

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

FAO-M-468-2015 (O&M)

Date of Decision:17.05.2018

Chiney

.....Appellant

Versus

Harvinder Singh

.....Respondent

**CORAM: HON'BLE MR.JUSTICE M.M.S. BEDI.
HON'BLE MR.JUSTICE HARI PAL VERMA.**

**Present: Mr. Anil Shukla, Advocate,
for the appellant.**

None for the respondent.

HARI PAL VERMA, J.

Appellant has filed the present appeal against the judgment and decree dated 30.07.2015 passed by learned Additional District Judge (Family Court), Panchkula, whereby her petition under Section 12 of the Hindu Marriage Act, seeking annulment/dissolution of the marriage was dismissed.

Briefly stated, the appellant had filed a petition under Section 12 of the Hindu Marriage Act for annulment of the marriage. As per her petition, the appellant is 22 years of age and has done her B.Tech. After completing the academic session, she was required to undergo training so as to get the degree of B.Tech. During the course of her B.Tech course, she was residing with her parents at Barnala. However, for undergoing six months training/practical knowledge, she joined an institute at Mohali,

where she was residing as a 'paying guest'. After completing her B.Tech

degree, she was interested to go abroad and in this process, she met with the respondent who told her that he is also interested to go abroad. The respondent had approached the appellant in order to fulfil the formalities and to submit papers to go abroad. For the purposes of completion of formalities, the appellant accompanied him to Chandigarh for submission of papers and when they were going in the car, the respondent offered cold drinks to the appellant. After taking the cold drinks, she lost control over her mind as the cold drink was laced/spiked with some intoxicants. She was taken to a room at Panchkula, where some photographs were taken on the pretext that these were required as a formality. As the appellant was under the influence of administered intoxicants, she could not resist. During this process, her signatures were also obtained on certain blank papers. On 11.05.2014, the appellant was brought at some distance from the paying guest room. Again on 13.05.2014, the respondent came to the appellant asking her to accompany him to Chandigarh. She was taken to the Court and when the appellant asked why she has been brought in the Court, the respondent had shown her photographs, wherein the appellant and the respondent were shown as bride and bridegroom. Though the appellant objected to it, but the respondent threatened her that in case she refused to go to the Court, these photographs will be put on the internet and she will not be in a position to show her face to the residents of her native city Barnala. In this manner, the respondent succeeded in getting protection from the High Court on the plea that the appellant is married with him. However, when the police personnel from Police Station, Barnala, came to the house of the appellant and started making inquiry about harassment by her parents, parents of the appellant came to know that the respondent has

filed a petition for protection on the ground that the appellant had got married with the respondent on 11.05.2014 while taking the benefit of the photographs taken under the influence of intoxicants. Since the appellant has never entered into marriage with the respondent and was staying with her parents, the respondent filed Criminal Writ Petition No.1011 of 2014, titled as Harvinder Singh Versus State of Punjab and others, in the nature of habeas corpus, whereby the appellant appeared before the Hon'ble High Court and made a statement that she is 22 years of age and is residing with her parents voluntarily. Therefore, in view of the statement of the appellant, Crl. Writ petition was dismissed.

The appellant has never consented to the alleged marriage and the photographs were procured by the respondent after administering intoxicant to the appellant. Thus, the consent if any was not free and voluntary. The respondent has committed a fraud as regards the nature of ceremony.

In the petition so filed by the appellant, the respondent was served by public notice, which was published on 17.04.2015 in Punjabi Newspaper Rozana Chardi Kalan, Patiala, which has got a wide circulation in the locality. The respondent failed to appear in the Court either in person or through any Advocate. Accordingly, vide order dated 25.05.2015, the respondent was proceeded against ex parte.

The appellant appeared as PW1 and has submitted her evidence by way of affidavit (examination-in-chief). Similarly, Tarloki Nath has appeared as PW2 and has submitted his evidence by way of affidavit Ex.PW2/A. However, the trial Court has dismissed the petition on the ground that evidence of the appellant is self-contradictory, whereas the facts

speaks themselves to the effect that she voluntary married the respondent on 11.05.2014 at Panchkula and since the appellant has failed to prove that the respondent ever played fraud upon her by administering intoxicants, the petition was dismissed.

Aggrieved against the judgment and decree dated 30.07.2015, the appellant has filed the present appeal.

Notice in this appeal was issued to the respondent. As notice issued to the respondent had not been received back served or otherwise, fresh notice was issued for effecting service upon the respondent returnable on 10.03.2016. But as there was no sitting of the Court on that day, therefore, this Court had issued fresh notice to the respondent, returnable by 07.02.2017 and as per office report dated 03.02.2017 submitted for 07.02.2017, notice issued to the respondent had been received back duly served, but nobody had put in appearance on behalf of the respondent in the case.

Learned counsel for the appellant has argued that the appellant has filed the petition under Section 12 of the Hindu Marriage Act for annulment of marriage as the same was performed by fraud and under the influence of intoxicants. Further, the factum of marriage came to her knowledge in the second week of June 2014. The appellant and respondent have never lived as husband and wife even for a single day. There was a fraud and no ceremony was ever performed under the Hindu Marriage Act. Since there was no marriage, this Court while disposing of CRM-M-16333-2014 vide order dated 13.05.2014 had made it categorically clear as regards the validity of the marriage and CRM-M-16333- 2014 was disposed of without commenting on the validity of the marriage. The appellant has

appeared as PW1 and has tendered her affidavit Ex.PW1/A in support of her evidence, PW2-Tarloki Nath has tendered his sworn affidavit Ex.PW2/A and has produced documents Exs.P2 to P5, whereas PW3-Abhishek has tendered his affidavit Ex.PW3/A and produced document Ex.P6 to prove her case. The respondent has never opted to contest the petition, which lead to conclusion that the averment made in the petition filed by the appellant remained uncontroverted. But still the Court below has totally misread the evidence on record. The Court below has failed to appreciate the evidence. PW3 has proved on record the transcription of SMS sent by the respondent on his phone, which would go to show that after clicking the photographs and getting protection order from this High Court, the respondent had been blackmailing the family members of the appellant. Since there was no marriage in the eyes of law, this Court while disposing of CRM-M-16333-2014 and granting protection to the parties, has rightly observed that the petition is disposed of without making any comment regarding validity of the marriage.

We have heard the learned counsel for the appellant.

Throughout the proceedings including before the Court below as well as in this Court, the respondent has opted not to appear in the case at all. Therefore, the averment made in the petition filed under Section 12 of the Hindu Marriage Act, seeking annulment of marriage in the present appeal remain uncontroverted. The appellant has pleaded that there is no marriage in the eyes of law and except that she has allegedly approached this Court vide CRM-M-16333-2014 seeking protection of life and liberty, there is no other evidence on record which may throw light as regards the validity of marriage. Even that petition was disposed of without

commenting on the validity of the marriage. Therefore, the marriage in the case is not proved as per law. Even otherwise, the respondent has not opted to contest the petition before the Family Court or before this Court, which leads to the conclusion that the appellant has succeeded in establishing her claim and there was no marriage between the parties. There is complete consistency in the evidence of PW1-appellant, PW2-Tarloki Nath and PW3-Abhishek and the appellant has succeeded in establishing the fact that there was no marriage between the parties. Accordingly, this Court is satisfied that the petition filed by the appellant under Section 12 of the Hindu Marriage Act deserves to be allowed. The judgment and decree dated 30.07.2015 of the lower Court is set aside and the marriage of the appellant with the respondent is declared as nullity.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

May 17, 2018
seema

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No