

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CMA NO. 404 of 2006

JUDGMENT: (Per Hon'ble Mr. Justice C. Praveen Kumar)

1. Assailing the order dated 21.11.2005 passed by the I-Addl. Senior Civil Judge, Guntur dismissing H.M.O.P.No. 96 of 2002 filed by the husband under Section 9 of the Hindu Marriage Act, 1955 (for short "the Act") for restitution of conjugal rights, the present appeal is filed under Section 28 of the Act. The parties will hereinafter be referred to as they are arrayed in OP.

2. The petitioner avers in his application that the marriage between him and the respondent took place on 11.3.2001 at Kanakadurga temple, Vijayawada as per Hindu rites and customs in the presence of their friends, as it was a love marriage. It is said that the petitioner and his family members were tenants of the respondent's father who was an Asst. Engineer in telecom department whereas the petitioner's father was a carpenter. In course of time, the petitioner developed friendship with the respondent which turned into a good relationship between them and ultimately they got married. After marriage the respondent joined the petitioner and started living with the petitioner at Mangalagiri. Since there were threats from the father of respondent, the couple left Mangalagiri on 12.3.2001, visited several places and returned back on 19.3.2001. However, they were called to the police station, Mangalagiri to settle the disputes which arose due to the marriage. It is said that at the police station, the

petitioner was forced to sign on some blank papers and was compelled to handover the photographs relating to the marriage along with negatives. From the police station itself the respondent was forcibly taken away by her family members and since then she did not return back. Hence the present application came to be filed seeking restitution of conjugal rights.

In her counter the respondent denied the alleged marriage between her and the petitioner and also about the alleged relationship between them. She states that the petitioner and his family members were tenants of her father and as the rents were not paid regularly even after several months, the petitioner and his family members were evicted from the tenanted house. Hence they bore grudge against the family of the respondent and filed a false case. It is averred that on 11.3.2001, while the respondent was returning home from the college at Vijayawada, she was forcibly taken to the Kanakadurga temple by the petitioner and his friends with a threat of pouring acid on her and a sham marriage was performed. It is said that none of the customary rituals or chanting of Mantras by Purohit were performed and it was a stage managed marriage for the purpose of taking photographs. Nobody was present at the time of alleged marriage except the petitioner and his companions. After the alleged marriage, she was forcibly taken to one Dr. Kolli Nageswara Rao, who intimated to her father. On such information, she was taken back to her house by her father. However, the petitioner started blackmailing the family of the respondent and tried to tarnish their image with the help of

photographs. The respondent's father lodged a report with Police, Mangalagiri who summoned the petitioner and reprimanded him. As the respondent was upset with the events, she discontinued her studies and owing to the poor health condition of her mother, she and her family members left Vijayawada for Guntur. She termed the alleged marriage as an invalid marriage.

On the basis of the above pleadings, the trial Court framed the following point for consideration,

Whether the petitioner is entitled to the relief as prayed for?

In support of his case, the petitioner examined himself as P.W.1 and two others as PWs 2 and 3 and got marked Exs.A1 to A12, the photographs and negatives. On behalf of the respondent, R.Ws.1 to 3 were examined and no documentary evidence was adduced. After hearing both the parties, the trial Court dismissed the OP by the order impugned in this appeal.

The learned counsel for the petitioner would submit that the finding of the trial Court that there was no valid marriage between the parties appears to be incorrect, in view of Section 7 of the Act and the circumstances under which the marriage took place. He would contend that much importance shall not have been given to the essentials of the marriage when their marriage was performed out of love and free will. In view of the above, he submits that it is a fit case where an application under Section 9 of the Act has to be allowed.

On the other hand, the learned counsel for the respondent would contend that since the marriage between the parties has not taken

place in the manner prescribed under Section 7 of the Act and as necessary ceremonies were not performed, their marriage has to be declared as invalid.

Section 7 of the Act deals with various ceremonies that are to be performed which include (1) '*Saptapadi*' wherein both bride and bride groom have to take seven steps together and the marriage becomes complete and binding when the 7th step is taken and (2) '*Homam*,' a sacred fire which serves as a divine witness to the newly wedded couple. These are the main rituals which are required to be performed to make Hindu marriage valid.

The present application is one made under Section 9 of the Act seeking restitution of conjugal rights. The burden squarely falls on the petitioner who filed the application to prove that there was a valid marriage between him and the respondent in order to claim restitution of conjugal rights. As seen from the record, the petitioner has not even passed 7th class and he was working as a semi-skilled labourer, whereas the respondent was prosecuting B.A. degree course when the alleged marriage took place. The petitioner's father was a carpenter who works on daily wages, while the respondent's father was a senior official in telecom department. From the qualifications and avocations of the parties it appears that there was a big gap in the status of two families in terms of education as well as in financial background. The father of the respondent who was examined as R.W.2 denies the marriage being performed between the petitioner and the respondent. He states that their family belongs to orthodox Padmashali community

and various ceremonies are essential while performing marriage i.e., the bride groom has to undergo a special thread ceremony prior to the wedding and *Mangalasutram* to be brought from the maker by the family elders accompanied by '*Sannaimelam*'. It is said that the petitioner failed to show that all these formalities and ceremonies were performed when the alleged marriage between the petitioner and the respondent took place.

At this stage, the learned counsel for the petitioner places reliance upon Exs.A1 to A12, the photographs which were taken by P.W.2 who is a friend of P.W.1 with regard to the marriage of the petitioner and the respondent. In his evidence P.W.2 states that except himself, no other person took the photographs and the photographs were developed at Vamshi Colour Lab. However in one of the photographs, P.W.2 was also present. Such being the position, the version of P.W.2 that no other person took photographs except himself appears to be incorrect. The photographs also reflect the presence of a stranger which also falsifies the version of P.W.2. Though the petitioner in his evidence spoke about the presence of many other persons at the time of marriage including his presence, but none of them except P.W.2 and a stranger were present at the time of the alleged marriage. That being the position, the evidence of R.Ws. 1 to 3 assumes some importance and the same cannot be brushed aside. Apart from that, one another circumstance which falsifies the evidence of P.W.1 is that he states in his evidence that himself and the respondent were in the house of P.W.2 throughout the day and that

they had food in his house, but P.W.2 states that on that day the petitioner and the respondent were roaming in Vijayawada from 10.00 A.M. to 6.00 P.M. and all of them had taken their meals in a hotel. These few circumstances throw any amount of doubt on the version given by the petitioner-husband.

In view of the above, we feel that the trial Court has rightly rejected the request for restitution of conjugal rights. Hence the appeal is dismissed.

Miscellaneous applications, if any pending, shall stand closed.

No order as to costs.

Dt. 22.2.2018
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C.PRAVEEN KUMAR, J

J. UMA DEVI, J