

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

**FAO No.M-156 of 2015 (O&M)
Date of Decision: 08.10.2015**

Sushil SharmaAppellant

Versus

Sonia SharmaRespondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Samir Rathaur, Advocate for the appellant.

Mr. J.S.Chandail, Advocate for the respondent.

RAJIVE BHALLA, J (ORAL)

The appellant-husband is in appeal before us challenging order dated 13.10.2014, whereby the petition filed by the respondent-wife, under Section 11 of the Hindu Marriage Act, 1955, for nullity of the marriage, has been allowed and the trial Court has ordered his prosecution.

During pendency of proceedings, parties resolved their differences and filed separate affidavits, dated 07.10.2015 and 08.10.2015, respectively. A relevant extract from the affidavit filed by Sushil Sharma-appellant, reads as follows:-

“2. That the deponent has filed the present appeal against the judgment and decree dated 13.10.2014 passed by Learned Additional District Judge, FTC, Patiala in Case No.1450 instituted on 16.10.2013, whereby a petition filed by the respondent under Section 11 of the Hindu Marriage Act, 1955 for declaring the marriage between the parties null and void has been allowed. The learned court below while passing the above mentioned judgment and decree has ordered the prosecution of the appellant under

Sections 193, 196, 197, 198, 199, 200, 209 of the IPC.

3. That the deponent do not want to pursue his appeal on the aspect of validity of marriage between the parties and gives up his claim in that regard if the observations regarding the prosecution of the deponent in the impugned judgment and decree are quashed by this Hon'ble Court.

4. That the deponent further undertakes that he shall not try or endeavour to contact the respondent in any manner or by any means after the disposal of the above mentioned appeal.”

Affidavit filed by Sonia Sharma-respondent reads as follows:-

“1. That the Deponent does not want to pursue with the Prosecution of the Appellant Sushil Sharma.

2. That the Deponent is happy with the Decree Granted by the Ld Trial Court and prays for the Dismissal of the Appeal of Sushil Sharma.

3. That the Deponent Prays that the Appellant Sushil Sharma be directed not to bother Deponent or her family in any litigation in future.”

A perusal of the affidavit filed by Sushil Sharma reveals that he accepts the correctness of judgment and decree, dated 13.10.2014, does not want to pursue the appeal and prays that the appeal may be dismissed as withdrawn.

The respondent by way of her affidavit states that she has no objection to the withdrawal of the appeal and does not want to pursue the prosecution of the appellant.

We have heard counsel for the parties and in view of affidavits filed by appellant-Sushil Sharma son of Rajinder Sharma and respondent-Sonia Shama, affirm the judgment and decree dated 13.10.2014, insofar as it declares that the marriage between the appellant and the respondent is a nullity.

The question that remains is whether the Court below was justified in ordering the prosecution of the appellant? The trial Court has ordered the prosecution of the appellant for making a false statement that the parties are not cousins and refusing to recognise the respondent's mother as his mother's sister (Masi) etc. We are not inclined to uphold these findings as the appellant was only rebutting allegations levelled against him. This apart the respondent has filed an affidavit that she does not wish to see the appellant prosecuted. Taking into consideration the totality of the aforesaid circumstances and while dismissing the appeal as withdrawn, set aside part of order dated 13.10.2014 that has ordered the prosecution of the appellant.

Decree sheet be prepared accordingly.

[RAJIVE BHALLA]
JUDGE

08.10.2015
Vinay

[REKHA MITTAL]
JUDGE