

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.502 of 2014

=====

Ajit Singh, son of Kameshwar Narayan Singh, resident of 26th Grand Square,
Danapur Cant, P.S.- Danapur, District- Patna, presently residing at Navi
Mumbai, Maharashtra

.... Appellant

Versus

Smt. Nitu Singh, W/o- Sri Ajit Singh, D/o Sri Deodeep Singh, resident of A/160,
A.G. Colony, Ashiana Nagar, P.S. - Shastri Nagar, District- Patna

.... Respondent

=====

Appearance :

For the Appellant : Mr. S.S. Dwivedi, Sr. Advocate
Mr. Ranjan Kumar Dubey
Mrs. Sangeeta Sharma, Advocates
For the Respondent : Mr. Ashok Kumar Choudhary,
Mr. Prakash Kumar,
Mr. Manoranjan Kumar,
Mr. Akshansh Ankit,
Mr. Ranjit Sinha, Advocates

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE VIKASH JAIN

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date: 08-11-2017

The present appeal has been filed against the judgment
and order dated 14.07.2014 passed by learned Additional Principal
Judge, Family Court, Patna in Matrimonial Case No. 396 of 2008,
whereby he has rejected the application of the appellant for annulment
of marriage under Section 12 of the Hindu Marriage Act.

2. The short facts of the case are that the parties were
married on 27.04.2008 at Danapur Cantt., Patna where the parents of
the appellant reside. At the time of marriage, the appellant was aged
about 31 years and the respondent was aged about 26 years. After



solemnization of the marriage, a reception was held on 30.04.2008 at Danapur Cantt. and Puja of 'Kuldevi' was also held on that date. It is claimed by the appellant that the marriage was never consummated between the parties and the respondent went back to her parent's house in the evening of 01.05.2008. A week later on 08.05.2008, the appellant was scheduled to return to his place of posting at Mumbai where he was employed in a public sector bank and for which he had reservation for New Delhi for that date and further from New Delhi to Mumbai on 11.05.2008, but however, the respondent did not accompany him and he had to proceed to Mumbai by himself. Soon thereafter the respondent came to his parent's house on 16.05.2008 when some abnormal growth in her body was detected but not much notice was taken. The reservation was again made for 02.06.2008 for the respondent along with the appellant's parents to go to Mumbai. However, on 30.05.2008 the respondent complained of severe pain in her abdomen and started bleeding and refused to permit anybody to attend or to go to the doctor. Since bleeding increased, the appellant's parents informed the respondent's parents who came to Danapur and all the persons went to Dr. Indu Bala Lal, a Gynecologist, and after examination, the doctor diagnosed that the respondent was carrying a pregnancy of six weeks and accordingly advised cleaning of uterus and prescribed medicines and injections. The appellant's parents went to purchase medicines but in the meanwhile, the respondent left the clinic



with her parents.

3. Mr. S.S. Dwivedi, learned senior counsel appearing on behalf of the appellant, submits that the entire episode amounted to fraud as the respondent had been found carrying a pregnancy of 40 days within 34 days of the marriage, more so when the marriage was never consummated between the parties. It is therefore apparent that the respondent had become pregnant by some person other than the appellant. Despite summons issued on the appellant's application, the said Dr. Indu Bala Lal did not appear before the Court as a witness. Thereafter the appellant filed an application for issuance of warrant of arrest against Dr. Indu Bala Lal to enable recording of her deposition to prove the prescription given by her and the result of her examination. No order, however, was passed by the Court and hence neither any warrant of arrest was issued nor the doctor was examined and instead the appellant was forced to proceed in absence of the evidence of Dr. Indu Bala Lal.

4. Mr. Ashok Kumar Choudhary, learned counsel for the respondent appears and has been heard. It is submitted that the respondent was not pregnant at the time of marriage and she has denied having been examined by any doctor on 31.05.2008, submitting that the allegations against her are totally false.

5. We have heard learned counsel for the parties and perused the lower court records. After careful consideration of the



facts and circumstances of the case, we find the appeal to be devoid of any merit. The prescription of Dr. Indu Bala Lal dated 31.05.2008 (Ext. 5) is on record, but however, the said Doctor has not been examined. The fact of the respondent having been medically examined by the said Doctor, particularly in view of the respondent's denial in this regard, itself has not been established. Even otherwise, the prescription dated 31.05.2008 *prima facie* appears to contain a material contradiction and is unworthy of reliance. On the one hand, the prescription dated 31.05.2008 states that the respondent was six weeks pregnant, while on the other hand it also mentions the date of her last period being 26.04.2008. In other words, the gap between the last period and the date of medical examination was only slightly more than four weeks and in such circumstances, it is not understood as to how the respondent could have been six weeks pregnant on the date of her alleged examination. According to the prescription itself, the last period of the respondent was on 26.04.2008 and she was admittedly married on 27.04.2008, meaning thereby that she was not pregnant on the day prior to her marriage. The entire allegation of the appellant is thus falsified on this ground alone.

6. The learned trial Court has examined all the witnesses and taken note that the appellant had failed to produce Dr. Indu Bala Lal on the ground that she refused to receive the Dasti summons issued on the request of the appellant. On perusal of the prescription, it has



been noticed that the respondent was examined in outdoor and that neither urine test, nor ultrasound test, nor X-Ray nor any biological test of the respondent was carried out. The medical prescription in question was thus treated to be of doubtful nature.

7. In the above view of the matter, I find no infirmity in the judgment under appeal. The appeal stands dismissed.

(Vikash Jain, J)

Dr. Ravi Ranjan, J. I agree

(Dr. Ravi Ranjan, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	13.09.2017
Uploading Date	10.11.2017
Transmission Date	N.A.

