

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 37 of 2016**

Annu Kaiwartya W/o Brijesh Suryakant, Aged About 26 Years D/o Shri
 Pramod Kumar Kaiwartya, R/o S.F.-665 Presently Qrt. No. N D-22
 C.S.E.B., Colony, Korba (East) Tahsil And District- Korba, Chhattisgarh
---- Appellant/Plaintiff

Versus

Brijesh Suryakant S/o Shri B.L.Suryakant, Aged About 29 Years R/o
 Naya Risda, Bhadrpara, Balco, Tahsil And District- Korba,
 Chhattisgarh
---- Respondent/Defendant

For Appellant/Plaintiff	:	Mr. Ajay Kumrani, Advocate
For Respondent/Defendant	:	Ms. Samishti Saloman, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Shri Justice Gautam Chourdiya****Judgment On Board****21/08/2018****Per Manindra Mohan Shrivastava, J.**

1. This appeal is directed against impugned judgment and decree dated 27.06.2014, by which, the Family Court has dismissed the appellant's application for declaring the marriage null and void and inoperative in law.

2. The appellant filed an application under Section 11 of the Hindu Marriage Act seeking a declaration that so called marriage dated 26.11.2011 be declared null and void and also for return of original educational certificate and photographs on the pleadings inter alia that the appellant/defendant and respondent/plaintiff are known and familiar to each other and the plaintiff on a false pretext to cheat that he would arrange job, took the appellant to Raipur along with one girl and two boys where they stayed in a hotel. The respondent demanded photographs and educational certificates in the name of collecting information in connection with employment and thereafter, on 26.11.2011, he came along with a marriage certificate stating that their marriage has been registered in Arya Samaj Mandir Baijnathpara, Raipur and they have become husband wife. The plaintiff disputed the same and came back to Korba.

3. It was further pleaded that later on, defendant lodged a false report in the police station that the plaintiff is his legally wedded wife and she be sent along with him. According to the plaintiff, certificate of marriage was arranged under a conspiracy and it was a fictitious document. The plaintiff and her family were threatened of dire consequence. Therefore, no complaint was lodged either by the plaintiff or by her parents. According to the plaintiff allegations, the plaintiff never went to Arya Samaj temple nor performed any marriage nor any witness was there much less any relations or the parents and the claim of marriage between the parties having been solemnized on 26.11.2011, was a deliberate falsehood, therefore, an appropriate declaration be granted.

4. On the other hand, the respondent pleaded in his written statement that the plaintiff and the defendant while studying had come close to each other and there was a relationship between them for the last three years and they took conscious decision to marry without any pressure or duress and thereafter, they went to Raipur along with their friends and on 26.11.2011, marriage was performed in Arya Samaj Mandir and later on, registration was also obtained from the Municipal Corporation, Raipur. According to the defendant, the plaintiff always remained there and also signed various proceeding. It was further pleaded that after marriage, plaintiff and defendant resided together as husband wife in the house of the defendant at Korba until she was withdrawn from his company on the false pretext of illness of her mother. It was further pleaded that the application under Section 97/98 of Cr.P.C. was also filed before the Sub-Divisional Magistrate, Korba but the plaintiff refused to go along with the appellant, due to pressure exerted by her parents.

5. On the basis of the pleadings of the parties, learned trial Court framed following issues :

<u>वाद प्रश्न</u>	<u>निष्कर्ष</u>
1. क्या अनावेदक आवेदिका को झांसा देकर रायपुर ले गया और नौकरी लगाने के संबंध में उसका शैक्षणिक दस्तावेज एवं फोटोग्राफ्स प्राप्त किया ?	नहीं ।
2. क्या अनावेदक आवेदिका से बिना विवाह संस्कार सम्पन्न कराये बगैर आर्य समाज बैजनाथ पारा	नहीं ।

रायपुर का फर्जी विवाह प्रमाण पत्र दिनांक
26.11.2011 को प्राप्त किया है, वह विवाह
शून्य है ?

3. सहायता एवं वाद व्यय ?

अंतिम कंडिका अनुसार

6. In order to prove its case, the plaintiff examined herself as PW1 and her father as PW2. The respondent/defendant examined himself as DW1 and three other witnesses Jairam Thatha (DW2), Ibrahim Suman (DW3) and Mradul Das (DW4). In order to lay credence to his case that there was solemnization of marriage between the parties, the respondent produced oral and documentary evidence in the form of marriage certificate issued by Arya Samaj Mandir marriage registration certificate issued by the Corporation original photographs of marriage as also compact disk containing videography of marriage.

7. Relying upon the evidence of solemnization of marriage between the parties, proved from oral evidence as well as the photographs and videography, learned trial Court recorded a finding that marriage was solemnized between the parties on 26.11.2011 in Aarya Samaj Mandir at Raipur and rejected plaintiff's case that no marriage was ever solemnized or that her certificate were collected by the appellant in the name of providing an employment and a fictitious certificate was prepared.

8. Assailing correctness and validity of impugned judgment and decree, learned counsel for the appellant argued that the plaintiff clearly pleaded and also deposed before the Court that she never married with the defendant and her documents were collected by the defendant in the name of providing employment at Raipur and misusing those documents fictitious certificate of marriage was prepared. The father of the appellant also deposed that no marriage was ever solemnized and appellant was taken to marriage on the false pretext of arranging job. It is further argued that the respondent has failed to prove that a marriage was solemnized between the parties in accordance with Hindu Rites and Rituals and Customs. It is also argued that the office bearer of Arya Samaj Mandir who issued the marriage certificate was also not examined and relying upon the evidence of interested witnesses, who are friends and associates of the respondent/defendant, suit was decreed.

9. It is also prayed that looking to the entire circumstances of the case that the appellant could not lead other relevant evidence, the case be remanded for retrial.

10. On the other hand, learned counsel for the respondent opposes and submits that the plaintiff's case from very inception is fully improbable and her version that her certificate were obtained by the defendant in the name of providing job has rightly been disbelieved by the trial Court as this story is not supported by any independent witness much less the evidence of her friend Jyoti or other boys and girls who, according to the plaintiff, had gone to Raipur at the assurance of the so called defendant for providing job. It is further argued that the original marriage certificate, photographs of marriage and videography are clinching evidence of solemnization of marriage between the parties. It is also submitted that it is not only the defendant who has deposed in his evidence regarding solemnization of marriage but there are other independent witnesses Jairam Thatha (DW2), Ibrahim Suman (DW3) and Mradul Das (DW4), who were present at the time of marriage and have clearly stated in their evidence that in their presence marriage was solemnized between the parties.

11. We have heard learned counsel for the parties and perused the records.

12. Present is not a case where the plaintiff having pleaded solemnization of marriage has sought declaration that the marriage be declared null and void alleging contravention of condition specified in clauses (i), (iv) and (v) of Section 5 of the Hindu Marriage Act, 1955. Present is a case where the appellant/plaintiff has sought a declaration that marriage was never solemnized between the parties on the pleadings that the defendant collected certificates, photographs on the false pretext of arranging job and thereafter got the fictitious and fabricated certificate of marriage prepared.

13. What has been pleaded by the plaintiff is that the defendant is familiar to her. They are known to each other and defendant was introduced to the plaintiff by one of the plaintiff's friend. The pleadings are that the defendant had taken the plaintiff to Raipur along with one girl and two boys with the

assurance that he will arrange job for her and they stayed in a hotel. Further pleading is that the defendant had collected photographs and educational certificate in the name of making necessary enquiry with regard to employment but later on, he came along with a certificate of marriage dated 26.11.2011, claiming that marriage between the parties has been solemnized and registered in Arya Samaj Mandir Baijnathpara at Raipur and from that date, they have become husband and wife.

14. The appellant has examined herself as PW1 and deposed that she was introduced to the respondent by her friend named Jyoti when she was studying in B.com final year in Girls College Korba and since then, she is known to the respondent. She has further deposed that at that time, her friend informed that respondent arranges job and with that interest of getting job, the plaintiff developed friendship with the defendant. She further deposes that on 26.11.2011 defendant had taken her along with her friend Jyoti and two other girls in the name of arranging job for them. She has further deposed that her B.com Final and M.com Final certificates along with employment registration documents, domicile certificate, birth certificate, higher secondary certificate were collected by the defendant. Thus, even according to the plaintiff, she went to Raipur on 26.11.2011 along with the appellant and accompanied by her friend Jyoti and two other girls. However, neither Jyoti nor those two other girls have been examined by the plaintiff in support of her case that they had gone to Raipur along with the defendant on the assurance of being provided job. The plaintiff and defendant were known to each other since the time plaintiff was studying in B.com Final is also admitted by her. Thus, plaintiff and defendant were known to each other for atleast 3 years.

15. Pramod Kumar Kaiwartya (PW2), father of the plaintiff has deposed that his daughter's friend had informed that job may be arranged by a person known to her and his daughter in search of job had gone to Raipur along with her friend and all the documents like original mark-sheet, caste certificate, domicile certificate, employment registration certificate were collected by that friend of his daughter. Thus, according to the father, the documents were collected by the friend of his daughter whereas PW1 plaintiff, herself, states that her documents were collected by the defendant. The father has also deposed in cross-examination that according to his information, his daughter had gone to Arya Samaj Mandir along with her friend Jyoti.

16. The plaintiff's case has been that no marriage was solemnized at Raipur, she never went to Arya Samaj Mandir and defendant prepared a fabricated certificate of marriage but the plaintiff has not examined her friend Jyoti, who is said to be all along associated with her, introduced her with the defendant gone along with her to Raipur and also come back to Korba. The plaintiff has not even examined the other two girls who are said to have accompanied her alongwith Jyoti to Raipur.

17. The case of the defendant apart from oral evidence of he and plaintiff having married on 26.11.2011 in Arya Samaj Mandir at Raipur, is supported from the photographs, videography and marriage certificate issued by the office bearers of Arya Samaj Mandir. Photographs Ex.D/1 is the original copy. Ex.D/2 to Ex.D/4 are the videography of the marriage. From the order-sheet of the Court below, we find that when the defendant led an evidence, the photographs of the CD, an objection was raised to its admissibility which was rejected by learned trial Court. The original certificate of marriage issued on 26.11.2011 by Arya Samaj Mandir both in favour of the appellant and respondent has been relied upon by the respondent in support of his case that a marriage was solemnized between the parties. The defendant as first defendant witness DW1 has clearly deposed regarding solemnization of marriage by stating that in order to give nuptial knot to their relation, appellant and respondent decided to go for marriage and they decided to go to Raipur and they performed marriage in Arya Samaj Mandir on 26.11.2011. He has further stated that on 27.11.2011, the plaintiff had to appear in IBPS examination from Raipur Centre and along with her, friend Jyoti herself had also accompanied. Jyoti had knowledge of her relationship and their intention to marry. He has further deposed that on 26.11.2011, he along with his friend Jairam Thatha, Ibrahim Suman had gone to Raipur along with the plaintiff and her friend. He has also deposed that one of his friend Mradul Das along with his wife had come from Jagdalpur and he has deposed that at Raipur, they all went to Arya Samaj Mandir and performed marriage by completing all rites and rituals in the presence of Jyoti and other friend. At the time of marriage, photography and videography was also done. Certificate of marriage in Ex.D/5 & Ex.D/6 has also been proved. The registration of marriage by the Corporation in registration certificate Ex.D-7C has also been proved. The impugned judgment also shows that learned trial Court had also played the

videography and observed that marriage was solemnized between the parties.

18. The case of the defendant is supported from the evidence of PW2, PW3 and PW4. All of them have clearly deposed regarding solemnization of marriage between the parties and the defendant on 26.11.2011 in Arya Samaj Mandir at Raipur in their presence and in their cross-examination, the suggestion given that they are making false statement, has been emphatically denied.

19. The plaintiff's case appears to be highly improbable because even according to her pleading, on 26.11.2011 itself, the respondent had shown her marriage certificate. If according to the plaintiff, this document was a fictitious and fabricated documents, the plaintiff or parents, would have taken appropriate steps by approaching police or any authority that without any marriage, false and fabricated documents were prepared.

20. However, neither the plaintiff nor her parents lodged any report nor approached any public authority for taking action on alleged preparation of fabricated document of marriage certificate. It has also been pleaded by the plaintiff that the respondent had threatened her that if she does not live along with him, he will not allow her to marry with any other person and would also kill her. If that was so, natural conduct would have been to lodge report in the police station of such threats rather than keeping silent. The plaintiff or her parents took no steps and kept mum and remained surreptitiously silent.

21. On the other hand, case of the respondent has been that after solemnization of marriage, the plaintiff and the defendant had come back to Korba where both of them resided till 26.11.2011. According to defendant's pleadings and evidence, a request was made to take the defendant by her family members stating that her mother is not keeping well and thereafter, she did not come back, due to which, he had lodged a report in the police station. A copy of which has been filed as Ex.D/8-C.

22. Thus, from the evidence of both the parties, it is clear that marriage was solemnized between the appellant and the respondent on 26.11.2011.

23. The appellant's case is not that marriage is liable to be declared null

and void because of contravention of condition specified in clauses (i), (iv) or (v) of Section 5 of the Hindu Marriage Act. Her case is that no ceremony was to be performed nor she participated which, in view of analysis of pleadings and evidence as above, appears to be highly improbable whereas from the evidence of the defendant, supported from documentary evidence photographs, videography and testimony of other defendant witnesses, marriage is proved. The present of the appellant in Arya Samaj Mandir is proved from the evidence of her own father PW2. The plaintiff has not examined any other witness much less Ms. Jyoti with whom she went to Raipur and came back.

24. In view of the above consideration, we are of the opinion that there is no infirmity in the judgment of the Court below in dismissing the appellant's case. The appeal is accordingly dismissed. The appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Gautam Chourdiya)
Judge