

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.495 of 2012

Niraj Kumar @ Sonu S/O Rajan Prasad Sinha Resident Of Kalyanbigha, P.S. Harnaut, District Nalanda, At Present Residence Of Mohalla Kumhrar, P.S. Agam Kuan, District Patna.

... .. Appellant/S

Versus

Smt. Namita Sinha D/O Girija Nandan Singh W/O Sri Niraj Kumar @ Sonu Resident Of Mohalla Ashok Nagar, Road No. 11, P.S. Kankarbgh, P.O. Lohia Nagar, District Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary, Adv
For the Respondent/s : Mr. Nawal Kishore Pd. Adv

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE Mr. JUSTICE S. KUMAR)

Date : 06.11.2018

Heard learned counsel for the parties.

2. This miscellaneous appeal is directed against the judgment and order passed by Principal Judge, Family Court, Patna on 11.07.2012, in Matrimonial Case No. 351 of 2010, by which the petition of petitioner-Appellant filed under Section 12 of the Hindu Marriage Act, 1955 for declaring the marriage as null and void, has been dismissed.

3. Appellant/husband had filed a petition in the Family Court, Patna, against the Respondent-wife stating therein that



marriage between them was solemnized on 04.06.2009 as per hindu rites and customs at the parental house of Respondent-wife.

4. On the date of marriage appellant/husband was 28 years 6 months of age and Respondent-wife was 25 years 9 months as per bio-data given by Respondent-wife.

5. Appellant/husband was employed as Second Engineer in Merchant Navy whereas Respondent-wife was holding M.A. Degree but she was not in employment. After marriage, Respondent-wife came to her matrimonial house at Kumhrar, Patna, and remained there till 2nd September, 2009 on which date Appellant-husband went to resume his duty on Ship in Indonesia.

6. Respondent-wife reached place of posting of Appellant-husband on 23rd September, 2009 at Jamnagar on the Ship and came to know about the passport of Respondent-wife in which her date of birth was recorded as 02.10.1980, however, in the Bio-Data given to Appellant at the time of negotiation of marriage her date of birth was shown to be 02.10.1982. Appellant was shocked and surprised to know this fact that on 02.10.2009 that Respondent-wife is older to him as date of birth of Appellant is 31.12.1980 and deliberately a wrong date of



birth was given and the actual date of birth was suppressed so that marriage could be negotiated and materialized. The case of Appellant is that had the Respondent-wife given her actual date of birth he would not have given consent for said marriage as under prevalent practice in the society the age of wife should be less than that of her husband and it is submitted that consent for the marriage was obtained by practicing fraud.

7. Secondly, it has been pleaded that Respondent-wife had accepted on Stamp Paper dated 15.10.2009 in her own handwriting that she had affair and relation with one Shekhar Paswan for last three years and they had physical relation also and this vital material fact was never disclosed to Appellant as such the second ground to declare the marriage as nullity has been taken that the affair and relation of Respondent-wife with said Shekhar Paswan was never disclosed to the Appellant and had he been informed about such relation he would not have given consent for this marriage and same has been obtained by practicing fraud by non disclosure of this vital material fact which was suppressed and Appellant was kept in dark about such relation.

8. Both of them came back to India on 10.10.2009 after such disclosure made by Respondent-wife and Appellant had to



pay penalty for breaking the contract and Appellant and Respondent purchased Stamp of Rs. 500/-and Respondent-wife in her own writing accepted affair and relation with said Shekhar Paswan in writing on stamp paper on 15.10.2009 and thereafter went to her parental home on 17.10.2009 along with cash and jewellery and on 28.10.2009 fled away with said Shekhar Paswan. Cousin brother of said Shekhar Paswan was tenant in the house of father of Respondent-wife and they developed relations when Shekhar Paswan visited her house.

9. Respondent-wife appeared in this case and filed her written statement in which she has stated that the marriage between the parties were solemnized and was consummated and several times co-habitation took place between them. The marriage between them was negotiated and settled after an advertisement was issued by the Appellant for his marriage and at the time of marriage her matriculation certificate was shown to petitioner in which her date of birth was recorded as 02.10.1980, which makes her older by two to three months. She has denied that the Bio-Data as enclosed in petition was given by her or her family rather same was falsely prepared for institution of present case. The original matriculation certificate in which date of birth of Respondent-wife recorded as



02.10.1980 is in custody of Appellant-husband and he has got paper of Visa which contains the same date of birth.

10. It has been submitted that when Respondent-wife went to place of posting of Appellant-husband she was tortured both physically and mentally to fulfill the illegal demand of Rs. 2 Lacs and a Maruti Car. Attempt was also made to push her from the Ship. She has further submitted that both of them returned to Patna on 13.10.2009 as Appellant-husband had falsely represented to the authorities that his Mother is admitted in AIIMS as he did not want to go Akaba by crossing Somalia and on arrival in Patna in the night of 15.10.2009, she was badly assaulted by Appellant husband and his family members and she was forced to write the statement as contained in Exhibit-1 which was got forcibly written by her on threat and coercion. On 03.08.2010, an attempt was also made to set her ablaze and as such on 04.08.2010 when she tried to inform the police she was brutally assaulted and ousted from her matrimonial home for which she instituted FIR being Agamkuan P.S. Case No. 149 of 2010 against Appellant-husband and his family members, which is still pending. It has been further submitted that she was forcibly aborted when she conceived.

11. Respondent-wife has denied any relation with said



Shekhar Paswan and the alleged Information Petition dated 27.11.2009 filed by father of Appellant is with ulterior motive. Consent of Appellant was never obtained by practicing fraud. The marriage is a valid marriage.

12. Appellant-husband was examined as PW-2 in the Family Court in which he has stated that marriage was solemnized on 04.06.2009 as per Hindu rites and rituals which was an arranged marriage. At the time of marriage, Bio-Data of Respondent-wife was given in which date of birth of respondent wife was recorded as October-1982 at that time he was posted as Second Engineer in Merchant Navy. His date of birth is 31st December, 1980. Bio-Data of Respondent has been filed which has been marked as exhibit 11. After sometime, he received matriculation certificate of the respondent in which her date of birth was recorded as 02.10.1982 and her qualification was shown as M.A. Both certificates were brought by Rajiv Kumar brother of the Respondent.

13. After marriage, Respondent remained in his house for three months and thereafter went on ship. On 02.10.2009, for the first time he saw the Passport of Respondent. The respondent had not accompanied him on the Ship but had come subsequently. In the Passport the date of birth of respondent was



recorded as 02.10.1980. To obtain the Passport the brother of Respondent had come with forged certificate and form on which the date of birth of respondent has been recorded as 02.10.1982. When Passport was not issued then the earlier Passport of Respondent was sent to company by courier. Company had prepared Visa of the respondent on said Passport, and on that basis the respondent came on his Ship. The Passport contains the signature of the respondent according to which she is three months older to him which was not known to him at the time of marriage. Had it been known to him he would not have given his consent for marriage. After having knowledge about the actual date of birth of Respondent relations between them became sore and strained and Respondent told that she had already solemnized love marriage with Shekhar Paswan three years before who lives adjacent to her house. The cousin brother of Shekhar Paswan namely Satendra Paswan is tenant in the house of his father and is a Police Officer. The respondent said that she agreed for marriage because of pressure of family and she was not willing for marriage. Regarding Matric certificate she said that it is forged. After 02.10.2009, the relation of husband and wife came to end and there has been no co-habitation thereafter. He broke the contract from the company



on 10.10.2009 for which he had to pay default fine of Rs. 1000\$ (Dollar) which was deducted from his salary and both came back to Patna and on Stamp paper of Rs. 500/- Respondent admitted in her own writing her affair and relation with Shekhar Paswan which has been marked as Exhibit-1. She had voluntarily written that consent for marriage was obtained by fraud he was not aware that she had affair with other and she is older to him in age and he would not have given his consent for marriage had it been known to him. On 28.10.2009, Respondent fled away with Shekhar Paswan. Thereafter on 10.11.2009, he went abroad on duty and on 25.04.2010, he came back to India and after reaching India he has filed this case and thereafter on 27.06.2010, he again went on his Ship and stayed abroad. He has denied any demand of Maruti and said that his father had a Maruti Car. He has filed this case for a declaration of the marriage to be a nullity and also refund of Rs. 9 Lacs and jewellery of Rs. 6 Lacs which was given by him to the Respondent.

14. In his cross-examination, he has stated that he has not made Shekhar Paswan as opposite party in this case. Seven months prior to filing of this case he came to know that Respondent had affair with Shekhar Paswan. He has not given



any written notice to Shekhar Paswan. He lived near the house of Respondent. He has never met Shekhar Paswan neither ever tried to meet his family members. In his petition he has stated that his wife is three months older to him but at the time of marriage it was told that she is two years younger to him. The Bio-Data and certificate were given at the time of marriage which he has filed in the court. Bio Data does not contain signature of girl or any of her family member. Certificate is in original. He has denied that he was aware at the time of marriage that the girl is three months older to him and even thereafter he agreed for marriage. After receiving the notice of this case, Respondent filed a case under section 498A of the IPC and $\frac{3}{4}$ of Dowry Prohibition Act against him and his family members. In her complaint she has alleged demand of dowry of Rs. 2 Lacs and a Maruti Car. At the time of marriage he was posted as Second Engineer and was getting salary of Rs. 3 Lacs. He had taken the leave to go home on the ground of illness of his mother. At that time both of them were on the ship and both came to Patna. He has denied that after coming to Patna there was any demand for Maruti Car or she was assaulted or her signature was taken on the blank paper. Respondent has written on the stamp paper in his presence. He has denied that



Respondent was compelled to write Exhibit-1. She had written voluntarily.

15. PW-1 Rajan Prasad Sinha is father of petitioner. He has stated in his examination-in-chief that the date of birth of his son is 31.12.1980. Advertisement was published in Newspaper for marriage in which it was stated that the boy is Engineer in Merchant Navy. The brother of the respondent came with Bio-Data and photo of respondent. Both are filed in this case. In the Bio-Data of respondent her date of birth was shown as October, 1982. In the Passport of the respondent her date of birth was recorded as October, 1980. He has seen the Passport of the respondent but has not filed. On seeing the Bio-Data and believing it to be true he agreed to marry his son with the respondent. After marriage, Respondent came in his house and lived there for three months. On 02.09.2009, his son went on his duty on the Ship in Indonesia. Respondent also wanted to go with him therefore, Passport was required and his brother brought Passport form on which date of birth of respondent was recorded as October, 1982 but Passport was not issued then she told that old Passport is in her parental home and Visa was made on said Passport and she went to Jamnagar. On said Passport the date of birth of respondent was recorded as 02.10.1980. After



marriage matriculation certificate was given on which date of birth was recorded as October, 1982. The respondent told his son that date of birth is wrong and dissolve the marriage because she agreed for marriage because of pressure of her parents and she had affair and relation with Shekhar Paswan and on hearing this his son became frustrated and he broke the contract and returned to his home for which he had to pay the penalty. After reaching here the respondent admitted everything in writing which has been filed in the court. Had he been informed about these facts he would not have agreed for marriage of his son. His son thereafter went for his job in November, 2009 and the respondent went to her parental home and thereafter fled away with Shekhar Paswan. The brother of the respondent came and said that prestige of the family is at stake therefore, both should be searched and find out and thereafter he filed an information petition dated 27.11.2009 in Bihar Sharif, a copy of which has been filed. On 04.08.2010 Respondent filed a criminal case against them. In such circumstances the marriage should be dissolved.

16. In his cross-examination he has stated that in this case for divorce as documentary evidence they have filed Bio-Data of Respondent and self written statement of Respondent.



Respondent has filed a case of torture which is pending. The age of the respondent was informed to be 2 year less but subsequently it was found that she is older by some months. Shekhar Paswan was not made party nor any notice was given to him. They returned back on the pretext that his mother is seriously ill. Respondent had given in writing to dissolve the marriage. He has seen that document. He has denied of having taken the signature of Respondent on blank paper and prepared a forged document.

17. DW-2 is Opposite party in this case. She has stated in her deposition that her marriage was solemnized with Appellant on 04.06.2009 as per Hindu rites and customs in Kankarbagh. Advertisement was published and his brother and father settled the marriage. Prior to marriage petitioner and his family had seen her academic certificate and her also. Original matriculation certificate was shown to them in proof of her age on which her date of birth is recorded as 02.10.1980. As per this certificate she is two months older than Appellant but Appellant had no objection on it. She had not given any bio-data, the bio-data produced by the Appellant is his own creation. She had given matriculation certificate which is correct. She had gone to her matrimonial house next day of her marriage. She had



accompanied her husband on the ship but there also she was being tortured and assaulted. He also tried to push her from the ship in the Sea. When she tried to talk on phone, he snatched her phone. Appellant was asked to go to Somalia. There she could not go and as such she came back to Patna with her husband. She was not allowed to talk to her family members. His husband and Father-in-Law forcibly got written by her on Stamp Paper about her relations with another person and thereafter her signature was taken and all of her belongings was kept by them and she was sent to her parental home. Thereafter, she was also threatened. On 03.08.2010, her husband, Brother-in-Law, Father in Law, Sister In Law and Mother in Law tried to kill her by setting her ablaze and in order to save her life she fled away and on the next day, she went to police station and instituted a case and thereafter she is living in her parental home. She was also aborted. She was an international acclaimed player. In Passport also her date of birth is 02.10.1980. His husband is in employment but she is not working. All the documents produced by Appellant are forged and manufactured. All the allegations are incorrect. Marriage was solemnized in her parental home Ashok Nagar which is in the name of her mother. At the time of marriage, her age was 28



years. She used to participate in sports and had also gone abroad. Advertisement of marriage was seen by her parents and she saw subsequently in which age of Appellant was given as 28 years. After looking at the age her parents had gone for negotiation. From advertisement it could not be ascertained whether she is older or the boy. She has also filed copy of Passport in this court. She has denied that any attempt was made to hide her age and she produced fake certificate and got fake matriculation certificate to get the marriage settled. After marriage on 02.09.2009, Appellant went on Ship and after fifteen days she went on Ship. It is not true that after going on Ship she disclosed her affair to the Appellant and insisted to take divorce. It is also not true that due to her behaviour Appellant was forced to return from the Ship. She remained with Appellant on the Ship for 20 to 25 days. It is not true that she had given on Stamp Paper about her illicit relation. It is not true that she called her brother to go to her parental home rather they called her brother on Phone to take her back. In January-2010 she came second time to Kumhrar under police protection. It is not true that after having knowledge of this case she filed a case of Dowry torture. She is not aware that Appellant remained abroad from 27.06.2010 to 30.12.2010. She does not remember



the date of her abortion. She was forced to write in respect of her illicit relation on the point of Gun.

18. DW-1 Rajiv Ranjan is brother of Respondent. He has stated on oath that the marriage was solemnized on 04.06.2009 as per Hindu rites and customs in Kankarbagh, Patna. Advertisement was published by Appellant from which they had knowledge about it. At the time of negotiation all academic certificates and matric certificate was shown to them. In matriculation certificate the date of birth of Respondent is recorded as 02.10.1980. Appellant had stated his date of birth as 31.12.1980, accordingly, Appellant is about three months younger to Respondent and having said knowledge he agreed for marriage. The Bio-data and matriculation certificate filed by Appellant is forged. After living for three months in Sasural, Respondent went on the Ship where Appellant was working. The VISA of Respondent was made on the basis of previous Passport on which date of birth of Respondent was recorded as 02.10.1980. The Passport of Respondent was already made as such there was no requirement of second Passport. He had denied Shekhar Paswan a Police Officer to be a Tenant in his house. He was posted in the IDBI Bank, Fraser Road, till 21st May 2011, thereafter was transferred to Siwan. He has denied



that he had concealed the date of birth of Respondent. He had given the Bio-Data at first instance and thereafter showed the matriculation certificate. In said Bio-Data the date of birth was recorded as 02.10.1980. In matriculation certificate, same date of birth was recorded. He has denied any concealment regarding date of birth of Respondent. He had obtained the consent of Appellant. He has supported the case of Respondent and repeated the version of Respondent in his examination and cross-examination.

19. That Appellant has filed this case under Section 12 (1)(C) of the Hindu Marriage Act, 1955, on the ground that the marriage was settled between the parties by practicing fraud on Appellant.

20. At the time of marriage the Respondent was older to Appellant by three months and suppressing this fact, Bio-Data of Respondent was provided in which the date of birth of Respondent has been recorded as 02.10.1982, a copy of which has been filed on behalf of Appellant which has been marked as Exhibit-11. It has been submitted that had this fact been known to Appellant that Respondent is older to him in age, he would not have given his consent for marriage and by providing a wrong date of birth his consent was obtained by practicing fraud



upon him and marriage was solemnized on 04.06.2009 and this fraud came to the knowledge of the Appellant when in the Passport and VISA of Respondent her date of birth was shown as 02.10.1980 and same came to the knowledge of Appellant some days after 23.09.2009 when Respondent joined him on Ship and from her Passport, he came to know her date of birth is 02.10.1980

21. Respondent has accepted on Stamp Paper in her own handwriting and signature that she had affair and relation with Shekhar Paswan prior to marriage and same was not disclosed to the appellant prior to the marriage and as such a vital material fact was concealed by the respondent and had same been disclosed to appellant he would have not given his consent for the marriage as such his consent was obtained by practicing fraud upon him by the respondent and his family.

22. And thereafter, has filed this case on 20.05.2010 i.e. within one year from the date of knowledge of fraud and as such petition is within the period of limitation as provided under Section 12 of the Hindu Marriage Act, 1955, which reads as follows:-

“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:-



(d) xxx

(a) on the ground specified in clause (c) of subsection (1) shall be entertained if-(i) the petition is presented more than one year after force had ceased to operate or, as the case may be, the fraud had been discovered.”



which Passport was needed and she had an old Passport already with her on the basis of which VISA was prepared and in the Passport date of birth of Respondent was recorded as 02.10.1980. Appellant and Respondent remained on the Ship for three months and for the first time on 02.10.2009 he saw the passport of Respondent showing her date of birth as 02.10.1980 and thereafter there was no co-habitation between the parties and both returned to Patna on 10.10.2009 and Respondent went to her parental home on 17.10.2009.

24. Respondent and other witnesses in her deposition has stated that the Bio-Data which was provided at the time of negotiation of marriage the date of birth of Respondent was shown as 02.10.1980 and the matriculation certificate also shows the same date of birth which was shown to Appellant and his family and nothing was suppressed and Appellant was fully aware that the date of birth of Respondent is 02.10.1980 and she was about three months older and having full knowledge of this fact appellant gave consent for marriage and thereafter marriage was solemnized and no fraud was practiced by Respondent or her family. The Bio-Data and matriculation certificate filed along with petition is a forged document. The VISA of Respondent was prepared on the basis of Passport which



Respondent had prior to the marriage as such there was no occasion for preparing fresh Passport. In Patna the co-habitation continued between Appellant and Respondent.

25. In support of his case Appellant has produced Bio-Data and the matriculation certificate which has been marked as Exhibit-11 and 12 in which date of birth of Respondent has been recorded as 02.10.1982 and admission of respondent written on stamp paper in which respondent has admitted her affair and relation with Shekhar Paswan prior to her marriage which has been marked as Exhibit-1.

26. Whereas Respondent has produced the photo copy of matriculation certificate in which her date of birth has been recorded as 02.10.1980 which has been marked as Exhibit- A and her passport and visa in which also her date of birth has been recorded as 02.10.1980 which has been marked as Exhibit-B and B/1.

27. After considering the oral as well as documentary evidence on record this Court finds that in Bio data of respondent as enclosed and marked as Exhibit-11 the date of birth of respondent has been shown as 10.10.1982 which falsifies the entire case of appellant that at the time of marriage the age of respondent as disclosed in Bio data provided by them



is 02.10.1982 as such the very foundation on which whole case was built up falls flat. The original matriculation certificate of respondent produced by the appellant showing her date of birth as 02.10.1982 has been stated by respondent as forged certificate. There is contradiction in deposition of AW-1 and AW-2 where they have stated in their deposition that matriculation certificate Exhibit-12 was provided at the time of negotiation of marriage but in their cross-examination they have stated that same was provided at the time of applying for passport of respondent. The respondent has produced matriculation certificate passport and visa in which her date of birth is 02.10.1980 and it has been further submitted that Bio-data which was given at the time of negotiation the date of birth was shown as 02.10.1980 and the bio-data enclosed by appellant Exhibit-11 is forged.

28. The Family Court has found that the case of the Appellant that he was given a wrong information regarding date of birth of respondent as 02.10.1982 is not established and no fraud/misrepresentation was committed by respondent and it was within the knowledge of the Appellant that the date of birth of Respondent is 02.10.1980 and thereafter he had given consent for marriage and has rejected the plea of Appellant to



declare the marriage as nullity on the ground of fraud. This Court has also carefully examined the oral as well as documentary evidence and is of the opinion that no fraud or misrepresentation was made by Respondents at the time of negotiation and settlement of marriage and Appellant was fully aware about the date of birth of Respondent to be 02.10.1980 and she being two to three months older than Appellant and the difference of age between the parties is not such that marriage could not have been settled or consent refused for such minor difference of age between the parties, as such this Court holds that no fraud was practiced in obtaining consent of the Appellant for the marriage and even assuming the case of Appellant to be true, the nature and magnitude of fraud should be of such an extent that had it been brought to the knowledge of Appellant, he would have refused the consent. The nature and magnitude of fraud and misrepresentation should be of such an extent that ordinarily if same is subsequently discovered it could be presumed that a ordinary person would have refused consent for such marriage. Even according to appellant the difference of age between both are 2-3 months and marriage with such difference of age is normal and acceptable in society. Plea of fraud or misrepresentation is not available if non disclosure or



suppression of any fact is of minor/trivial in nature such as it was told that respondent is whitish but she was found fair in complexion, respondent was told to be 5'6" but actually she was found to be 5'5". Respondent was told to be post graduate but she was graduate only. This Court is also in agreement with the finding of the Family Court.

29. The other ground taken by appellant that the respondent had not disclosed to him that respondent had affair and relation with one Shekhar Paswan and had such fact been disclosed to him he would not have given his consent for marriage and as such his consent was obtained by concealing material fact which means consent was obtained by a fraud.

30. A person can be said to have practiced fraud or misrepresented if he presents any document or makes representation about any fact to be true which subsequently is found to be false. Appellant and his family members had asked for academic qualification and respondent and his family members had given them bio data, academic certificate including matriculation certificate. Appellant has nowhere stated that he had asked respondent if she had any affair or relation with anyone and same was not disclosed by her. In present case there is nothing to infer that appellant had asked respondent



about such affair and respondent had replied in negative or anything was given in writing by the respondent. If appellant seeks declaration of marriage to be nullity on this ground then he has to make said person as party in the proceeding and he has to establish such affair and relation on the basis of evidence and is also required to prove that such disclosure was sought from respondent and was denied by her. A person cannot be forced to give evidence against herself and any incriminating material procured against her by the appellant under duress cannot be permitted to be used against her. The marriage was negotiated by the brother of respondent and it cannot be said that he had any knowledge of alleged affair of respondent and same was not disclosed to appellant

31. In support of his contention appellant has relied upon following judgments, however same are not applicable in facts and circumstances of present case as discussed above.

- (i) AIR 1968 Patna 90 (Babui Panmato Kuer Vs Ram Agya Singh)
- (ii) AIR 2006 Madhya Pradesh 51 (Sunder Lal Soni Vs Smt. Namita Jai)

32. After hearing the parties and going through the evidence and materials available on record, this court does not find any illegality, or infirmity in the order passed by the Family Court, as such the present Appeal is devoid of any merit



and is, accordingly, dismissed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	16.11.2018
Transmission Date	N.A.

