

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.802 of 2013

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Basuki Devi Daughter Of Naresh Mandal, W/O Of Abhijit Kumar @ Pankaj
Resident Of Village- Lochha Patam, P.S- Naya Ramnagar, District-Munger,
Presently Residing At Mungra, P.S- East Colony, Jamalpur, District-
Munger.

... .. Appellant/s

Versus

Abhijit Kumar @ Pankaj S/O Bishwanath Chaurisia Resident Of Village-
Lochha Patam, P.S- Naya Ramnagar, District- Munger.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prashant Sinha
For the Respondent/s : Mr.

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR**

ORAL JUDGEMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 31-08-2018

Heard the parties.

2. This Miscellaneous Appeal under Section 19 (1) of Family Courts Act has been filed by appellant wife against the judgment and order dated 12.11.2013 passed by Principal Judge, Family Court, Munger passed in Matrimonial Case No. 1059 of 2013 by which the learned court below has allowed petition filed by respondent husband under Section 11 of the Hindu Marriage Act.



3. Briefly stated, the facts of the case is that respondent husband had filed a petition in the Family Court, Munger against the appellant wife for a declaration that marriage solemnized on 18.05.2008 at Mahavir Mandir, Jamalpur District Munger be declared as null and void on the ground that respondent husband was already married on the alleged date of marriage with appellant wife and that being in contravention with section 5(1) of Hindu Marriage Act and as such was void from its inception and secondly the marriage solemnized on 18.05.2008 between respondent-husband and appellant-petitioner was forced marriage and was not voluntary and consensual.

4. In his petition filed before the Family Court, it is alleged that no mandatory rituals of Hindu Marriage such as Satpathi was performed nor any priest solemnized the marriage. Petitioner was abducted on 18.05.2008 at 3.00 PM by the father of appellant wife and was forced to put vermilion on the forehead of appellant wife on the point of Gun. Respondent husband was thereafter brought to the residence of appellant wife and somehow he managed to escape and reached Naya Ram Nagar Police Station but his FIR was not registered and he filed a complaint case in the court of C.J.M., Munger being



complaint Case No. 551C/08 on 22.05.2008 which is still pending in which appellant wife and his family members have been made accused. Respondent husband was already married and their marriage was registered under the Marriage Registration Act but in spite of knowledge of the same he was abducted and was forcefully married on the strength of arms with appellant wife against his will and consent.

5. Appellant wife filed a case being case No. 748C/08 under Section 498A of IPC and $\frac{3}{4}$ D.P. Act against petitioner and his family members only to harass and put pressure upon them to accept forceful marriage. Petitioner had filed Anticipatory Bail petition in which the Session Judge, Munger has also doubted the factum of lawful marriage and Patna High Court granted anticipatory bail to petitioner and his father. Appellant wife has also filed a case under Section 125 of Cr.P.C. being case No. 41M/09 for grant of maintenance and as such petitioner had no option but to file the matrimonial suit for a declaration that the so-called marriage as claimed by appellant wife is void and nullity in the eye of law.

6. Written statement was filed on behalf of appellant wife in which it has been stated that marriage was valid and all rituals customs and rites were performed and Saptpathi was also



performed and petition under Section 11 of Hindu Marriage Act, 1955 was not maintainable. Respondent wife is legally married wife and marriage was solemnized on 18.05.2018 and it was the first marriage of both the parties. Allegation of forceful marriage is denied. The appellant wife was taken to her matrimonial home where the marriage was consummated and she lived till 24.05.2008 but thereafter father of respondent husband started demanding Rs. 2 lacs and one motorcycle as dowry and when father of wife could not fulfil said demand appellant wife was ousted from her matrimonial home and left with no option she filed the Criminal case.

7. The previous marriage of respondent husband is false and baseless and in his complaint case No. 551C of 2008 he has nowhere stated that he was a married person. She has also prayed for interim maintenance during pendency of matrimonial case.

8. Husband respondent has examined five witnesses in support of his case and has also produced five documents which has been marked as Exhibit-1 to 5.

9. PW-1 is Abhijit Kumar, respondent husband, PW-2 is Shobha kumari, legally wedded wife of respondent husband, PW-3 Vishwanath Mandal is father of respondent husband, PW-



4 Shekhar Suman was Up Mukhiya of Panchayat, PW-5 Santosh Kumar is relative of respondent husband.

10. Exhibit-1 is joint affidavit dated 24.01.2008 issued by Chandi Asthan, Dharmik Nyay Samiti Chandi Asthan, Munger showing marriage of PW-1 and PW-2, Exhibit-2 is marriage registration certificate dated 26.08.2008, Exhibit-3 is birth certificate dated 05.02.2010 showing date of birth of Abhilasha Kumari daughter of PW-1 and PW-2, Exhibit-4 certified copy of complaint case No. 551C/2008, Exhibit-5 Voter identity card of Shobha Kumari, Exhibit X to X3 are photographs of marriage ceremony of PW-1 and PW-2, Exhibit-Y order dated 13.01.2009 passed by learned Session Judge, Munger in A.B.A. No. 873/2008.

11. Respondent has examined two witnesses, RW-1 is Basuki Devi, appellant wife, RW-2 Ramavtar Jha, priest of the marriage on 18.05.2008. Eight documentary evidence has also been produced by respondent. Exhibit-A is affidavit of Abhijit Kumar dated 24.01.2008, Exhibit B- certified copy of order dated 02.09.2008 passed by learned S.D.J.M., Munger in complaint case No. 748C/2008 issuing summons, Exhibit B/1 certified copy of complaint petition No. 748C/2008, Exhibit-C order dated 05.05.2011 passed by Patna High Court in C.W.J.C.



No. 11882 of 2010, application of Abhijit Kumar for marriage registration, three photographs of marriage has been marked as E to E/2 for identification.

12. PW-1 Abhijit Kumar has supported his case in his examination-in-Chief as given in his petition under Section 11 of the Hindu Marriage Act. In his cross-examination he has stated that he was abducted on 18.05.2008 and taken to Mahavir Temple where he was forcibly married to Basuki Devi on strength of arms and was compelled to put sindur on her forehead. He somehow escaped and went to the police station to lodge the case but same was not instituted and thereafter he filed the complaint case. He has denied any love or affection for Basuki Devi and voluntarily and willingly marrying her. His marriage was solemnized with Shobha Devi on 24.01.2008 at Chandi Asthan and from said wedlock one daughter is born. He had given application for registration of marriage on 24.01.2008 itself and got certificate on 26.08.2008 from Deputy Mukhiya who had made inquiry for granting the certificate. He has denied demand of dowry or ousting appellant wife from matrimonial house on 24.05.2008.

13. PW-2 is Shobha Kumari, who in her examination-in-Chief has supported the case of respondent husband and has



stated that she is the first and only legal wedded wife of Abhijit Kumar and her marriage was solemnized on 24.01.2008 as per Hindu rites and customs at Chandi Asthan, Munger and from said wedlock she is blessed with one daughter Abhilasha Kumari born on 18.01.2010. She has been cross-examined. She has identified four photographs of her marriage which have been marked as X, X1, X2 and X3 for identification. After performance of marriage in Chandi Asthan both went to Civil Court, Munger and her husband had not joined the railway workshop at Jamalpur. On 18.05.2008 when her husband was going to Jamalpur he was forcibly abducted and she was not accompanying him. She has denied that on 24.01.2008 her marriage with Abhijit Kumar was not performed. She is not a witness in the complaint case lodged by her husband and her marriage has also not been mentioned in said complaint case.

14. PW-3 is Vishwanath Mandal, father of respondent husband who has supported the case of his son. In his cross-examination he has stated that he is an accused in case filed by appellant wife under Section 498A of I.P.C. He is not eye witness of abduction of his son. He knew it from his son. His son was married to Shobha Devi on 24.01.2008. He has denied that Basuki Devi is his daughter-in-law.



15. PW-4 Shekhar Suman in his examination in chief has stated that respondent husband is known to him and his marriage with Shobha Kumari was performed on 24.01.2008 as per Hindu rites and customs at Chandi Asthan Temple, Munger in presence of members of society and one daughter is born from said wedlock. He has also proved marriage registration certificate dated 26.08.2008 issued in his writing and signature. In his cross-examination he has stated that he is neither relative nor friend of husband respondent. He knows him because he is residence of his Gram Panchayat. He was Deputy Mukhiya of his Gram Panchayat, Lohchatam from 2006 to 2011 and mukhiya was Vim Prasad Chaurasia who in 2008 on account of his illness handed over the charge and he continued to be in charge till 2011. The registration was made by him and he maintained the marriage register which was kept by him and returned back at the time of handing over charge to the Mukhiya. He has also stated that he is witness to the marriage and has identified the signature in the affidavit, marked as Exhibit-A.

16. PW-5 Santosh Kumar has also supported the case of respondent husband and he is relative of respondent husband. He has deposed that the respondent husband was married to



Shobha Kumari on 24.01.2008 as per Hindu rites and customs at Chandi Asthan Temple, Munger in presence of family members and one daughter born from said wedlock. He has further deposed that petitioner was abducted on 18.05.2008 and was forcibly married with Basuki Devi on gun point. He is not an eye witness of kidnapping and has denied that the marriage of petitioner with Basuki Devi was not forceful.

17. R.W.-1 Basuki Devi in her examination-in-Chief had supported the statement made in her written statement and in her cross-examination she has stated that all rituals which are required for a valid marriage was performed and she is legally wedded wife of Abhijit Kumar @ Pankaj. She has denied that she was aware of marriage of respondent husband with Shobha Kumari on 24.01.2008 and there is a daughter named Abhilasha from said wedlock. She has also denied that marriage was forceful and has stated that marriage was voluntary and with free will, without coercion.

18. R.W.-2 is Ramautar Jha who was the priest, who had performed the marriage rituals and ceremony and has stated in his examination-in-Chief that he had performed the marriage of Abhijit Kumar and Basuki Devi on 18.05.2008 at Mahavir Mandir as per Hindu Rites and Customs with consent of both



the parties. After marriage respondent husband had taken his newly wedded wife to her matrimonial home. He has stated in his cross-examination that no lady was present from the side of bride-groom. He was family priest of bride side and no priest was present from the side of bride groom. Barbar was also not present. He has denied that no marriage was performed.

19. Matrimonial suit was filed on behalf of respondent husband to declare the marriage with appellant wife as void as on the alleged date of marriage he was already married with Shobha Devi on 24.01.2008 and as such the marriage being in contravention of Section 5(i) of the Hindu Marriage Act was void from its inception. In order to declare the marriage with appellant wife to be void, respondent husband was required to prove the factum of valid marriage on 24.01.2008 with Shobha Devi. In support of marriage with Shobha Devi on 24.01.2008 the respondent husband has produced an affidavit sworn by both sides, on format of Sri Sri 108 Chandi Ashthan Dharmik Nyas Samiti, Chandi Ashthan, Munger witnessing marriage of Abhijit Kumar @ Pankaj with Shobha Kumari on 24.01.2008 . He has also produced a marriage registration certificate dated 24.01.2008 issued by Up Mukhiya of Gram Panchayat, who is the marriage registering authority under the Marriage



Registration Act, who has issued an certificate dated 26.08.2008 certifying the marriage of Abhijit Kumar @ Pankaj with Shobha Kumari on 24.01.2008. A birth certificate has also been produced by the respondent husband of a female child being born on 18.01.2010 from the wedlock of Abhijit Kumar and Shobha Devi. Said certificate dated 05.02.2010 issued by the Panchayat Secretary in the prescribed format. These documents have been issued by the competent authorities while discharging their duty in official capacity under the Marriage Registration Act and Municipal Act as such will be presumed to be true and correct. The certificate dated 24.01.2008 issued on 24.01.2010 certifying the marriage of Abhijit Kumar @ Pankaj with Shobha Kumar on 24.01.2008 performed in the temple at 4.30 PM and same stands corroborated by other evidences as photographs of the marriage and different rituals, ceremonies and customs being followed during the marriage ceremony for a valid marriage.

20. Respondent has also sought declaration of marriage with appellant-wife nullity in view of the fact that said marriage was performed under-duress and threat after abduction of respondent-husband and as such under Section 12(1)(c) of Hindu Marriage Act and there are sufficient pleading that the marriage performed with appellant Basuki Devi was a forceful



marriage without his consent and will as such the marriage was voidable within the meaning of Section 12(1)(c) of the Hindu Marriage Act which reads as follows:-

“12. Voidable Marriages-(1) Any marriage solemnised, 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)-----

(b)-----

(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 (2 of 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.”

(2) Notwithstanding anything contained in subsection (1), no petition for annulling a marriage-

(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 the force had ceased to operate or, as the case may be, the fraud had been discovered;

21. In support of his contention that it was a forced marriage after abduction respondent husband has produced the complaint case filed soon after the alleged marriage in which



appellant wife and her family members had been made accused and court had taken cognizance of the offence against accused persons and which is still pending and accused are facing the trial. However, no document has been adduced on behalf of appellant wife in support of legal and valid marriage and as such the marriage dated 18.05.2008 was not a valid and legal marriage in accordance with tradition, customs and ceremonies and same was not voluntary and out of free will but was performed on threat coercion and without consent after abduction of respondent husband.

22. The contention of appellant/wife that after solemnisation of marriage on 22.05.2008 she came to her matrimonial house and respondent husband and his family members started demanding dowry and for non-fulfilment of demand of dowry she was driven out of matrimonial home on 24.05.2008 is neither believable nor probable as such case of respondent husband that the so called marriage on 22.05.2008 was forced marriage is to be accepted.

23. Family court on the basis of evidences adduced by the parties and considering the materials available on record has allowed the case of respondent husband and this Court in appeal is not inclined to interfere in the order passed by Family



Court, accordingly the present appeal filed by the appellant wife
is dismissed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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