

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.26 of 2015

Arvind Kumar Rai S/o Late Jagdish Rai Resident of Village Rahimpur
Rudauly, P.O. Rudauly, P.S. Samastipur (Muffasil), District Samastipur.

... .. Appellant/s

Versus

Guria Kumari D/o Upendra Rai Resident of Village Chaknoor, P.O.
Rahmatpur, P.S. Samastipur (Muffasil), District Samastipur.

... .. Respondent/s

Appearance :

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For the Appellant/s : Mr. Vishwanath Prasad Sinha, Sr. Adv & Mr.
Prabhash Ranjan Thakur, Adv

For the Respondent/s : Mr. Suraj Narain Yadav, Adv, Mr. Bijay
Bhushan Prasad, Adv and Ms. Vandan Singh,
Adv

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 18-07-2018

We have heard learned counsel for the parties and
perused the record of this case.

This appeal is directed against the judgment and decree
dated 03.12.2014 passed by the Principal Judge, Family Court,
Samastipur in Matrimonial Case No. 03 of 2011.

The fact which emanates out of the petition filed by the
petitioner-appellant under Section 11 of the Hindu Marriage
Act, 1955 (hereinafter to be referred to as the 'Act') is
summarized as under:-

“The petitioner claims to be an employee of Indian
Railway and posted in Diesel Shed, Samastipur. According to



the allegations set forth in the plaint the petitioner was kidnapped on 18.06.2010 by the father of the Opposite Party-respondent with the help of some unknown persons and thereafter was pressurized for getting married with Opposite Party-respondent and on denial, he was subjected to physical assault and threat was also given to him of facing dire consequences. It is stated that the petitioner was taken away in a BOLERO car towards Pusa and confined in a room and subsequently was taken to village Chaknoor along with some ladies where he was forced to pour vermilion over the head of Opposite Party-respondent. The petitioner remained in confinement for about one month and, thereafter, he was brought on motorcycle and left back to his home.”

In the meantime, while the petitioner was under confinement, the brother of the petitioner-appellant lodged FIR being Samastipur (M) P.S. Case No. 341 of 2010 under Sections 354/34 of the Indian Penal Code against Devendra Rai and Others on 21.06.2010 i.e. three days after the date of kidnapping. The FIR has been brought on record as Exhibit-1.

It is alleged in the plaint/petition that the so called marriage was performed applying force and coercion, which is nullity and as such this case has been filed for declaring it as



void.

It is urged that since the basis of marriage is fraud, deception and coercion without performing the ceremonies as per Hindu rites, this is not a valid marriage, as such the aforesaid declaration is sought. It is further stated that there was no Saptpadi performed before the sacred fire etc. or any other ceremony save and except forcibly putting vermilion over the head of the Opposite Party-respondent.

It is also alleged that petitioner-appellant and Opposite Party-respondent are of same 'Gotra' and as such marriage could not have been solemnized on that count also. According to the plaint first cause of action arose on 18.06.2010 when the petitioner-appellant was kidnapped and again on 21.06.2010 when the alleged marriage was solemnized and further on 30.12.2010 when it came to the knowledge of the petitioner that both the parties were of same 'Gotra' and as such they requested Opposite Party-respondent to let the marriage be declared null and void. On declining, the present matrimonial case was filed.

The Opposite Party-respondent appeared in the case and filed her written statement. She has stated that the case has been filed for the purpose of extorting money and dowry from her parents for which she has already filed a case before the C.J.M.



Samastipur. The factum of marriage by applying force and coercion has been denied. Allegation of kidnapping has also been denied rather it is stated that the marriage was arranged one and was finalized after negotiations between the family of Opposite Party-respondent and Petitioner-Appellant and the marriage was solemnized on 18.06.2010. In the presence of villagers and relatives of both sides the parents of the Opposite Party-respondent gifted ornaments, clothes etc. of amount of Rs. 3,00,000/- to the petitioner's uncle but dhotis were given to the Barat party also in the presence of the villagers.

It is further stated in written statement that the applicant also received gift from parents and grand-mother of the Opposite Party-respondent and after feast all the members of 'Barat' departed to the place of applicant. It is stated in the written statement that applicant passed happy hours at the paternal place of Opposite Party-respondent, however, when the Opposite Party-respondent came to her matrimonial place, the applicant, under pressure of his family members, demanded Rs. 2,00,000/- as dowry which was not acceptable to the parents of the Opposite Party-respondent. This infuriated the applicants family members who started taunting and torturing her. The brother of the bride who came with her was not given food,



water etc. Ultimately, he fled away from the matrimonial place of her Opposite Party-respondent and somehow reached to his home and narrated all the incident to his family members who immediately came at the matrimonial home of the Opposite Party-respondent and requested the appellant for 'Bidagari' but there was again demand of dowry. Ultimately Panchayati was also done at the matrimonial place of the Opposite Party-respondent and local panches released the Opposite Party-respondent from the custody of applicants family. Thereafter she came back to her Naihar (parents house) and since then she is residing there.

It has been clarified in the written statement that Opposite Party-respondent belongs to family of 'Majhraut Yadav' having 'Kashyap Gotra' and the applicant belongs to 'Sandilya Gotra' which are not same 'Gotra' and therefore marriage is permissible and there is no illegality and irregularity in the marriage of applicant with Opposite Party-respondent, as it does not come within the prohibited degree of marriage. It is stated that the Opposite Party-respondent has examined Photographer, Pandit, Hajam and other villagers in support of her statement made in written statement. It is further stated that the marriage was already consummated.



In the aforesaid background of the factual matrix emanating out of the pleading of both the parties, the court below framed following issues:-

“ISSUES

- I. Whether the case/suit as filed is maintainable?
- II. Whether the petitioner has got valid cause of action to file the suit/case.
- III. Whether the marriage of the petitioner with O.P. dated 21.06.2010 is without his consent and under pressure after kidnapping him?
- IV. Whether the marriage between the petitioner and the O.P. is valid one or is null and void?
- V. Whether the applicant is entitled to get the decree for divorce?
- VI. Whether the petitioner is entitled to any other relief except as prayed for?”

Altogether five witnesses have been examined on behalf of the petitioner-appellant. The petitioner-appellant has produced some documents which have been exhibited as under:-

- (i) Certified Copy of the FIR (Exhibit-1)
- (ii) Certified Copy of the Final Form of Muffasil P.S. Case No. 341 of 2010 (Exhibit-2)
- (iii) Certified Copy of Deposition in Maintenance Case No. 83 of 2011 (Exhibit-3)
- (iv) Certified Copy of deposition in C. R Case No. 1008 of 2010 (Exhibit-3/a)
- (v) Certified Copy of order sheet of C.R Case No. 1008 of 2010 filed in the said complaint case before the court of C.J.M., Samastipur (Exhibit-4)
- (vi) Certified Copy of the Final Form of Muffasil P.S. Case No. 413 of 2010 (Exhibit-2/a).



Four witnesses have been examined on behalf of Opposite Party-respondent and she has also brought on record documents exhibited as under:-

- (i) Certified Copy of Order of T.R. No. 2373 of 2012 (Exhibit-A)
- (ii) Photos taken on the marriage ceremony (Exhibit-B to B/8
- (iii) Certified Copy of deposition of Bhole Nath Choudhary in Maintenance Case No. 83 of 2011 (Exhibit-C).

The Family Court on appreciation of pleading and testimonies produced on behalf of the parties has come to the conclusion that the marriage was solemnized in presence of both the parties following Hindu Rites and Customs, as such there is no illegality in the marriage and the entire story propounded by the petitioner-appellant appears to be false and frivolous.

Accordingly, Issue Nos. (iii) and (iv) were decided in favour of Opposite Party-respondent.

So far as Issue Nos. 1 and 2 are concerned, it is recorded that these issues have never been raised though the question will still remain as to whether the matrimonial case could have been filed in view of the provisions contained under Section 11 of the Act as well as on the basis of facts disclosed and relief sought in the plaint. So far as Issue Nos. V and VI are concerned since the petitioner could not prove the case, the court was of the opinion



that there was no need for consideration of the same, as such petitioner was not found entitled for any relief.

On the aforesaid background of the matter, we have heard Mr. Vishwanath Prasad Sinha, learned senior counsel appearing on behalf of the appellant-respondent and Mr. Suraj Narain Yadav, learned counsel appearing on behalf of the Opposite Party-respondent.

First question which has been raised by the Opposite Party-respondent at the time of hearing is regarding maintainability of the matrimonial case.

It is urged on behalf of Opposite Party-respondent that the matrimonial case was filed under Section 11 of the Act and not under Section 12 of the Act and as such since the issue raised did not come under the ambit of such Section, entire case has to be declared to be not maintainable.

Per contra learned counsel appearing on behalf of the appellant-respondent urged that it would be apparent from the judgment itself that the Issue Nos. I and II, which are regarding the maintainability of the suit was not contested by the Opposite Party-respondent, and therefore, she is not entitled to raise the issue once again.

However, we do not find any force in such submission



made by the learned counsel for the petitioner-appellant, inasmuch as the question of law specially with respect to the maintainability can be raised at any stage of the proceeding which would definitely include the said suit, appeal or any other stage, which is permissible in law. However, at the same time it would also have to be considered as to whether on such ground alone the plaint should be thrown away? For reaching to a just and logical conclusion, it would be desirable to quote the relevant provisions of Section 11 and 12 of the Act, which are extracted as under for better appreciation:-

“11.Void marriages.- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

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 marriage has not been consummated owing to the impotency of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of Section 5; or

(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] 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) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

2) Notwithstanding anything contained in sub-section (1), 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) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the [existence of the said ground].”

From perusal of the aforesaid provision, it would appear that Section 11 is with respect to void marriages. It is stated that if the marriage is in contravention of any conditions specified in Clauses (i), (iv) and (v) of Section 5 then that marriage is void *ipso jure*, i.e. void from the very inception, and have to be ignored as not existing in law. As and when such a question arises the parties to the marriage may seek formal declaration from the competent court regarding that. Whereas Section 12 deals with voidable marriages which are essentially required to be declared void by a court of competent jurisdiction. The Court may annul the marriage by pronouncement of decree of nullity on the ground that the marriage has not been consummated owing to the impotence of the respondent or on the ground that the marriage is in contravention of the condition that has been



specified under clause (ii) of Section 5 of the Act. Third ground available is that the consent of the petitioner or where the consent of guardian in marriage of the petitioner was required under Section 5, has been obtained by playing force or fraud either as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent and other ground which would be found in the provision itself.

Since Section 11 only refers as conditions to the clause no. (i) (iv) and (v) of Section 5 which does not cover the case of the petitioner-appellant at all save and except one of the grounds i.e. for declaring that the parties are within the prohibited degree of relationship. Once the actual case of the petitioner is covered under Section 12(1)(c) and the major allegation is that the marriage has been performed by force and coercion and also that the ceremonies as per the Hindu Customs and Rites have not been performed, it has to be noted that Section 12 (2) (a) (i) provides that such petition should be filed within a period of one year after the force has been ceased to operate or the fraud has been discovered otherwise case would not be maintainable. However, that rider is of no consequence in the present case as even from the date of arranged marriage, as accepted by the Opposite Party-respondent i.e 18.06.2010, the case has been



filed within one year on 06.01.2011.

From the aforesaid discussion, it appears that though one of the allegation made in this case is regarding the marriage within the degree of prohibited relationship, the actual case of the petitioner-appellant is covered under Section 12 and not under Section 11 of the Act specially when no serious effort has been made by the petitioner-appellant to prove that parties are within the prohibited degree. Being of same 'Gotra' does not necessarily mean that the concerned persons are within the prohibited degree of relationship.

Now, the question is whether, on count that only Section 11 has been mentioned in the plaint, the case is to be thrown away after holding it to be not maintainable? We are of the considered opinion that it cannot be held as such for the following reasons.

From perusal of plaint, it appears that the allegations are there which are covered under Section 12 of the Act save and except one allegation i.e. regarding marriage within the prohibited degree which is covered under Section 11 of the Act. The relief sought is also for declaration of marriage between the petitioner-appellant and Opposite Party-respondent to be null and void. Therefore, since the matter is well covered under



Section 12 of the Act, in our view, levelling of Section 11 in the plaint would not take away the matter from the hands of the petitioner as levelling of section is of no consequence as the plaint could well have been filed even without disclosing the provision. It would not be in the interest of justice that on such ground case would be declared to be not maintainable, as the ingredients which are necessary to make out a case under Section 12 of the Act stands embedded in the plaint. Therefore such error cannot come in the way of doing full justice.

Under Rule-7 of the Family Courts (Patna High Court) Rules, 2000, it stands clarified as to what should be the content of the plaint. It is stated that in addition to the particulars required to be furnished under Order VII Rule 1 of the Code of Civil Procedure, 1908 Section 20(1) of the Hindu Marriage Act, 1955 every plaint/application for judicial separation, nullity of marriage, divorce and restitution of conjugal rights shall contain the particulars prescribed therein. It is no-where stated that the provision of law under which the relief is being sought, should also be written in the plaint. Otherwise also even if wrong provision of law is written that will not make the entire case non justiciable. That has to be considered merely as typographical error.



Thus, in our opinion the suit was maintainable under Section 12 of the Act. It was also partially maintainable under Section 11 of the Act as per the allegation.

Now, coming to the merit of the case, altogether 5 witnesses have been examined on behalf of the petitioner-appellant. A.W. 1, Sita Ram Rai, who is an employee of the Railway and posted as *Khalasi* in Narkatiaganj, has fully supported the case of the petitioner-appellant including his kidnapping by the side of opposite party. Similarly, A.W. 2, Bimal Kumar, who is relative of the petitioner, has also supported the case being his cousin (*Phuphera* brother). A.W. 3, Bimal Kumar Rai, who is also relative of the petitioner and has supported the case of the petitioner in similar manner. A.W. 4, Raj Kumar Rai, is full brother of the petitioner-appellant. He has lodged the case against the father of the opposite party and others on 21.06.2010 bearing Muffasil Case No. 341 of 2010 under Section 364/34 of the Indian Penal Code. He has stated about kidnapping of his brother, i.e., the petitioner-appellant by the father of the opposite party and confining him in a room and pressurizing him to get married with his daughter. Surprisingly, the court below has stated in paragraph No. 10 that the evidence of this witness is not reliable, however, it has not stated anything



as to why it has come to such conclusion. If the A.W.4 is the full brother of the petitioner and he himself has lodged F.I.R. for kidnapping of the petitioner-appellant and has narrated everything at the time of his examination as a witness then why his testimony would be unreliable is not at all clear.

In our view, there is no reason to reach to such conclusion.

A.W. 5 is the petitioner-appellant himself, who has supported his case and has withstood the test of cross-examination.

So far the opposite party is concerned, the court below has recorded that she has narrated her fact in the written statement and examination-in-chief that marriage was performed by observing all the Hindu rites and customs, and at the time of her marriage, people of both sides were present and some photographs taken in marriage was also brought on record as Exhibit-B to B/8. She has stated that it was an arranged marriage. Other witnesses are also there. O.P.W. 3, Bhikhari Jha has claimed that he is *Purohit* and he has performed the marriage, whereas O.P.W. 4, Ramchandra Thakur has stated that he was *Hazam* and has assisted O.P.W. 3 in performing the marriage according to Hindu rites and rituals.



Now, it has to be seen whether the evidence led by the opposite party inspires confidence or not. According to the petitioner-appellant, date of kidnapping is 18.06.2010 and date of marriage as per the opposite party is 18.06.2010. F.I.R. was lodged by the brother of the petitioner-appellant regarding kidnapping of the petitioner-appellant on 21.06.2010 in which final form (charge-sheet) against the opposite party was already submitted which is apparent from Exhibit-2, whereas, a complaint case filed by Upendra Rai against the petitioner-appellant and his family members was dismissed under Section 203 Cr.P.C. on 26.07.2012 which would be apparent from order-sheet which is on record. In the F.I.R. bearing Samastipur Muffasil P.S. Case No. 413 of 2010, the police has already submitted final form exonerating the petitioner-appellant and his family members. However, it is stated that on 27.07.2012 cognizance was taken by the court concerned.

The opposite party, while being examined as O.P.W. 1, has stated that the marriage was fixed after negotiation but she has not been able to say anything regarding the negotiation, for example, when the negotiation started, what were the dates of pre-marriage and during marriage ceremonies were fixed who had participated in the marriage negotiation? When was pre-



marriage ceremony such as *Chheka/Tilak/Faldan* were performed? Though she has examined the *Purohit* and *Hazam* but neither her grandfather nor her father, who had lodged complaint and F.I.R. cases against the petitioner's side, could be examined as witness on her behalf. In fact, not a single family member of the opposite party has been examined. She has stated that there were 100-150 *Barati*, whereas, O.P.W. 2 has stated that only 13-15 members were there in *Barat*. Therefore, they are not sure about it. In fact, such type of contrary statement raises serious doubt regarding its reliability. There is absolutely no evidence regarding negotiation of marriage having taken place prior to the marriage. It is also stated by the opposite party-respondent in her examination that *Panchayati* was also done at the matrimonial place of the opposite party-respondent and local *Panches* released the opposite party-respondent from the custody of the applicant's family but none of the said arbitrators were examined in the case. O.P.W. 2 has stated that photography of every ceremony or ritual was done during the marriage. The deposition of the said photographer recorded in matrimonial case has been brought on record of this case as Exhibit-C. There is no photograph of the members of *Barat*. The photographer has not been examined in this case rather his



evidence recorded in maintenance case has been brought on record as Exhibit-C and though he has stated that he has taken snap of every ritual of the marriage from the beginning to end but he has been able to produce only 7 photographs which do not show any ritual was performed. He has denied that he is having photographs of “*Dwar Puja*” or “*Kanya Nirichhan*” or “*Sindur Daan*”. Aforesaid fact coupled with the further fact that none of the family members of the bride side has been examined as witness in the case, raises serious doubt about the correctness of the statement. Charge-sheet was already submitted and trial must be going on in the kidnapping case which was lodged on 21.06.2010 itself by the brother of the applicant/appellant. The case of the applicant/appellant is that he was kidnapped and married under coercion, and further, the evidence led by the A.Ws. fully support this case but so far as opposite party is concerned, she has not been able to prove by leading evidence that there were any negotiation of the marriage and the marriage was prefixed after such negotiation and then *Barat* came and marriage was performed following Hindu rites and rituals.

In the aforementioned facts and circumstances we are left with no other option than to hold that marriage would have to be declared void under Section 12(1) (c) of the Act. Held



accordingly.

So far the marriage being within the prohibited decree as claimed by the appellant is concerned, we are unable to accept this as there is no cogent evidence led on behalf of applicant/appellant in this connection. However, since appellant has succeeded on the first first ground that has been discussed above, this would have no consequence.

As a result, this appeal stands allowed. The judgment impugned is quashed and set aside. The marriage between the applicant/appellant and opposite party-respondent is held to be void and, accordingly, the same stands annulled on the ground that the consent of the petitioner for marriage was obtained by force and coercion the marriage suffers from fraud as to the nature of ceremony and the material facts. The parties will bear their own costs.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	N.A.
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