

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-M-205-2013 (O&M)

Date of decision: 19.1.2015

Manpreet Kaur

...Appellant

Versus

Balkar Singh

...Respondent

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

Present: Mr.Sandeep Singh Deol, Advocate for the appellant

Mr.Vikas Bahl, Senior Advocate with
Mr.Nitish Garg, Advocate for the respondent

SNEH PRASHAR, J.

Assailing the judgment and decree dated 2.5.2013 passed by the learned District Judge, Shaheed Bhagat Singh Nagar vide which HMA case No. 49 of 2011 under Section 11 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') filed by Balkar Singh - respondent was allowed, Manpreet Kaur appellant preferred the instant appeal.

2. The facts culminating to the initiation of the instant appeal are as under:-

Balkar Singh was married to Manpreet Kaur on 24.2.2010 at village Mohaddipur, Tehsil and District Jalandhar according to Sikh rites

and ceremonies. After marriage, they cohabitated together as husband and wife. The respondent averred that prior to their marriage, Manpreet Kaur was already married to one Deepak Viridi son of Lekh Raj Viridi, and her said marriage was still in subsistence when she married him. She and her parents concealed the factum of her first marriage and represented to him that she was a spinster at the time of talks for their marriage alliance. The first marriage of Manpreet Kaur was dissolved on 12.6.2010 by way of judgment and decree dated 12.6.2010 passed by learned Additional District Judge, Fast Track Court, Jalandhar. It was thereafter that he came to know about her first marriage with Deepak Viridi.

The petition was filed by Balkar Singh through an attorney namely Avtar Singh son of Sansar Singh. Submitting that his marriage with Manpreet Kaur was in violation of Section 5(i) of the Act and being void was liable to be annulled, Balkar Singh invoking the provisions of Section 11 of the Act prayed for declaration to the said effect.

3. The petition was contested by appellant -Manpreet Kaur. She filed written statement raising preliminary objections with regard to the maintainability of the petition, estoppel, principle of acquiescence, waiver, concealment of true and material facts by Balkar Singh etc. Replying parawise, the appellant denied that Avtar Singh had an authority to file the present petition on behalf of Balkar Singh. The solemnization of marriage between the parties on 24.2.2010 was admitted, but it was submitted that the marriage was performed at village Hazara and not at village Mohaddipur. The appellant denied that she was already married to Deepak Viridi or the said marriage was in subsistence

and she had a living spouse when her marriage with Balkar Singh was performed. She also denied that she had concealed the factum of said marriage from the respondent.

The appellant alleged that her marriage with Deepak Viridi was merely a paper marriage for the purpose of going abroad, as is apparent from the judgment and decree of divorce dated 12.6.2010, granted in her favour. No marriage ceremony was performed according to religious rites as is required under Section 7 of the Act. The travel agent had shown them as a couple for obtaining a ten years visa, which was granted by the concerned embassy. She went to USA all alone and settled there for a period of six months and thereafter, she came back to India. The marriage with Deepak Viridi was never consummated and there was no physical relation between them.

It was further submitted by the appellant that at the time of proposal of the marriage with Balkar Singh respondent, the factum of her marriage with Deepak Viridi was brought to his notice and he had consented to the same and had promised to arrange for her migration from India to USA. At the time of her marriage with the respondent, she was having multipurpose visa for USA, which was checked by the respondent himself. Soon after the marriage, the respondent left for USA on 24.3.2010 with promise to come back and arrange the papers required for her migration to USA. In the meantime, she lived with her in-laws family at village Hiala. The respondent came back to India in the last week of May 2011. To her surprise, he started treating her with utmost cruelty and told that he had no liking for her and expressed unwillingness to take her alongwith him to USA. He clearly stated that he was not

willing to let their relationship survive. However, with the intervention of the respectables, he agreed to take her to USA. They boarded the plane on 24.7.2010, but on reaching USA, the respondent with a malafide intention turned away his eyes from her and told the immigration authority that she was not his wife and he was having no relation with her. The immigration authority cancelled her visa and deported her back to India on 25.7.2010. On reaching India, she went to her matrimonial home at village Hiala, but Makhan Singh and Jasvir Kaur, uncle and aunt of the respondent did not allow her to enter the house. She told about the development to her parents, who reached there, but even their intervention did not cut the ice and she had to come back to her parental home at village Mohaddipur. The respondent made no efforts to rehabilitate her and his uncle Makhan Singh openly proclaimed in the Panchayat that the respondent was not interested in keep relations with her. All the dowry articles given by her parents at the time of marriage were retained by the respondent. Alleging that the respondent is guilty of ruining her life by treating her like a holiday wife, she prayed for dismissal of the petition.

4. The respondent filed replication controverting the objections raised by the appellant in the written statement and reiterated his claim.

5. On the pleadings of the parties, the following issues were settled by the learned trial Court:-

- “1. Whether the respondent was married with Deepak Viridi before her marriage with the petitioner on 24.2.2010, which was subsisting on that date? OPP
2. Whether the marriage of the petitioner with the

respondent was in violation of Section 5(i) of the Hindu Marriage Act, if so, whether the marriage of the petitioner with the respondent was a void marriage? OPP

3. Relief.”

6. To substantiate his allegations, respondent Balkar Singh stepped into the witness box as PW1 and examined PW2 Om Parkash Sharma, Advocate, District Courts, Jalandhar. He tendered into evidence the certified copy of judgment and decree dated 12.6.2010 passed by learned Additional District Judge (Fast Track Court), Jalandhar as Ex.P5 and Ex.P-6.

On the other hand, appellant Manpreet Kaur appeared as RW1 and examined RW2 Gurdeep Singh, who corroborated her version.

7. Considering the evidence adduced by the parties and the submissions made on their behalf, learned trial Court found that the marriage of respondent Balkar Singh with appellant Manpreet Kaur was in violation of Section 5(i) of the Act and declared the said marriage as null and void as provided under Section 11 of the Act.

8. Feeling aggrieved by the impugned judgment and decree dated 2.5.2013 passed by the learned District Judge, SBS Nagar, appellant -wife filed the instant appeal.

9. Mr.Sandeep Singh Deol, counsel representing the appellant and Mr.Vikas Bahl, Senior Counsel appearing for the respondent have been heard at length and record has been perused.

10. It was not disputed that respondent Balkar Singh was married to Manpreet Kaur on 24.2.2010 according to Sikh rites and ceremonies, though while according to the respondent, the marriage was solemnized at village Mohaddipur, Tehsil and District Jalandhar, but the appellant alleged that it had taken place at village Hazara. A decree of nullity declaring the marriage null and void had been sought by the respondent stating that at the time of their marriage, the appellant was already married and was having a living spouse namely Deepak Viridi s/o Lekh Raj Viridi, resident of Jalandhar/ New York (USA) at that time. He alleged that the appellant represented to him that she was unmarried. The factum of her first marriage as well as subsistence of that marriage was intentionally and malafidely concealed from him. To prove his version the respondent tendered in evidence the certified copies of the relevant judgment and decree dated 12.6.2010, as Ex.P5 and Ex.P6 respectively, vide which the marriage of Manpreet Kaur and Deepak Viridi was dissolved.

11. Interestingly, the appellant did not deny her marriage with Deepak Viridi, but she alleged that it was merely a paper marriage and no religious ceremonies were performed between her

and Deepak Viridi for solemnization of marriage. They were shown as a couple in the papers by the travel agent for the purpose of going abroad and for obtaining a ten years visa of USA.

12. Learned counsel for the appellant- Manpreet Kaur raised two fold arguments. First, that the respondent was well aware of the first marriage of appellant -Manpreet Kaur with Deepak Viridi and therefore, was estopped from taking advantage of his own wrong; second, that no substantive and reliable evidence could be produced by the respondent to prove the solemnization of marriage between Manpreet Kaur and Deepak Viridi by performing religious ceremonies. The marriage between Manpreet Kaur and Deepak Viridi was never consummated and it was on that ground that Manpreet Kaur filed a petition under Section 12 of the Act for declaring her marriage with Deepak Viridi as null and void. Deepak Viridi did not appear in the said petition and an ex-parte judgment and decree were passed, declaring their marriage as null and void.

13. Learned counsel asserted that even if it is assumed for the sake of arguments that Manpreet Kaur was married to Deepak Viridi, the said marriage having been declared as null and void, will be treated as void from its very inception and as a result thereof, the marriage between the parties namely Manpreet Kaur and Balkar Singh was a valid marriage.

Learned counsel pointed out that earlier Balkar Singh approached the court with a petition under Section 13 of the Hindu Marriage Act, 1955 levelling allegation of cruelty against the appellant, but then he got the petition changed into a petition for annulment of marriage under Section 11 of the Act. His conduct proved that by hook or crook his intention was only to get rid of the appellant.

14. The arguments of the learned counsel for the appellant-wife were controverted by learned counsel representing the respondent -husband. He submitted that the marriage between Manpreet Kaur and Balkar Singh was solemnized on 24.2.2010. The judgment and decree Exs.P5 and P6 dissolving the marriage between Manpreet Kaur and Deepak Viridi was passed on 12.6.2010 by a competent court of jurisdiction. Only thereafter the respondent came to know about that marriage and hence on 20.4.2011, he filed the petition under Section 11 of the Act for a decree of nullity declaring his marriage with Manpreet Kaur as null and void. Relying on **Mohan Lal Sharma vs. Parveen 2009(4) RCR (Civil) 749**, learned counsel urged that the marriage which was null and void could be held to be invalid even if the respondent had knowledge about the previous marriage of the appellant.

15. Clause (i) of Section 5 of the Act lays down that for a lawful marriage, the necessary condition is that neither party should

have a spouse living at the time of the marriage. A marriage in contravention of the said condition is null and void as provided under Section 11 of the Act. Meaning thereby that marriage of two Hindus during subsistence of earlier marriage of either of the spouse is nullity.

16. The appellant only half heartedly denied her first marriage with Deepak Viridi. There is no concept of a paper marriage under the Act. A valid Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto as provided under Section 7 of the Act. The appellant alleged that her marriage with Deepak Viridi was solemnized without performing any ceremonies. If that was so and it was only in papers that appellant and Deepak Viridi were shown as married couple, there was no occasion for the appellant to file any petition for annulment of her marriage with Deepak Viridi on the ground that the marriage had not been consummated owing to the impotency of the latter.

17. Certified copy of the petition under Section 12 of the Act filed by appellant Manpreet Kaur is Ex.P4. A perusal of the same shows that she had specifically pleaded in her petition that her marriage with Deepak Viridi was performed on 10.10.2007 as per Sikh religious rites. She also pleaded that at the time of marriage, her parents had given sufficient dowry and that after marriage, she

had lived with Deepak Viridi at her matrimonial home for two days. The respondent examined PW2 Om Parkash Sharma, Advocate, District Courts, Jalandhar, who testified that he had drafted the petition Ex.P4 on the instructions of Manpreet Kaur. He proved the affidavit of Manpreet Kaur Ex.P3 annexed with the petition, which was on the same lines. Admittedly, Manpreet Kaur was an educated lady conversant with English language. She signed and verified the pleadings and also signed the affidavit and got the same attested, which amounted to admission of the contents of the said document.

As such, from her own pleadings in the petition under Section 12 of the Act, it stood proved that her marriage with Deepak Viridi was performed according to religious rites and ceremonies and the marriage when performed was a valid marriage under the Act. Needless to say that admission of a factum by a party is the best evidence. When from the pleadings of Manpreet Kaur in this petition and in the petition Ex.P4 filed by her under Section 12 of the Act, her first marriage with Deepak Viridi was proved, there was no necessity for Balkar Singh to adduce any more evidence for proving the said factum.

18. The marriage between Manpreet Kaur and Deepak Viridi was solemnized on 10.10.2007 and it is further proved from the judgment and decree Ex.P5 and Ex.P6 that the said marriage was annulled on 12.6.2010. Thus, there remains no doubt that on

24.2.2010, when Balkar Singh was married to appellant Manpreet Kaur, the latter was already married and was having a living spouse. In other words, the marriage between the parties was solemnized in contravention of the conditions specified in Clause (i) of Section 5 of the Act and therefore, it was a void marriage.

19. As far as knowledge of petitioner Balkar Singh with regard to marriage of Manpreet Kaur with Deepak Viridi is concerned, he pleaded and deposed that he came to know about the same much later i.e. just before he filed the present petition. Even if it is assumed for the sake of argument that Balkar Singh had knowledge about the first marriage of Manpreet Kaur, yet as held in **Mohan Lal Sharma's case (supra)** by this Court a marriage which was null and void from very inception could not be held valid even if the complaining spouse knew about the previous marriage of the other spouse.

20. Coming to the next contentious issue it is important to note that the marriage between Manpreet Kaur and Deepak Viridi was annulled under Section 12 of the Act. The provisions of Section 12 of the Act deal with voidable marriage. For ready reference, the relevant portion of Section 12(1)(a) is reproduce hereunder: -

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) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceedings; or

As is clear from the above provision, a marriage shall be voidable and may be annulled by a decree of nullity if the marriage had not been consummated owing to the impotency of one of the spouse. A void marriage is non-existent in the eyes of law, but on the contrary in case of voidable marriage, till the marriage is annulled by a decree of nullity, the voidable marriage is deemed to be a valid marriage. It was held by a Full Bench of Andhra Pradesh High Court in **Abbayolla M.Subba Reddy vs. Padmamma** 1998(3) Civ. C.C. 426, as under:-

“Sections 11 and 12 of the Act as quoted earlier, deal with cases where a marriage is void and cases where a marriage is voidable at the option of either of the parties to the marriage respectively. In Section 11, the expression used is “null and void” while the word “voidable” is used in Section 12. This indicates the intention of the Parliament that they wanted to make a distinction between a void marriage and a voidable marriage. The distinction is further indicated by Section 17 which makes the parties to void marriage criminally liable, while there is no such penalty for the parties to a

voidable marriage. Of course, both Sections 11 and 12 speak of a decree of nullity; but Section 11 speaks of only declaration of the marriage as null and void by such a decree, while Section 12 speaks of the annulment of a voidable marriage by a decree. As a void marriage is non-existent in the eye of law, only a declaration is sufficient, but an annulment of a voidable marriage is necessary because such a marriage shall be deemed to be valid until it is annulled by a decree of nullity. Further, the marriage which is null and void for contravening the provisions of Section 5(i) of the said Act cannot be treated as voidable under Section 12.”

21. In view of the above, the marriage between Manpreet Kaur and Deepak Viridi may have been annulled by a decree of nullity under Section 12 of the Act, but it was certainly a valid marriage and it was annulled from the date i.e. 12.6.2010, when the decree was passed. The fact remains that on 10.10.2007, when Manpreet Kaur was married to Deepak Viridi, her first marriage was in subsistence and she had a living spouse.

22. Thus, seen from every angle, the marriage between the parties being in violation of Section 5(i) of the Act was rightly

declared null and void by the learned trial Court by a decree of nullity. Accordingly, the judgment and decree passed by the learned trial Court is upheld and the instant appeal having no merit is dismissed.

CMM-100-2013

Since the appeal of appellant Manpreet Kaur has been dismissed on merits in limine, CMM is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

19.1.2015

gsv

Note: Whether to be referred to the Reporter? Yes/No