

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-151 of 2007 (O&M)

Date of Decision: 4.2.2015

Naveen Thakran wife of Shri Sanjay Thakran

....Appellant.

Versus

Sanjay Thakran son of Shri Ram Chander Thakran

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: Mr. Ashit Malik, Advocate with
Mr. Sagar Aggarwal, Advocate and
Mr. Saurabh Sharma, Advocate for the appellant.

Mr. Shailendra Jain, Senior Advocate with
Mr. Bhagender, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. The appellant-wife by way of instant appeal has challenged the judgment and decree dated 2.6.2007 passed by the Additional District Judge, Fast Track Court, Gurgaon, whereby the petition filed by the respondent-husband under Section 12 of the Hindu Marriage Act, 1955 (in short "the Act") for annulment of marriage, was allowed.

2. Sans unessentials, the facts of the case are that the marriage of the parties was solemnized on 29.4.2004 according to Hindu rites and ceremonies at village Kundal, Tehsil Kharkhoda, District Sonipat. At the time of marriage, the respondent was doing LL.B IInd year at Mahavir Law College, Jaipur and was the only son of his parents. One Ram Singh got effected the marriage by acting as a middleman. The proposal of the marriage was accepted and roka ceremony was performed. On 29.4.2004, the marriage was solemnized. On the very

first night after the marriage, the behaviour of the appellant was abnormal. She even did not interact with the family members and was not following the family traditions. She neither allowed the respondent to cohabit with her nor did she sleep even for a minute with him. Physical relation was not held despite an attempt made by the respondent. She threatened the respondent to shout and wake up the whole family if he persisted to go ahead against her desire. On 5.5.2004, the respondent took the appellant to Dr. Lokesh Abrol, Gurgaon from where she came back without getting herself examined. Then again after persuasion she was taken to the doctor in the morning of 6.5.2004. The doctor prescribed some medicines and advised the respondent to send her to her parents for a few days as she was suffering from some mental ailment. The doctor advised that she should be shown to some Psychiatrist if she behaves in same fashion again. She did not take the prescribed medicine and she took the medicine from the respondent and thrown them away and torn the prescription slip. The brother of the respondent then informed the parents of the appellant who came on 6.5.2004 and took her away. On 14.5.2004, the parents of the appellant called the father of the respondent and requested him to send the respondent to take the appellant with him as she was perfectly normal. The respondent went to the house of his in-laws on 16.5.2004 and brought the appellant back to her matrimonial home. After coming to the house, the appellant again acted in a most unbecoming manner and talked non-sense. She was taken to Dr. Mohinder Madan, Psychiatrist, Gurgaon on 18.5.2004 who administered a couple of injections. Then again she was taken to the doctor. On 20.5.2004, the appellant became violent and started shouting that she should be taken to gynecologist for

check up. The respondent took her to Dr. (Mrs.) Rajinder Mahajan, Gurgaon who told that the appellant was not having any gynecological disorder rather she was having a mental problem. On 20.5.2004, the respondent took her to Civil Hospital, Gurgaon and got her checked up from Dr. Braham Deep Sindhu who prescribed medicines for some mental disorder. She stopped taking the medicines and her parents were apprised of the situation on the telephone. The respondent had to go to Jaipur in connection with examination on 28.5.2004 and on 10.6.2004, the brother of the appellant came and left her at her matrimonial home saying that they had shown her to some Tantrik and she was fully cured. Again on 11.6.2004, the appellant started the same behaviour upon which the father of the respondent rang up her parents who came and took her to village Bankner Delhi on 12.6.2004 for showing her to Tantrik. The mother of the respondent also accompanied them. On 13.6.2004, the appellant suffered an attack of abnormal behaviour which continued for 20 minutes. The parents of the respondent took her to Thakral Nursing and Maternity Home, Gurgaon where some medicines and injections were given and she was referred to Psychiatrist for opinion and further management. On the said day, the appellant for the first time admitted that she was suffering from mental disorder and had been taking medicines for the same since long even before marriage. The parents of the respondent took an appointment with Dr. D.N. Mandekar, Department of Psychiatry, GB Pant Hospital, New Delhi for 22.6.2006. In the meantime, the father of the appellant along with his younger brother and cousin took her with them to their house. They got her admitted in Chetna Neuro-Psychitary and Drug De-Addiction, New Delhi on 15.6.2004 where she remained admitted for a

number of days and was kept under observation. Since then she was under treatment and was residing with her parents. When the respondent was not being told satisfactorily about the mental condition of the appellant, he himself went to the doctor and came to know about her mental condition. In the morning of 13.6.2004, she lighted the gas stove in the kitchen and tried to burn herself. At one point of time, she poured Gangajal on herself and tried to commit suicide by immolating herself, presuming the same to be kerosene oil. She also pulled out a live wire from the iron and tried to touch the same in order to get herself electrocuted. She even used to lock herself in the bathroom on the pretext of taking bath but came out without taking a bath after a long time. Since the appellant was suffering from mental disorder of permanent nature, the respondent filed a petition for annulling the marriage by a decree of divorce. The said petition was contested by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that the appellant was not incapable of giving valid consent; she was not of unsound mind and was not suffering from mental disorder. She was not unfit for marriage and pre-creation of children. The respondent and his family members had come on roka ceremony and had seen the appellant. Sufficient amount was spent on her marriage but the respondent demanded a sum of ₹ 1.5 lacs and a santro car in the dowry. The respondent wanted to examine her personally the complete body and private parts with naked eyes by using a torch light at night time when both were on one bed but she objected to the same. Due to this unfair act of the respondent, the appellant became provoked. The appellant sent a telephonic message to her parents that her husband and in-laws were harassing her on account

of demand of dowry, upon which her brother came to see the situation wherein he found that she was suffering from fever and was normal. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The respondent filed replication to controvert the averments made in the written statement and reiterated that made in the petition. From the pleadings of the parties, the trial court framed the following issues:-

- “1. Whether the marriage of the parties was liable to be annulled on the grounds mentioned in the petition?OPP
2. Whether the petition is time barred?OPR
3. Whether the petitioner has got no cause of action for filing the petition? OPR
4. Relief.

3. In support of his case, the respondent besides examining himself as PW9 also examined PW1 ASI Jai Narain, PW2 Joginder Singh, PW3 Krishan Kumar Constable, PW4 Dr. Braham Deep Sindhu, PW5 Dr. Mohinder Madan, PW6 Dr. Harish Matai, PW7 Sarup Singh, PW8 Mahender Singh, PW10 Ram Chander and PW11 Santra Devi. On the other hand, the appellant besides examining herself as RW3 also examined Pardeep Rana as RW1 and Ajay Kumar Rana as RW2.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent holding that his consent was obtained by fraud and as such he was entitled to get his marriage annulled. Issue No.2 was decided against the appellant holding the petition to be within limitation. Issue No.3 was decided against the appellant being not pressed. Accordingly, the trial court vide

judgment and decree dated 2.6.2007 allowed the petition and passed a decree of nullity in favour of the respondent and against the appellant declaring their marriage as illegal and void. Hence, the present appeal.

4. Learned counsel for the appellant submitted that the illness of the appellant was not prior to the marriage. It was further submitted that there was no evidence to show that the consent of the respondent was obtained by fraud. It was urged that the false allegations were levelled by the respondent.

5. On the other hand, learned counsel for the respondent besides supporting the judgment and decree, submitted that the trial court on appreciation of the evidence led by the parties had rightly passed a decree of nullity under Section 12(1)(c) of the Act as the appellant had played fraud in obtaining the consent of the respondent for solemnization of marriage.

6. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the contentions of the learned counsel for the appellant.

7. Section 12 of the Act deals with 'voidable marriages'. Clause (c) of sub-section (1) of Section 12 along with clause (a) of sub-section (2) of Section 12 of the Act which are relevant for the purposes of adjudication of the present appeal, read thus:-

“12. Voidable marriages.-(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

(a) & (b) XX XX XX

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(d) XX XX XX

(2) Notwithstanding anything contained in sub-section (2), no petition for annulling a marriage-

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if-

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) XX XX XX"

According to clause (c) of sub-section (1) of Section 12 of

the Act, a marriage is voidable where the consent of the petitioner or the guardian has been obtained by force or fraud. The words “force” and “fraud” has not been defined in the Act. Broadly, fraud means and includes acts committed by a party with the intention to deceive or to induce the other party to do certain acts. The concealment of fact necessarily ought to be of such a nature so as to affect the decision of the parties. It depends upon facts of each case.

8. Section 12(2)(a)(i) prescribes time limit for presenting a petition to avoid a marriage on the ground of force or fraud. According to the said provision, such a petition has to be filed within one year after the force has ceased to operate or fraud has been discovered. The second condition for the maintainability of petition has been prescribed under Section 12(2)(a)(ii) of the Act. It stipulates that the petitioner should not have cohabited with his or her full consent with the other party to the marriage as husband or wife after the force had ceased to operate or the fraud had been detected.

9. Adverting to the facts involved herein, it is to be noticed that the respondent had examined PW6 Dr. Harish Matai who while deposing had categorically stated that the medical illness of the appellant-wife was hereditary. He diagnosed her case to be of acute psychosis which is commonly known as Tej Pagahan. This witness had further stated that the medicines taken by the patient may effect the mental and physical development of the child in case of conception. Evidence of Dr. Mohinder Madan (PW5), Sarup Singh (PW7) and Mahender Singh (PW8) have fully supported the case of the respondent-husband regarding the ailment of the appellant. Besides the oral testimony of these witnesses, documentary evidence, Ex.P1 to Ex.P4, i.e. application

to the Superintendent of Police and the police entry is also material. Further Ex.P5 to Ex.P9 has also been produced by the respondent-husband relating to medical treatment of the appellant which is a clear pointer towards the mental condition of the appellant. In such circumstances, it could not be said that she was not suffering prior to the contracting of the marriage. Further, it was proved on record that the appellant was having mental disorder and was not normal at the time of marriage and even after the marriage. The respondent always remained under apprehension, stress and tension because the appellant could attack at any time when her mental disorder could have aggravated. The medical evidence adduced by the respondent had not been rebutted by the appellant as she had failed to produce any doctor regarding her mental condition. The irresistible conclusion is that the appellant was not normal and that consent of the appellant was obtained by fraud. Keeping in view the facts and circumstances of the case and evidence on record, the trial court had rightly observed that the respondent was entitled to get his marriage annulled as his consent was obtained by fraud.

10. In view of the findings recorded by the trial court which could not be demonstrated to be perverse or erroneous in any manner being based on misappreciation or misreading of the evidence on record, no interference is called for by this Court. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 4, 2015
gbs

(SNEH PRASHAR)
JUDGE