

**HONOURABLE SRI JUSTICE R.SUBHASH REDDY
AND
HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO**

C.M.A.No.160 of 2005

JUDGMENT (Per Hon'ble Dr.Justice B.Siva Sankara Rao)

This is an appeal maintained under Section 28 of the Hindu Marriage Act, 1955 by the unsuccessful petitioner-husband in O.P.No.65 of 2001 on the file of the Senior Civil Judge, Gooty, against the dismissal order dated 06.01.2004 on his application under Section 12(1)© of the Hindu Marriage Act, to annul the marriage with respondent-wife, dated 04.03.2001 performed at Kalvagadda Anjaneyaswamy temple, Gooty, against his will by use of force and under threat. The respondent-wife contested that it is a voluntary marriage.

2. Having been went unsuccessful before the trial Court on merits from the full dressed trial after recording his evidence as P.W.1 besides two more witnesses, Nagi Reddy(P.W.2) and Chandrasekhar(P.W.3) and from the evidence of the respondent/wife(R.W.1) with reference to the documentary evidence of Exs.R.1 to R.9-marriage photos with corresponding negatives, he preferred the appeal impugning the said dismissal order and decree dated 06.01.2004; with the contentions in the grounds of appeal that the order dismissing the relief for annulling the marriage between the couple by the trial Court is contrary to law and weight of evidence, that the trial Court went wrong by ill-appreciation and non-proper consideration of the material evidence of P.Ws. 1 to 3 that even establishes the marriage was under threat exercised on the petitioner and his family members including through police by use of force and against his will and thereby it is not a valid marriage to annul, that the trial Court should have relied upon the evidence of P.W.3 a community elder who categorically deposed that the manner of performance of marriage at the temple is contrary to their caste custom which is generally performed in early hours before sunrise, that the trial Court should have

seen that when the marriage was performed by use of force and not legal and valid, that filing cases under section 498-A of IPC and section 125 CPC for maintenance claimed by the wife no way validating the marriage, hence to set aside the order dismissing the claim for nullity of marriage and to allow the appeal annulling the marriage.

3. The learned counsel for the appellant reiterated the grounds of appeal. The respondent/wife of the claim petition as well as the appeal who even served with notice failed to attend, hence taken as heard to decide on merits.

4. Perused the material on record. The parties hereinafter are being referred to as they are arrayed before the Court below for sake of convenience.

5. Now the points that arise for consideration are:-

1. Whether the dismissal of the petition(O.P.No.65 of 2001) filed by the petitioner/appellant to annul his marriage dated 04.03.2001 with the respondent-wife alleged as performed by use of force, is unsustainable and requires interference by this Court while sitting in appeal, if so, with what observations and conclusions?

2. To what relief?

Point No.1:

6. The marriage ceremony was undisputedly took place at Kalvagadda Anjaneyaswamy temple, Gooty, at about 2.00 P.M., on 04.03.2001 and there was tying of tali to the respondent by the petitioner. He alleged that it is under a knife point and also the police forcibly taken him from his house to the house of the respondent-wife and therefrom to the venue against his will or consent which he obliged to avoid danger to his life therefrom and it is also his version that the police and political leaders forced him to marry her by giving threats to his life and also to his parents, brothers and unmarried sisters as to bring them to police station and torture.

7. The contention of the respondent-wife is that having voluntarily married her as outcome of love and affection between them, through elders of the village, now conceived a mischievous claim as if the marriage was under force or threat or in exercise of threat through police and political people against him much less at the knife point. Though he claimed that the marriage was not consummated, she claimed that they happily lived from her joining him at Veerannapalli village after consummation of the marriage and he looked after her properly for two months and thereafter started demanding additional dowry and even elders intervened to persuade, he neglected her and started threatening that he would marry another to get more dowry and started torturing her to give divorce and even beaten her to oblige his above said demands of consent for divorce and ultimately necked her out from which she reached her parents. From this, the crux is to see whether the marriage was performed by force and threat but not from the free consent and voluntariness of the petitioner-husband and respondent/wife.

8. P.W.1 is the petitioner. P.W.2 is no other than his father and P.W.3 is one of the community elders. Coming to the evidence of P.W.3 so called community elder though he deposed in his chief examination of the marriage being performed in early hours between 2.00 A.M. to 4.00 A.M. and not in day time as per their community customs that too by tying a goat to the pandal and while feeding the goat, a thread being tied by the bridegroom to the bride and by that the marriage ceremony being completed and said custom is not performed in this case. In the cross-examination, he admitted that even the marriage in their community being performed day time and not in early hours between 2.00 to 4.00 A.M, it is not even his case that he attended the marriage of petitioner and respondent the marriage was performed by use of force or to a knife point or under threat. Undisputedly, there is no any exchange of notices after the alleged marriage more particularly from his side, if the marriage is outcome of use of force or through a threat at knife point and no police complaint given nor any private complaint case filed. The alleged

marriage was dated 04.03.2001. The marriage ceremony was admittedly took place at the Anjaneyaswamy temple, Gooty but for he alleged as it was outcome of force exercised on him. The petition for the relief of annulment of marriage filed by him was dated 09.07.2001 which is more than 4 months 5 days after the said marriage dated 04.03.2001 apart from no exchange of notices, no giving of complaint to the police or filing a private complaint case and there is no any explanation for the delay of waiting for more than four months, had there been any truth of the marriage was performed by use of force or at knife point or under threat. Further even coming to his version including from his evidence and of his father P.W.2 that the petitioner on 26.02.2001 when went to Pamidi to purchase fertilizers, the so called persons took him by force at about 1 P.M. to Pamidi police station by naming the persons of which included brother and cousin of the respondent and their alleged associates and alleged as he was detained at Police station till next day and on next day he was shifted to Peddavadugur and therefrom shifted to Gooty police station and by influencing Gooty police through political people for his not agreeing to marry respondent by threatening and detaining him at Peddavadaguru police station till 04.03.2001 and on which day shifted to Anjaneya swamy temple, Gooty and forcibly made him to tie tali to the respondent and that for 6 days he was detained after marriage in the house of the respondent/wife, meanwhile he fell sick and he was allowed to go to his parents house under police watch for treatment for one week. If this is the case even to believe, that could be an opportunity to him and his parents. Had there been any truth in their version, for any ordinary prudent person could take recourse by cause issuing notice and filing a case or giving a police report but he did not do so, that doubts the very credibility of his version. The above conduct of the petitioner leads to draw adverse inference to the said version under Section 3 of the Indian Evidence Act. Apart from it, for his saying further so also by his father that after said one week and completion of treatment he was again called by police and was kept in the house of respondent for three days to

consummate the marriage and while so, he escaped in the night from their house and left the village and he got threat from police. It is not even his case that after the alleged escape in the midnight from the house of respondent, he was again arrested and prevented. When such is the case, there is nothing even therefrom to report to police in some other area, much less by directly giving report to the Sub Divisional Police Officer or Superintendent of Police, apart from the police complaint, for cause issuing a legal notice through any advocate for recourse. The said version thereby highly improbable from said evidence. The cross-examination of P.Ws. 1 and 2 also belies the said version, apart from said defence version is corroborated by the evidence of R.W.1 in support of the presumption of the things naturally taken place of the marriage is voluntarily performed. It is for the petitioner who seeks to annul the same by saying out of use of force to plead the material facts as contemplated by order VI Rules 2, 4 and 5 of CPC. Furthermore, from the evidence on record more particularly, from the Exs.R.1 to R.8 photos with corresponding negatives covered by Ex.R.9, a perusal of each of which clearly shows the petitioner voluntarily participated in the marriage and the ceremonies took place with his will and consent freely, also from his facial expressions with cheerfulness that substantiates the version of respondent and clearly establishes that he came with false version as if the marriage performed was outcome of use of force by respondent, her family members and their associates. The trial Court in fact by scanning the evidence in this regard by appreciation of the facts and law when came to the right conclusion, for this Court while sitting in appeal, there is nothing to interfere. Accordingly, Point No.1 is answered.

Point No.2:

9. In the result, the appeal is dismissed with no costs. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B. SIVA SANKARA RAO

Date:05-02-2015
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