

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 168 of 2016

Naresh Parganiha S/o Hemant Parganiha, Aged About 32 Years
Caste OBC, R/o Qt. No. 17/ B, H Pocket Maroda Sector, Bhilai,
P.S. Newai, Tah. and District- Durg, Chhattisgarh.

---- Appellant

Versus

Yamini Parganiha W/o Shri Naresh Parganiha, Aged About 26
Years, Caste OBC, presently residing At Qt. No. 15/ A, Street-26,
Sector 4, Bhilai Nagar, Tah. and Distt. Durg, Chhattisgarh.

---- Respondent

For the Appellant	:-	Mr. P. R. Patankar, Advocate
For the Respondent	:-	None.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

30.08.2019

1. This appeal is directed against impugned judgment and decree dated 30.06.2016 passed by Third Additional Principal Judge, Family Court, Durg in Civil Suit No.742-A/2014 by which the learned Court below has granted decree in favour of respondent/ wife that the marriage is null and void.

2. The respondent/wife filed an application under Section 11 of the Hindu Marriage Act, 1955 before the Family Court on the pleadings *inter alia* that the marriage between the parties was solemnized on 15.01.2013 at Maharashtra Bhawan Sector 4, Bhilai according to Hindu rites and rituals. It was pleaded that after marriage a woman used to give call with whom her husband/appellant was engaged in talking for long hours and later

on, the respondent/wife came to know that her husband Naresh had earlier performed marriage with one Sarla Sahu and later on when she inquired, Naresh admitted this fact. Further pleading was that she was subjected to cruelty and finally report was lodged in the Police Station Newai on 11.02.2014 by the wife being subjected to cruelty and also playing fraud in not disclosing earlier marriage. Wife was finally shunted out unceremoniously from the matrimonial house on 11.02.2014 and since then she was residing separately.

3. In his reply appellant/husband denied all the allegations including that he had contracted any marriage with someone named Sarla Sahu. According to him, his marriage with respondent Yamini was his first marriage. Even after marriage, wife was not prepared to accept marital relationship as she did not like him and, therefore, she lodged false report as she has no intention of performing marital obligations.

4. On the basis of the pleadings, learned Family Court framed as many as 8 issues. The first issue was as to whether appellant was married to Sarla Sahu and the second issue was whether the family members and the appellant got second marriage solemnized with respondent only in order to get dowry by playing fraud. Learned Family Court also framed an issue whether the wife had deserted the husband or not. After allowing the parties to lead oral and documentary evidence, taking into consideration the evidence of those who got the marriage solemnized and particularly the evidence of priest and the manager of the institution where marriage was said to have been solemnized, the learned Family

Court arrived at the conclusion that prior to marriage of the respondent/wife with appellant/husband on 15.07.2013, appellant/husband had solemnized marriage with Sarla Sahu on 11.07.2013. On this finding, learned Family Court declared that marriage of the appellant with respondent was in contravention of Section 11 of HMA Act and, therefore, liable to be declared void. It is this judgment which is under challenge in this appeal.

5. Learned counsel for the appellant argued that the learned Court below recorded finding of there being a marriage between appellant and one Sarla Sahu on 11.07.2013, on the basis of extremely unreliable and shaky evidence of the respondent/wife's witnesses. He would submit that as far as respondent's witnesses, except AW-2 and AW-3, are concerned, none of them claim to have witnessed marriage of appellant with Sarla Sahu. As far as AW-2 and AW-3 are concerned, it is argued that the evidence of these witnesses is that the society of which, Vasudeo Sharma (AW-2) claims to be the office bearer, is not registered for the purposes of solemnization of marriage or even for issuing any marriage certificates. His evidence is not supported from any entries which are said to be recorded in their office register. Further, he admits that their institution is not recognized by the Government to get marriages solemnized. His evidence is not supported by any clinching and reliable documentary evidence and only on the basis of certain entries which is also struck off and photocopies of the applications and affidavit and consent letter, the learned Court below has reached the conclusion regarding solemnization of marriage. As far as evidence of AW-3 - the priest is concerned, it is

submitted that the evidence of priest is quite vague and there is no specific averment as to in what manner the marriage was solemnized. In his cross-examination, he has admitted that he has no information with regard to marriages solemnized and he acts only under the directions of Vasudeo Sharma (AW-2), he does not receive any application and he is unable to clearly state as to how many marriages were solemnized and performed under the instructions on 10.07.2013 and even before that, he cannot specifically state as to how many marriages were performed. Therefore, it is argued, the evidence of this witness is also not reliable. Further submission of the learned counsel for the appellant is that the evidence of the notary (AW-5) and stamp vendor (AW-6) also does not inspire confidence and their evidence with regard to notarization of any affidavit is completely vague. The excerpt of notary register does not contain any specific noting regarding the marriage application, consent or otherwise. The stamp vendor (AW-6) has also admitted that no register was produced in the Court and, therefore, he is unable to state that when and whom the stamp was sold to a person on 08.07.2013. It is also submitted that in the cross-examination, AW-3 has admitted that he has not brought any proof of marriage said to be solemnized on 11.07.2013.

6. Learned counsel for the appellant would further argue that the case of the respondent/wife that the appellant married Sarla Sahu is liable to be rejected because respondent/wife did not examine Sarla Sahu as one of her witnesses nor Sarla Sahu ever appeared before the Court to depose that she married with the

appellant. This submission of learned counsel for the appellant by itself is sufficient to reject the application of respondent/wife that the appellant had solemnized marriage with Sarla Sahu on 11.07.2013.

7. Lastly, it is argued that the appellant/husband in his own evidence has emphatically denied solemnization of any marriage and his father (NAW-2) has also clearly stated that no marriage of the appellant with anyone except with respondent/wife had taken place which was solemnized on 15.07.2013.

8. We have heard learned counsel for the appellant and gone through the record.

9. The respondent/wife moved an application before the Court below seeking decree of annulment of marriage on specific pleadings that after her marriage with the appellant on 15.07.2013, she found that a lady, named Sarla Sahu, kept on calling her husband on mobile phone and her husband was engaged in talking to her for hours together and when later on, she made inquiry, she came to know that appellant had contracted marriage with that Sarla Sahu and thereafter, she collected various materials regarding solemnization of marriage of appellant with Sarla Sahu. In support of this pleading, the respondent/wife examined as many as six witnesses. Out of these witnesses, only two witnesses claim to be the persons before whom the marriage was solemnized. Vasudeo (AW-2) who, at the relevant time was associated with Gaytri Family and engaged in management of Gaytri Shaktipeeth at Bhilai has deposed that on 04.07.2013, Naresh and Sarla Sahu had come to Gaytri Shakti Peeth Sector 6, Bhilai for the purpose of

solemnization of marriage and as they were going for intercaste marriage he had asked them to bring an affidavit in that regard. He further deposes that by 09.07.2013, they had completed all formalities and, therefore, he had given them a date for solemnization of marriage and accordingly on 11.07.2013, in the afternoon, their marriage was solemnized and conducted by their priest Jitendra Prasad. After marriage, "Ashirwad Pramana Patra" was also issued and it contains his signature. He also produced the register of the Gaytri Shakti Peeth which, at Sr. No.406, recorded the details of marriage, copy of which is placed on record as Ex.P-5 C. In the said register, at Sr. No.406, their names have been mentioned but later on, they were struck off. The name which has been struck off is that of Naresh Kumar and the purpose, struck off is mentioned to be Vivah Sanskar. He has further deposed that after the solemnization of marriage, Sarla Sahu came to office twice and her parents as well as the parents of boy came and expressed their anger and requested to strike off records and thereafter, one day, Sarla Sahu came with another person and struck off the entries made therein and also destroyed certificate. He further stated that the original document is given to the parties whereas, its photocopies is retained by the institution. In his cross-examination, he admits that he is only the manager and not any office bearer and that he is not possessed of any certificate. He further states that the object of the organization is social, religious and moral upliftment. In further cross-examination, he states that they had issued "Ashirwad Pramana Patra" and not marriage certificate as such. He also admits that the priest has not been

given any letter of authorization to solemnize marriages. He further stated that for the purpose of religious rituals it is not necessary to obtain any permission.

10. From the evidence of this witness, what is proved is that on 11.07.2013 marriage of the appellant was performed with Sarla Sahu, though, the register in which, entry was made was, later on, corrected and the names were struck off because of dispute where parents of both the parties reached their office and raised serious objection. True it is that there is nothing in evidence to show that the witness have not been given any kind of recognition by any authority and there is nothing in their own bylaws that getting marriages would also be one of the activities, it has come in his evidence that their organization is engaged in social, religious and moral upliftment activities. Further, the evidence of this witness regarding appellant and Sarla Sahu having come to their institution and performed marriage could not be disputed only because they have not been recognized by the Government because nothing could be placed before us to establish that there is any legal requirement of obtaining recognition or registration by any Government authority.

11. The evidence of this witness is supported from the evidence of priest Jitendra Prasad (AW-3) who has stated regarding marriage solemnized between the Naresh and Sarla Sahu on 11.07.2013 in Gaytri Shakti Peeth Sector 6, Bhilai. He has stated in his evidence that he got the marriage solemnized between the parties. His credibility is sought to be impeached by eliciting that he belongs to Sahu caste and that he does not hold any certificate of

priest issued by Gaytri Shaktipeeth that he is a priest. Further, it has also been elicited that as far as other official business of the institution is not concerned, he acts as directed by Vasudeo Sharma. The oral evidence of this witness that he got the marriage solemnized between appellant Naresh and Sarla Sahu appears to be natural and there is no reason why this witness should give a false statement in favour of respondent/wife and against the appellant. Vasudeo Sharma (AW-2) has clearly stated that the marriage was solemnized in their institution by priest Jitendra Prasad (AW-3) and he has also stated emphatically regarding the same. The argument of the learned counsel for the appellant is that in the cross-examination, this witness have admitted that he has not brought any proof, therefore, his evidence is liable to be discarded, cannot be accepted. The witness himself got the marriage solemnized and that is what he stated in his evidence. No further proof of any documentary nature is required under the law.

12. The proof of purchase of stamp documents and entries made in the register of notary is based on the evidence of AW-5 and AW-6. In their evidence it cannot be said that they were witness of solemnization of marriage but from the oral evidence of these witnesses and also documents which have been placed before the Court below which includes certificates, affidavits, consent letters, excerpts of notary register it renders highly probable that for the purpose of getting the marriage solemnized, both appellant and Sarla Sahu had purchased stamp documents, got it prepared in their respective names with details. That much of evidence fully supports the case of the respondent, which is

otherwise proved from the evidence of AW-2 and AW-3 out of which AW-3 is the priest who actually got the marriage solemnized between the appellant and Sarla Sahu.

13. True it is that Sarla Sahu has not been examined. But in case, there would have been serious doubt on the evidence of AW-2 and AW-3, perhaps in the given, case non examination of the other spouse would have raised serious doubt with regard to solemnization of marriage, but from the emphatic evidence of AW-2 and AW-3, on preponderance of probability, this Court is of the opinion that the finding of learned Court below regarding solemnization of marriage does not warrant any interference. In the case of ***A.L.V.R.S.T. Veerappa Chettiar Versus S. Michael and others***, AIR 1963 SC 933 it has been held that once factum of marriage is proved, there is a presumption that marriage was solemnized in accordance with the rites and rituals. It was held as under:-

“49..... In this state of evidence the presumption in Hindu Law that the marriage was performed in Brahm form must be invoked. As we have pointed out under the Hindu Law whether a marriage was in Brahm form or Asura form the Court will presume even where the parties are Shudras that it was in the Brahm form. Further where it is proved that the marriage was performed in fact the Court will also presume that the necessary ceremonies have been performed. See 'Mauji Lal V. Chandrabati Kumari' MANU/PR/0010/1911....”

14. There is one more submission of the learned counsel for the appellant with regard to payment of Rs.30,000/- as Stridhan. The respondent/wife (AW-1) has clearly stated in her deposition as also in the affidavit under Order 18 Rule 4 CPC that at the time of her marriage with the appellant, the household articles, clothes,

ornaments were given by her parents which the appellant and his family members have withheld. On this point, no suggestion has been given in her cross-examination that no such gift was given to her. The only suggestion which has been denied by the respondent/wife is that when she was leaving matrimonial house, she collected all the articles and left the house. There is no specific detail of each and every article. However considering that marriage was solemnized between the appellant and respondent/wife on 15.07.2013 and respondent/wife has stated regarding gift of utensils, households and clothes, award of Rs.30,000/- to wife towards Stridhan, cannot be said to be illegal.

15. In the result we do not find any good ground to interfere with the judgment impugned.

16. Appeal is thus dismissed. Parties to bear their respective costs. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay