

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

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Date of decision: 18.02.2020

+ **MAT.APP.(F.C.) 19/2020 & C.M.Applns.2090/2020, 2092-93/2020**

SAGAR GR

..... Appellant

Through: Mr. Manjunath Meled and Mr. Anuj
Saini, Advocates

versus

PREETY CHOWDHARY

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This appeal has been preferred against the judgment and decree dated 11.11.2019 of the learned Family Court (Central), Tis Hazari Courts, Delhi, annulling the marriage between the parties on a petition moved by the respondent.

2. The brief facts as are relevant for the disposal of the present appeal are that in the year 2013, the appellant/respondent and the respondent/petitioner came in contact with each other through Facebook, while the respondent/petitioner was pursuing her MBBS from Lady Harding Medical College, New Delhi and the appellant/respondent was studying for a Masters Degree from AIIMS, Delhi. It was the case of the respondent/petitioner that on 15.01.2015, she was assured by the appellant/respondent that he could get her admission in St. John's Medical College, Bengaluru for her post graduation, as he had some contacts in that college. On the basis of

the said assurance on 21.01.2015, the respondent/petitioner proceeded to Bengaluru along with the appellant/ respondent believing that she would return in a day. However, the appellant/respondent told her that she had to stay overnight as due to some urgent work, his contact at St. John's Medical College could meet them only the following day. When she attempted to contact her parents, the appellant/respondent took away her mobile phone and on her raising an objection, she was roundly abused by him. She was also subjected to violence but could not garner the attention of the passersby as they could neither understand English nor Hindi.

3. Further, the case of the respondent/petitioner was that she was taken forcibly by the appellant/respondent and two other persons in a vehicle and when she protested and desired to go back to Delhi, the appellant/respondent gave her some water. After consuming it, she lost her consciousness. When the respondent/petitioner regained consciousness, she found herself in an apartment located outside Bengaluru. The next day, the respondent/petitioner was dragged to a temple by the appellant/respondent where his parents and other associates were already present and she was forcibly married with the appellant/respondent on 22.01.2015. According to the respondent/petitioner, she was taken to a small house located in Gejjallagere, a village, and had a physical relationship with the appellant/respondent due to threats extended by him.

4. In the meantime, father of the respondent/petitioner had filed a complaint of his daughter missing, on 22.01.2015 vide DD No.24-A dated 22.01.2015. When the appellant/respondent came to know that her parents had come to village Gejjallagere, she was not permitted to meet them and was instead, removed to Hatna. When her parents reached that village too,

the appellant/respondent did not allow her to meet them as he and his relatives gathered in strength. She was also taken to the police station on the assurance that she was going to meet her parents, but there the appellant/respondent sought protection from her parents and she was forced to sign some blank papers and some proof of her marriage with the appellant/respondent was also filed before the police.

5. On 30.01.2015, the parents of the respondent/petitioner also filed a complaint of kidnapping of their daughter. The respondent/petitioner alleged that the appellant/respondent had demanded Rs.50 lacs for her release. The parents repeatedly begged of him to permit them to take the respondent/petitioner with them for Holi. Finally, after payment of Rs.10 lacs in two tranches to the appellant/respondent, she returned to Delhi along with her parents on 25.02.2015. In the above circumstances, she filed a petition under Section 12 (1) (c) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for annulment of the marriage on the ground that she had not willingly consented for the marriage and her consent was obtained by force and coercion by the appellant/respondent.

6. On the other hand, the appellant/respondent claimed that the parties had known each other for about 4 years and had been in relationship/courtship for 3 years before they were legally and validly married at Prasanna Venkateshwara Temple, Chikka Tirupathi, Malur Taluk, Kolar District, in the presence of his family members and well wishers and in accordance with the prevailing customs. The marriage was also registered at the office of the Sub Registrar, Maddur on 23.01.2015. According to the appellant/respondent, the parents of the respondent/petitioner had objected to their marriage as the parties belonged to different caste and communities

and asserted that the respondent/petitioner had voluntarily come with him to Bangaluru on 21.01.2015 and had stayed overnight at his house. Their marriage was performed on the next date and was duly consummated.

7. Thereafter, on 24.01.2015, the respondent/petitioner's father and uncle had come in her search and since the appellant/respondent feared for his life and that of his family members, they approached the S.P, Mandya for protection. As advised by the SP, they filed a petition in West Police Station, Mandya on 25.01.2015, alongwith required documents supporting their marriage, namely, marriage registration certificate, age proof of the parties, photographs of the wedding ceremony etc. Further, the statement of the respondent/petitioner was also recorded to the effect that the marriage was of her own free will and she would like to stay with her husband.

8. However, the parents of respondent/petitioner were adamant to take their daughter back to Delhi and not ready to accept her marriage with the appellant/respondent. The appellant/respondent claimed that the respondent/petitioner herself was not inclined to meet her parents and it was on his advice that she met them on 14.02.2015. He claimed that after two meetings, the respondent/petitioner was frequently contacting her parents and on 24.02.2015, they came to take her to Delhi for the Holi festival and all of them stayed at the appellant/respondent's house and returned to Delhi on 25.02.2015.

9. According to the appellant/respondent, he was shocked to find a change in the attitude of the respondent/petitioner after her return to Delhi and on her demand, he had returned all the original documents to her. Being worried for the safety of the respondent/ petitioner, the appellant/respondent filed a police complaint and approached the Commissioner of Police on

30.03.2015, asking for help to trace his wife and even sent a notice asking the respondent/petitioner to join him in the matrimonial home, but there was no response. Eventually, the appellant/respondent filed a Habeas Corpus petition before the High Court of Karnataka, registered as W.P. No.89/2015 which was disposed of on 10.08.2015. The appellant/respondent denied all the allegations levelled against him that he had procured the consent of the respondent/petitioner to marry him by putting her under threat, pressure or coercion.

10. On the basis of the pleadings of the parties, the learned Family Court settled the following issues on 19.03.2018:

- 1. Whether the consent of the marriage between petitioner and respondent was not free and the same was obtained by respondent by playing fraud, force or coercion? OPP*
- 2. Whether the marriage between the petitioner and respondent is voidable and may be annulled by decree of nullity, as stated in the petition? OPP*
- 3. Relief.*

11. The respondent/petitioner examined herself as PW-1 and the appellant/respondent examined himself as RW-1 and Dr. Vinay, his friend, as RW-2. After analysing the evidence brought on record, the Family Court concluded that the parties had become acquainted to each other on Facebook while the respondent/petitioner was pursuing her MBBS from the Lady Harding Medical College, New Delhi and the appellant/respondent was a Senior Resident in the AIIMS, Delhi. However, there was no proof that the respondent/petitioner had wanted to marry the appellant/respondent and that she had appeared before the High Court of Karnataka to state that she was living with her parents of her own free will and was not married. Further,

there was no photograph depicting that any priest had performed the marriage ceremonies or that the ceremonies were performed as per Hindu Law. The photographs only showed the respondent/petitioner and the appellant/respondent with garlands around their neck. In the background of all these facts, the Family Court concluded that the marriage between the parties was not performed with the free consent of the respondent/petitioner and was against her wishes. Since the consent of the respondent/petitioner had been obtained by exercising force and coercion, it was held that the respondent/petitioner was entitled to get the marriage annulled. Accordingly, the Family Court declared the marriage between the appellant and the respondent, a nullity.

12. Aggrieved by the said judgment, the appellant/respondent has filed the present appeal contending that the Family Court has failed to properly appreciate the evidence and had erroneously come to the conclusion that the marriage between the parties had been performed against the wishes of the respondent/petitioner.

13. Mr. Manjunath Meled, learned counsel for the appellant/respondent has relied on the video and photographs to contend that the presence of the priest could be seen in the video and also reveals that the respondent/petitioner was participating in the ceremonies voluntarily. He submitted that in DD No. 20A dated 31.03.2015, the statement of the respondent/petitioner had been recorded to the effect that she had married with the appellant/respondent of her own free will and that she was a major and therefore, the investigations be called off and the FIR be cancelled. It was also submitted that the respondent/petitioner had made a false statement before the High Court of Karnataka and in the light of the other evidence on

record, it was clear that a valid marriage existed between the parties and there was no ground to annul their marriage and to deprive the appellant/respondent of the company of his “wife”, the respondent/petitioner.

14. Reliance has also been placed on document Ex. PW-1/R3, the letter dated 25.01.2015, written by the respondent/petitioner to the SP, Mandya, Karnataka that she had married the appellant/respondent of her own free will and that she wanted to live with him. It was contended that merely because in her cross examination, the respondent/petitioner had stated that she was not in agreement with the contents of the letter, was no reason to discard the same.

15. We have heard the learned counsel for the appellant/respondent at length and have carefully perused the Family Court record, which was requisitioned.

16. The learned Family Court allowed the petition of the respondent/petitioner for several reasons which may be briefly listed below:-

- a) Though the appellant/respondent and the respondent/petitioner knew each other through Facebook, nothing was placed on record to show that the respondent/petitioner desired to marry the appellant/respondent;
- b) Ex. PW-1/R3 i.e., the letter to the SP, Mandya, Karnataka has been explained by the respondent/petitioner that she was not in agreement with the words written therein and the same had been scribed by her under threat to her and her parents’ lives;
- c) The respondent/petitioner had given a complaint to the PS Mandir Marg, Mark ‘C’, that she had been given some

intoxicant;

- d) She had stated before the High Court of Karnataka that she was not under any threat from her parents and that she was wished to live with them and not with the appellant/respondent.
- e) The marriage card was stated to have been printed 3 days before the marriage ceremony whereas according to the respondent/petitioner they had decided to go to Bengaluru only on 20.01.2015, which suggests that there was some preplanning by the appellant/respondent; and,
- f) The Family Court also observed that there was no priest performing the marriage ceremony in the video and the photographs placed on record.

17. To our mind, the analysis of the evidence, as brought on record by both sides, is proper and fair. The argument of the learned counsel for the appellant/respondent that the videos establish that the respondent/petitioner had voluntarily married the appellant/respondent and that the priest conducting the marriage ceremonies can be seen in the video, are not borne out on viewing the same. The photographs and video do show that some ceremonies were conducted by a group of people related to the appellant/respondent, as claimed by him, being his parents and other relatives, but the priest, apparently, is only a temple priest. On the basis of the photographs and video, the observation of the learned Family Court that the marriage was not conducted as per Hindu rites and ceremonies cannot be found to be incorrect as none has explained the rituals seen in the video and photographs as those that validate a marriage in the community of the

appellant/respondent.

18. The statement before the police i.e., Ex. PW-1/R3 recorded on 25.01.2015, has been explained by the respondent/petitioner as having been made under threat. She also explained that she had copied the same from some other letter and that her signatures were obtained on blank papers. A perusal of Ex. PW-1/R3 reveals that the words *“In future I will be residing with Dr. Sagar from now onwards. In case any complaint registered regarding my MISSING, that case must be closed kindly”* have been squeezed in after the signatures were appended and it is a clear attempt to extricate the appellant/respondent from any criminal complaint, also supporting the claim of the respondent/petitioner that by then, her parents had already filed a complaint with the police. This is also reflective of the fact that the appellant/respondent was aware of the serious consequences and was doing his best to gather favourable evidence. These facts indicate that the version of the respondent/ petitioner is believable that she had written Ex.PW-1/R3, at the instance of the appellant/respondent.

19. It is noteworthy that the video alleged to have been recorded at the police station, Ex. DW-1/19, has not been duly proved. As it is claimed to have been recorded by an official agency, viz, the police, proof that Ex. DW-1/19 is a certified version, had to be established in accordance with law. The learned Family Court was justified in discarding it.

20. The order of the High Court of Karnataka, Ex. DW1/8 passed in WPHC No.89/2015, is extremely relevant as it was dealing with a Habeas Corpus petition filed by the appellant/respondent in May, 2015. The respondent/petitioner had appeared before the court and had stated unequivocally that she was voluntarily residing with her parents. On a

request made by the counsel for appellant/respondent, the Hon'ble Judges had interacted with the respondent/petitioner in the chamber before dismissing the petition filed by the appellant/respondent. It may be useful to reproduce the said order below:

“This Writ Petition (Habeas Corpus) is filed under Article 226 of the Constitution of India praying to issue a writ, order or direction in the nature of writ of Habeas Corpus and direct the respondent Police to produce the body of the person of Dr. Preety.

This petition coming up for orders, this day, MOHAN M. SHANTANAGOUDAR, J., made the following:

ORDER

*This writ petition (Habeas Corpus) is filed with an allegation that Dr. Preety is forcibly detained by her parents at Delhi; that **Dr. Preety is the wife of the petitioner**; the parents of Dr. Preety did not want her marital life to continue with the petitioner and therefore they have detained Dr. Preety.*

*The writ petition is opposed by the learned advocate appearing on behalf of Dr. Preety as well as her parents. **The contention of Dr. Preety and her parents is that the marriage was not solemnized between the petitioner and Dr. Preety**; the petitioner was merely a senior student to Dr. Preety in the college and that Dr. Preety is not detained by anybody muchless by her parents. It is further contention of Dr. Preety that she is voluntarily residing at Delhi alongwith her parents.*

*Pursuant to the order dated 5th August 2015, Dr. Preety is present before the Court. **We talked with Dr. Preety in the open Court to find out as to whether she is in illegal detention of anybody including her parents.** Dr. Preety is aged about 24 years and has completed her MBBS Degree. She is pursuing her studies for Entrance Test in respect of Masters Degree at Delhi. **She has stated in the open Court that she has not been detained by anybody and she is voluntarily residing with her parents.***

However, learned advocate for the petitioner prayed the Court to interview Dr. Preety in the Chambers (in camera) so as to find out her actual will and wish. Learned advocate for the petitioner felt that Dr. Preety must not have disclosed her mind in the open Court because of presence of her parents. Accepting the submissions of the learned advocate for the petitioner, we directed Dr. Preety to appear before us in the Chambers. Consequently, she came to the Chambers of one of us (i.e., MSGJ) and we have talked with her personally. At the time of our talks, none except Dr. Preety was present in the Chambers. After talking to her, we are satisfied that she is not detained by anybody including her parents and that she is voluntarily residing with her parents at Delhi.

In view of the above, no further orders are necessary and the writ petition is liable to be dismissed. Accordingly, writ petition stands dismissed.

It is open for the parties to take such steps as are open to them in law, if they so choose.”

(emphasis added)

21. As is clear from the order of the High Court of Karnataka extracted above, even in May 2015, the stand of the respondent/petitioner was that she had not married the appellant/respondent. In fact, in dismissing the petition, the High Court appears to have turned down the plea of the appellant/respondent that the respondent/petitioner herein was his “wife”. Instead, it was left open for the parties to take recourse in law as available to them and it was then that the respondent/petitioner chose to file for annulment.

22. The statement made by the respondent/petitioner before the Judges of the High Court that she had not been detained by anybody including her parents and that she was voluntarily residing with them at Delhi and was unmarried, has far greater worth than the videos and photographs and the

statements made before the police, particularly when the respondent/petitioner has explained that she had given the statement under threat and intoxication and was not fully aware as to what was happening to her during that time and had expressed her disagreement with the contents of such statements.

23. The next contention of the learned counsel for the appellant/respondent is that the respondent/petitioner had herself made a statement before the Delhi Police that she had voluntarily married the appellant/respondent, being a major. It has been noticed that the extract annexed at pages 86 and 87 of the appeal paper book with typed and translated versions at pages 88 and 89, are not the correct versions of the documents which are on the trial court records, wherein the document at Page 86 of the appeal paper book, is not followed by page 87. It is seen that page 86 and page 87 are two distinct documents. Page 86 of the appeal paper book relates to DD No.20A, while Page 87 is part of DD 27A, obviously scribed by the police officials and the same is not in the hand writing of the respondent/petitioner. Therefore, it is incorrect to contend that she had herself disclosed to the Police at PS Mandir Marg that the enquiry based on the complaint filed by her parents, be closed because she had married the appellant/respondent of her free will.

24. Ex. RW-1/R2 relates to DD No.20A dated 31.03.2015, recorded at PS Mandir Marg and the report is dated 22.05.2015 whereas the full document of which only the last portion has been reproduced at page 87 of the appeal paper book, relates to DD No.27A, dated 17.02.2015, recorded at PS Mandir Marg. DD No. 27A is connected to DD No.24A dated 22.01.2015 regarding a missing complaint of the respondent/petitioner. DD No.27A records that

the Reader of SHO, PS Mandir Marg had forwarded to ASI Virender Kumar, the documents of marriage and the information that Preety is now residing with Dr. Sagar G R at Gejjallagere Village and this information was conveyed to the father of the respondent/petitioner, who in turn informed that through their own efforts, they had found their daughter and about her marriage and had discussions with her. Thus, this document does not support the claim of the appellant/respondent that the respondent/petitioner had herself acknowledged that she had married him voluntarily and of her own free will.

25. We would like to highlight some other interesting facets that would throw light on the entire episode lending credence to the version of the respondent/petitioner. During her cross examination, the respondent/petitioner stated that though she had spoken to the appellant/respondent on 15.01.2015 and though he had informed her that he was coming to Delhi on 20.01.2019, she had not told him that she would be accompanying him to Bengaluru and this was decided only on 20.01.2015. If that be so, it is indeed strange that a marriage invitation card was got printed by the appellant/respondent even before he had arrived in Delhi on 20.01.2015. Further, there is no challenge to the statement of the respondent/petitioner that she had gone with no change of clothes to Bengaluru, as she had expected to return to Delhi on the same day. The suggestion given was that she had given measurements for her wedding dress, which she had denied. She took all her certificates and mark lists with her which adds a tinge of truth to her claim that she had gone with a hope of getting admission in St. John's Medical College in a post graduate course.

26. There is no denial by the respondent/petitioner to the fact that the

tickets were purchased with her money, which seems strange if the appellant/respondent was intending to take her with her consent, to marry her at Bengaluru. In such matters, it is usual for a man to pay for his bride's travel expenses. It is also equally interesting to note that when the respondent/petitioner returned to Delhi, the appellant/respondent did not accompany her. The claim of the appellant/respondent that he and his family members were too busy with other pre-occupations and therefore, had not come to Delhi though ostensibly, the parents of the respondent/petitioner were bringing her to Delhi for celebration of the festival of Holi, seems unusual. Once again, he does not deny the fact that the tickets were purchased with the money paid by the respondent/petitioner/ her parents. There is no assertion in the affidavit filed by the appellant/respondent that no money was paid to him, leave alone Rs.10 lacs, in two tranches, as claimed by the respondent/petitioner.

27. It must also be noted that the respondent/petitioner was 23 years of age at the time of the incident while the appellant/respondent was 32/33 years of age and was clearly a more mature person. He may have taken a fancy to the respondent/petitioner and must have desired to marry her. But there is no reason to disbelieve the respondent/petitioner that she had been taken from Delhi to Bengaluru on a promise of getting admission in St. John's Medical College, which metamorphosed into a so-called marriage between the parties, to which she had never consented with her free will.

28. In view of the aforesaid discussion, we find no reason to interfere with the impugned judgment, annulling the marriage between the appellant/respondent and the respondent/petitioner, which is upheld. The appeal is accordingly dismissed along with the pending applications, as

meritless. Trial Court Record be returned forthwith.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

FEBRUARY 18, 2020
Sm/s