed that the claim of the respondent to convert herself to Islam just for the sake of a library membership has to be tested in the light of the background, education and also the relationship which she shared with the appellant. The respondent had also not disclosed the name of the library in Jama Masjid where she wanted to seek the membership. She also admitted the fact that she had neither seen that library nor she had signed the library membership form to seek membership for that library. The court also found that even post conversion, no attempt was made by the respondent to seek membership of any such library. The conversion from one religion to another has to be

very well thought and serious decision in one's life and it is hard to believe that one would change her religion just for the sake of seeking a library membership. The said version of the respondent also gets demolished from the admitted fact that there was a serious love affair between the respondent and the appellant and it appears that the respondent with a view to find an escape route, not only from the said relationship but also from her immature decision to get herself converted from Hinduism to Islam, devised the said theory of seeking membership in some library of Jama Masjid. I, therefore, do not find any infirmity in the said finding of the learned trial court holding that the claim of the respondent that she was fraudulently made to undergo conversion ceremony for the sake of library membership cannot be believed.

12. So far the question of conversion of the respondent from Hinduism to Islam is concerned, the learned trial court has returned a finding against the appellant. As per the defence raised by the appellant before the learned trial court, the respondent converted herself to Islam by executing an

affidavit dated 22nd November, 2005 which was duly attested by the SDM and the Notary. The appellant has further taken a stand that after the said attestation, the respondent had appeared before the Qazi for the issuance of the conversion certificate and on the conversion certificate, the respondent herself in her own handwriting stated the fact that she had converted her religion by her own sweet will and without any sort of pressure upon her in signing the same. For better appreciation of the controversy, the said declaration made by the respondent on the conversion certificate Ex.PW-1/R-10 dated 28.11.05 is reproduced as under:-

"I Luxmi D/o Mr. Pitamber Dutt r/o GB-51 Pul Pehlad Pur New Delhi-44 am giving my statement on oath that I am a major and my date of birth is 01.01.1984. I can understand what is good and bad for me. The law and society allows me to adopt any religion of my choice. I have seen a lot of goodness and qualities in Islam and being impressed with the same with the help of Allah and of my own will without any force or coercion or greed have become a Muslim and I have kept my islami name Maviya. In future I should be called by the said name. I have written these words so that the same may be remembered and used at the time of need, so also because my

mother, father and relatives do not initiate any legal proceedings against me”.

13. In the affidavit which was proved on record as Ex.PW1/R9, the respondent has deposed that as she was impressed with Islam religion, she had adopted the same of her own sweet will, consent and without any pressure and also changed her name from Luxmi to Maviya. The relevant para 3 of the said affidavit is also reproduced as under:-

“3. That I have embressed in Islam and I have adopted Islamic religion with my own sweet, will, consent and without any pressure, threat or coercion from any corner and also changed my name from Laxmi to MAVIYA, henceforth I shall be known as Maviya in future in all respects.”

A bare perusal of the aforesaid declaration given by the respondent on the conversion certificate and on the affidavit filed by her before the Qazi, manifestly shows that the respondent never had the true, honest and genuine intention of converting herself from Hinduism to Islam religion. Nowhere the respondent has stated that she was converting herself from Hinduism to Islam religion because she

professed faith in Islam religion or she had started following the tenets of Islam religion in her day-to-day life. She has also nowhere stated that she took a conscious and well-thought out decision to renounce Hindu religion. It also cannot be lost sight of the fact that the appellant failed to produce the Qazi who could have been the best witness to prove the fact of conversion undergone by the respondent and withholding of such a material witness by the appellant further strengthens the case of the respondent that such a conversion was a mere farce. In the background of the aforesaid facts, this Court does not find any infirmity in the finding of the learned trial court taking a view that the respondent converted herself to Islam religion just with a view to get married to the appellant, the marriage which was not acceptable to the family of the respondent.

14. India is a secular country and under Article 25 of the Constitution of India, right has been given to every citizen to profess, practice or propagate any religion. The cherished ideal of secularism which is the hallmark of our Constitution

has been expressly recognized under the said Article 25 of the Constitution of India. The Constitution does not put any kind of embargo on the right of any person to freely choose any religion he or she so likes or the religion which one is to adopt and practice in his or her life. It is well-settled that freedom of conscience and right to profess a religion implies freedom to change his or her religion as well. The Constitution of India does not define the word 'religion' and rightly so, as the framers of the Constitution could not have perceived to give any exhaustive definition of 'religion'. The meaning of word 'religion', however, has been discussed in number of judgments of the Supreme Court and it would be appropriate to refer the judgment of the Constitution Bench in the case of ***S.P. Mittal v. Union of India AIR 1983 SC 1*** where the Apex Court had an occasion to discuss the concept of religion at great length. The relevant paras of the same are reproduced as under:-

"In order to appreciate the contentions of the parties, it is necessary to know the implication of the words "religion" and "religious denomination". The word "religion" has not been defined in the

Constitution and indeed it is a term which is hardly susceptible of any rigid definition.

77. *The expression "Religion" has, however, been sought to be defined in the Words and Phrases, Permanent Edn., 36-A, p. 461 onwards, as given below:*

"Religion is morality, with a sanction drawn from a future state of rewards and punishments.

The term "religion" and "religious" in ordinary usage are not rigid concepts.

'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character, and of obedience to his will.

The word 'religion' in its primary sense (from 'religare', to rebind, bind back), imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion.

'Religion' is bond uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.

'Religion' has reference to man's relation to divinity; to the moral obligation of reverence and worship, obedience, and submission. It is the recognition of God as an object of worship, love and obedience; right feeling toward God, as highly apprehended.

'Religion' means the service and adoration of God or a God as expressed in forms of worship; an apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the Orient; a particular system of faith or worship.

The term 'religion' as used in tax exemption law, simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets or belief, the content of such belief being of no moment.

While 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and the term, 'a

religious purpose', as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for public worship.

'Religion' is squaring human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'. The term 'religion' has reference to one's views on his relations to his Creator, and to the obligations they impose of reverence for His being and character and obedience to his will.

The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

78. *These terms have also been judicially considered in Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt¹ where in the following proposition of law have been laid down:*

"(1) Religion means 'a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being'.

(2) A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

(3) Religion need not be theistic.

....."

Hence, the word `religion' used in Articles 25 and 26 of the Constitution of India must be construed in its strict and etymological sense. It is a matter of personal faith and belief

of personal relations of an individual with what he regards as his Maker, Creator or Cosmos and which he believes, regulates the existence of insentient beings and the forces of the Universe.

15. The issue of religious conversion has come before the Apex Court and various High Courts time and again and the courts have tried to evolve judicial principles for discerning the genuine conversions from the feigned ones. It would be useful to refer to some of the landmark decisions in this regard here, one of the earliest being the judgment of the Bombay High Court in ***Dr. Abdur Rahim Undre vs. Smt. Padma Abdur Rahim Undre AIR 1982 Bombay 341*** , which was also referred to by the learned trial court wherein it was held that:

"27. It is a well known principle of civil law that a person born into or following one religion continues to belong to such religion subject to conversion to another religion. Conversion to another religion basically requires change of faith. To say the least it is a matter of conviction. According to Mulla's Principle of Mohammedan Law any person who professes Mohammedan religion that is, he acknowledges that there is but one God and that Mohammad is his prophet is a Mohammedan. Such a person may be a Mohammedan by birth or he may be a Mohammedan by conversion. It is not necessary that he should observe any particular rites or ceremony to be an orthodox believer in the religion, no Court can test or

gauge sincerity of religious belief. It is sufficient if he professes Mohammedan religion in the sense that he accepts prophetic grant of Mohammedan (section 19, Chapter 2, page 19 of Mulla's Principles of Mohammedan Law). Thus the real test is of professing Mohammedan religion. As to when is the true import of the term profess fell for consideration of the Supreme Court in Punjabrao V. [D. P. Meshram](#), : [1965]1SCR849 of the said decision the Supreme Court has observed as under:

"13. What cl. (3) of the Constitution (Scheduled Castes) Order, 1950 contemplates is that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that Order he must be one who professes either Hindu or Sikh religion. The High Court, following its earlier decision in Narayan Waktu v. [Punjabrao](#), : AIR1958Bom296 has said that the meaning of the phrase "professes a religion" in the aforementioned provision is "to enter publicly in to a religious state" and that for this purpose a mere declaration by a person that he has ceased to belong to a particular religion and embraced another religion would not be sufficient. The meanings of the word "profess" have been given thus in Webster's New World Dictionary: " to avow publicly, to make an open declaration of to declare one's belief in : as to profess Christ. To accept into a religious order" The meanings given in the Shorter Oxford Dictionary are more or less the same. It seems to us that the meaning 'to declare one's belief in : as to profess Christ' is one which we have to bear in mind while construing the aforesaid order because it is this which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word 'profess' in the Presidential Order appears to have been used in the sense an open declaration or practice by a person of the Hindu for the Sikh religion. Where, therefore, a person says, on the contrary that he has ceased to be Hindu he cannot derive any benefit from the order."

Thus it appears that for a conversion there should be a declaration of one's belief and the said declaration should be in such a way that it should be known to those whom it may interest. If a public declaration is made by a person that he has ceased to belong to one religion and is accepting another religion, he will be taken as professing the other religion."

The learned trial court also relied on the judgment of the Supreme Court in ***Lily Thomas vs. Union of India (2000) 6 SCC 224*** wherein while dealing with the issue of feigned conversion by a Hindu to Islam religion, the court observed that:

"39. Religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a super-natural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. The institution of marriage under every personal law is a sacred institution. Under Hindu Law, Marriage is a sacrament. Both have to be preserved."

In ***Perumal Nadar (dead) by Legal Representative vs. Ponnuswami Nadar (minor) AIR 1971 SC 2352*** it was by the Apex Court as under:-

"A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion."

In ***Kailash Sonkar v. Smt. Maya Devi AIR 1984 SC 600***

reiterating the same approach even for re-conversion, the Apex Court observed that:-

"In our opinion, the main test should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. We must hasten to add here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery. The reconvert must exhibit a clear and genuine intention to go back to his old fold and adopt the customs and practices of the said fold without any protest from members of his erstwhile caste. In order to judge this factor, it is not necessary that there should be a direct or conclusive proof of the expression of the views of the community of the erstwhile caste and it would be sufficient compliance of this condition if no exception or protest is lodged by the community members, in which case the caste would revive on the reconversion of the person to his old religion."

16. In ***Rakheya Bibi v. Anil Kumar ILR 1948 Calcutta 119***, the Calcutta High Court held that it is open for the Court to go into the question whether the conversion was

a bonafide one or a mere pretence. In a recent case of ***M. Chandra v. M. Thangamuthu & Anr.(2010) 9 SCC 712***, the Supreme Court laid down the following test to prove conversion:-

"It is a settled principle of law that to prove a conversion from one religion to another, two elements need to be satisfied. First, there has to be a conversion and second, acceptance into the community to which the person converted. It is obvious that the need of a conversion cannot be altogether done away with."

17. Thus the legal position which crystallizes from the above discussion is that it is the right of every individual to choose or embrace any religion and every person has the complete liberty to forsake his previous religion and to convert himself to another religion. There can be various reasons which can prompt a person to change his/her religion but when one changes his religion, then such a change should come from one's heart based on his change of faith and his determination to embrace the new religion with complete faith, belief and consciousness. Conversion from one religion to another religion in any case is a solemn, pious and noble act with far reaching consequences and it cannot be seen as

an exercise undertaken by someone as a mere pretence to achieve some limited objective or purpose. Nobody can be seen to change his/ her religion just to seek a membership of a library. There cannot be any divergence of opinion that in certain situations one of the parties to the marriage belonging to one religion can take a decision to embrace the religion of the other party but however such a conversion should not be undertaken merely to achieve the purpose of marriage, it should be done to embrace the new religion with a will and desire to completely follow the tenets of the new religion while simultaneously forsaking the tenets of the religion being professed by a person prior thereto.

18. I had also the occasion to deal with a somewhat similar situation as has arisen in the case at hand , where a Muslim lady married a Hindu based on her conversion from Muslim religion to Hindu religion and invoked the provisions of the Hindu Marriage Act, and it was held:-

"Conversion to another religion basically requires change of faith; it is essentially a matter of conviction. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that

he is a Hindu sufficient to convert him to Hinduism. The conversion from one religion to another religion is a very major decision in one's life and for proving such a conversion, it is incumbent upon the appellant to place on record complete facts and documentary material, if any, to satisfy the court that based on such facts and supporting material, the appellant had undergone change of religion. Change of religion cannot be believed merely on vague oral allegations unsupported by any documentary or uncorroborated oral evidence.

.....

21. India is a melting pot of the religions of the world maintaining a delicate balance between its myriad religious communities and religious tolerance. By virtue of Article 25 of the Constitution of India everyone is free to practice one's own religion making India the most secular country in the world. However, at this strange point of time, religious conversions have gathered many eyeballs as it is being increasingly used for anything but the primary reason for conversion; spiritual advancement. The basic focus to convert from one religion to another is to seek God from another platform but unfortunately today proselytization is increasingly done for reaping benefits and in cases like the present one, an afterthought to maneuver the law. In number of cases the Supreme Court has held that religion was not merely a matter of faith and belief, but also included rituals, ceremonies and religious practices according to the religious tenets of a religion. But apostasy produces far reaching results in the relations of husband and wife, where it is also a ground for divorce under the Hindu Marriage Act and raises controversies like the present one demanding a mechanism in place to stop people from fishing in troubled waters."

19. Now analyzing the facts of the case at hand in the backdrop of the aforesaid legal position, in my considered view the learned trial court has rightly observed that the respondent got prepared her conversion certificate because she wanted to marry the appellant and to achieve this

purpose, she did feign to have adopted another religion which was for the only purpose of worldly gain of marriage. It would be appropriate to reproduce para 35 of the impugned judgment as under:-

“The petitioner got herself the conversion certificate because she wanted to marry the respondent. In this manner she did feign to have adopted another religion which was only for the purpose of the worldly gain of a marriage. Her act had nothing to do with her faith in Islam. This is confirmed by the respondent himself in his testimony wherein he has deposed that she converted by executing an affidavit expressing her intent to convert and the Qazi issuing a conversion certificate after seeking her affidavit expressing her intent to convert. There is no mention of the Qazi confirming her change in faith or making her utter the *Kalma*.”

20. The learned trial court further found that in the affidavit filed by the respondent in evidence, she testified that she never had professed Islam and was a worshipper of Lord Shiva and such a deposition of the respondent remained unrebutted in the absence of any cross-examination by the appellant. The learned trial court also found that no suggestion was given by the appellant to the respondent that she practiced Islam or read the *namaz* or kept *rozās*. The learned trial court further found that even the families of both

the parties were not aware of either the said conversion or of the marriage. The learned trial court also found that even the publication of name Maviya by the respondent nowhere proved the fact that she intended to change her religion from Hinduism to Islam.

21. In view of the above discussion, this Court does not find any infirmity in the findings of the learned trial court on the Issue No.1 and it has been rightly held that there was no conversion of the respondent from Hinduism to Islam.

22. This now brings me to the finding of the learned trial court on Issue No.2, which concerns the question as to whether there was proper solemnization of marriage between the parties or not. The appellant has claimed marriage with the respondent firstly under the Muslim Law before the Qazi and secondly under Section 15 of the Special Marriage Act. With the findings of the learned trial court on Issue No.1 having gone against the appellant, however, still the learned trial court examined the question as to whether proper marriage according to Muslim customs took place or not,

even assuming the fact that there was a valid conversion of the respondent from Hindu to Muslim religion.

23. Referring to the essentials of a Muslim marriage, the learned trial court pointed out that the appellant being a *Sunni* what was required was that there should be a proposal of marriage made by or on behalf of one of the parties to the marriage and an acceptance of the proposal by or on behalf of the other in the presence and hearing of two males or one male and two female witnesses, who must be sane and adult Muslims. It would be appropriate to again reproduce paras 41,43,44 and 45 of the impugned judgment as under:-

“41. A Muslim marriage is a civil contract the object of which is firstly legalization of sexual intercourse and secondly procreation of children. Although solemnized with recitation of verses from the Koran it is not a sacrament but purely a civil contract. Also no ceremonies or rituals are essential for the solemnization of a Muslim marriage. The essentials of a Muslim marriage are that there should be a proposal made by or on behalf of one of the parties to the marriage and an acceptance of the proposal by or on behalf of the other in the presence and hearing of two males or one male and two female witnesses, who must be sane and adult Muslim. While in a *Sunni* marriage the absence of witnesses makes the marriage irregular and not void, in a *Shia* marriage the witnesses are not necessary. The proposal and acceptance must both be expressed at one meeting.

43. The respondent is a *sunni*. There is no mention in the pleadings or testimony of any of the parties or their witnesses about any proposal of marriage being made and its acceptance before the Qazi. The petitioner nowhere admits to the proper sequence of the essentials of a nikah being followed before the Qazi or the ceremony of nikah per se being performed, which fact has gone unchallenged as the respondent had failed to examine the Qazi who was competent to depose about the sequence of events proving all necessary ingredients of a valid nikah. The counsel for the respondent has placed great reliance upon the nikahnama (Ex. PW1/11) admitted to bearing the signatures of the petitioner, to stress that there was proper solemnization of the marriage. Although the petitioner admits her signatures and thumb impression on the nikahnama (Ex PW1/R11), significantly this document is printed in Arabic, a language which she does not understand. Also the nikahnama which is a certificate of marriage amount and by itself does not prove the essentials of a nikah having been performed.

44. The respondent has examined himself and one of the two witnesses to the nikah, Mr. Sadaqat Ali (RW-2) who is his friend as his witnesses. The respondent in his examination-in-chief has testified that on 28.11.2005 both parties gave the Qazi their affidavits expressing their intent to marry in addition the petitioner gave her affidavit expressing her intent to convert. The marriage of the parties was solemnized in Jama Masjid and thereafter the Qazi issued the conversion and marriage certificate. There is no mention in his pleadings or evidence about the essential ceremonies of the nikah being performed.

45. Mr. Sadaqat Ali (RW-2) when questioned about what transpired on the said day before the Qazi only testifies to the effect that “the Kazi enquired something from the petitioner and the respondent and thereafter took my signatures on the nikahnama and one register”. Neither the respondent nor his witness (RW-2) have testified to the proposal for marriage being made by the respondent or on his behalf and the acceptance of the same by or on behalf of the petitioner in the presence and hearing of two males or one male and two female witnesses. This vague statement of the witness about what transpired itself casts doubt on the solemnization being proper.”

It would be thus clear from above that neither the appellant nor his friend Mr. Sadakat Ali (RW-2) could prove on record that essential ceremonies of the *nikah* were performed between the parties.

24. Marriage amongst the Muslims is not a sacrament but purely a civil contract. There are no rituals or ceremonies which are essential for solemnization of Muslim marriage. The twin objectives which the Muslim marriage seeks to achieve are; (i) legalization of sexual intercourse (ii) procreation of children. The essence of Muslim marriage is mutual consent. The proposal and acceptance need not be in any particular form. The essentials of marriage under the Mohammedan law as described under Section 252 by Mulla at page 256, 7th Edition are as under:

“252. Essentials of a marriage- It is essential to the validity of a marriage there should be a proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence and hearing of two male or one male and two female witnesses, who must be sane and adult Mohammedans. The proposal and acceptance must both be expressed at one meeting; a proposal made at one meeting and an

acceptance made at another meeting do not constitute a valid marriage. Neither writing nor any religious ceremony is essential."

It would be thus manifest that the first legal essential of a valid Muslim marriage under the civil contract is a proposal made by or on behalf of the one of the parties to the marriage and the acceptance of such proposal by or on behalf of the other party. The other essential requirement is that such a marriage takes place in the presence and hearing of two males or one female or one male or two female witnesses who not only should be adults but sane as well.

25. In the present case, although the nikahnama was proved on record as Ex.PW-1/11 but except the said nikahnama nothing was proved on record to establish the fact that the essential requirement of offer and acceptance was made by the parties in the presence and hearing of the witnesses. The learned trial court in para 44 (*reproduced above*) has clearly observed that there was no mention either in the pleadings or in the evidence about the essential ceremonies of the nikah being performed between the parties. The learned

trial court has also taken note of the two affidavits filed by the parties before the Marriage Officer which were executed by them on 9.12.2005 i.e. after a gap of 10 days from the date of the alleged marriage but the same carried a declaration that “marriage would be solemnized in a Masjid at Delhi” meaning thereby that the marriage was yet to be performed between the parties. This court, therefore, does not find any infirmity in the finding of the learned trial court on Issue No.2 as well.

26. Now the other argument canvassed by the counsel for the appellant was that the suit filed by the respondent under Section 24(2) of the Special Marriage Act was not maintainable due to a jurisdictional error, as the said suit should have been entertained by the learned trial court as the one being filed under Section 25 (iii) (a) &(b) of the said Act. As a sequel to this argument, counsel further submitted that had the said suit been treated under Section 25(iii) (a) & (b) of the Special Marriage Act, then the same would have been time barred due to non-filing of the same within the prescribed period of one year from the date of alleged

discovery of fraud. Counsel for the respondent, on the other hand took a stand that Section 25(iii) (a) & (b) of the Special Marriage Act would be totally inapplicable, as the case set up by the respondent in the said petition was that she in fact was never married to the appellant and the registration of the marriage was in clear violation of the conditions specified under Section 15(a) of the Act. The learned trial court dealt with the said argument of the appellant under Issue No.4 and in para 61 of the impugned judgment, it observed that since there was no conversion of the respondent from Hinduism to Islam and therefore there could not have been any valid marriage between the parties. The learned trial court further observed that the appellant and the respondent never lived together as husband and wife after their alleged marriage and prior to the registration and therefore such a marriage was clearly in contravention of Section 15 (a) of the Special Marriage Act, 1954.

27. Section 24 of the Special Marriage Act, 1954 deals with those marriages which are null and void while Section 25

deals with voidable marriages and the present petition was filed by the respondent under Section 24 (2) of the Special Marriage Act not under Section 25 of the said Act. Under which provision of law the case of the petitioner would fall and what relief the petitioner can claim in the facts of the case is for the petitioner to decide and not for the respondent. In the said suit filed by the respondent (*petitioner before the trial court*) the allegations raised by the respondent were that the conversion of religion gone into by her was not a valid conversion in the eyes of law as she had no faith in Muslim religion and she had not professed the tenets of Muslim religion. The respondent further alleged that the registration of marriage was obtained in violation of the mandatory conditions required for the purpose of registration as the parties had never lived together since their marriage. The respondent also took a stand in the said suit that no valid marriage was performed between her and the appellant. In the face of these allegations raised by the respondent, her case was squarely covered under Section 24 (2) of the Special

Marriage Act, 1954, whereunder the marriage solemnized under the Act shall be null and void if it is in violation of any of the conditions specified in clauses (a) to (e) of Section 15 of the said Act. The argument raised by the counsel for the appellant has thus no force and the same is rejected.

28. The other argument raised by the counsel for the appellant that the marriage certificate became a conclusive evidence under Section 13(2) r/w Section 40(c) of the Act and also r/w Section 4/36 of Indian Evidence Act is also equally devoid of any merit. The marriage certificate is conclusive evidence so far it proves its issuance by a proper and competent Marriage Officer after following the due procedure prescribed under the Act and the Rules framed thereunder. The said conclusive evidence, however, cannot come in the way of the parties challenging such a marriage certificate or the marriage itself.

29. The other argument raised by the counsel for the appellant that the suit was not maintainable on account of non-impleadment of Registrar of Marriage and non filing of

objection by the respondent under Section 8 r/w Section 16 of the Special Marriage Act also lacks force. Section 8 of the Special Marriage Act would be attracted in a case where objection is made by any of the parties under Section 7 of the said Act complaining violation of any one or more conditions specified under Section 4 of the Act. No such case was set up by the respondent in the said suit. Counsel for the appellant has not proved that there was any provision requiring impleadment of Registrar of Marriage in a suit filed under Section 24(2) of the Special Marriage Act.

30. All other contentions raised by the counsel for the appellant are also devoid of any merit as this court does not find any illegality or perversity in the reasoning given by the learned trial court in accepting the case of the respondent that she had never adopted Islam religion and there was no proper solemnization of marriage between the parties.

31. At omega, it would be befitting to mention that the Hon'ble Division Bench of the Kerala High Court in the case of ***Re: Betsy and Sadanandan 2009(4) KLT 631*** decided

on 16th October, 2009, while dealing with a joint application moved by the parties for dissolution of marriage under section 13B of the Hindu Marriage Act, 1955, examined the issue as to how, in the absence of any specific procedure prescribed under the Hindu law, custom and statute, the Court may hold whether there has been conversion or re-conversion to Hinduism. The Hon'ble High Court invited the attention of the Law Commission in order to address the need for legislation on the issue. This court also when faced with a similar catch 22 situation in the case of ***GA Arife@Arti Sharma (supra)*** decided on 13.8.2010 seconded the suggestion of the Kerala High Court that the need for legislative intervention is imperative to curb the court battles and controversies arising out of the converts religious status in matrimonial proceedings. The Law Commission of India thus acting on the suggestion in its 235th Report published in December, 2010 has made the following recommendations:

"Recommendations

16. The Law Commission, therefore, proposes to formulate the following recommendations:

1. *Within a month after the date of conversion, the converted person, if she/he chooses, can send a declaration to the officer in charge of registration of marriages in the concerned area.*
2. *The registering official shall exhibit a copy of the declaration on the Notice Board of the office till the date of confirmation.*
3. *The said declaration shall contain the requisite details viz., the particulars of the convert such as date of birth, permanent address, and the present place of residence, father's/husband's name, the religion to which the convert originally belonged and the religion to which he or she converted, the date and place of conversion and nature of the process gone through for conversion.*
4. *Within 21 days from the date of sending/filing the declaration, the converted individual can appear before the registering officer, establish her/his identity and confirm the contents of the declaration.*
5. *The Registering officer shall record the factum of declaration and confirmation in a register maintained for this purpose. If any objections are notified, he may simply record them i.e., the name and particulars of objector and the nature of objection.*
6. *Certified copies of declaration, confirmation and the extracts from the register shall be furnished to the party who gave the declaration or the authorized legal representative, on request.*

17. Now, the question arises as to how the above recommendations could be implemented. It is clarified that in whichever State, there is a law governing conversion such as Freedom of Religion Act, the above recommendations do not apply. The question then is whether for implementation of the said recommendations in other States, the enactment of law by Parliament is necessary. The Commission is inclined to think that a separate enactment or amendments to the respective personal laws is not required to give effect to this simple recommendation having regard to the fact that it does not go contrary to the existing provisions of law nor does in any way impinge on the religious freedom or faith of any person. Matters relating to conversion/reconversion are governed by the personal laws in respect of which Parliament has power to make laws. The Central Government can exercise its executive power under Article 73 to issue appropriate instructions to the Union Territories. Similar communications may be addressed by the Central Government to the States (where there are no laws governing the conversion) to give effect to the recommendations set out supra. The Governments concerned in their turn will have to issue necessary orders to the Registration officers. That can be done by the Governments of UT and State Governments administratively."

Hence, as it would be manifest from the above, the Law Commission has recommended that this issue can be tackled by way of executive instructions. Now the onus is on the Government to steadfastly act on the same as this is a recurring controversy before the courts adding to the judicial backlog.

32. In the light of the above discussions, I do not find any merit in the present appeal and the same is hereby dismissed.

April 08,2011
dc/mg

KAILASH GAMBHIR, J