

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-73-2019

Date of Decision: 07.03.2019

Davinder Kaur

.....Appellant

Versus

Gagandeep Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Rupinder K. Thind, Advocate, for the appellant.

Harnaresh Singh Gill, J.

The appellant-wife is in appeal against the judgment and decree dated 17.01.2019 passed by the learned District Judge, Mansa, whereby petition filed by her under Sections 11, 12 and 13 of the Hindu Marriage Act, 1955 (for short 'the Act'), has been dismissed.

The appellant-wife filed the aforesaid petition with the averments that the marriage between the parties was solemnized on 2.4.2012 at Kharar, District Mohali. The respondent-husband had threatened to kill the brother of appellant-wife in case she did not marry him. She was brought by the respondent-husband to Chandigarh and forced her to file CRM-M-10037 of 2012 before this Court and succeeded in obtaining protection order dated 4.4.2012. The appellant-wife had signed the papers under such threats. The respondent-husband, thus, having forced her to live in his company, had committed rape upon her. The appellant-wife had been taken to

Budhlada, where she was treated with cruelty. She somehow managed to come to her parental home and narrated her parents the entire facts, whereupon a Panchayat was convened and the appellant-wife was taken to her matrimonial home. Pursuant thereto on 27.6.2012, a writing in the form of a customary divorce was made and signed by the parties as also the witnesses. The respondent-husband had filed a false Civil Suit No. 18 of 2014 against the appellant-wife. The marriage between the parties never got consummated. The respondent-husband had committed the acts of cruelty, fraud, desertion, coercion, misrepresentation and blackmailing and, therefore, the appellant-wife was entitled to the decree of divorce.

The respondent-husband contested the divorce petition by filing his written statement, averring therein that the marriage had been solemnized with the free will of the appellant-wife. It was denied if any force was used to solemnize marriage between the parties. The respondent-husband had filed a civil suit for restraining the appellant-wife from contracting a second marriage, which was decreed by the Civil Court. After marriage, the parties lived together as husband and wife and the marriage got consummated and there was no act of rape committed by the respondent-husband upon the appellant-wife. As a matter of fact, after the marriage, the appellant-wife wanted to meet her parents and the respondent-husband left her there, where the appellant-wife had expressed her desire to stay for few days. However, she did not come back, as her parents refused to send her. Rather, signatures of the respondent were taken on some

papers on the pretext that the same were necessary. The customary divorce was never written nor agreed to, at the behest of the respondent-husband.

On the pleadings, the learned trial Court framed the following issues:-

1. Whether the petitioner is entitled to decree of nullity of the marriage, as prayed for? OPP
2. Whether the present petition is not maintainable? OPR
3. Relief.

In evidence, the appellant-wife got herself examined as PW1; her mother, Kuljit Kaur as PW2, Ramesh Singh, Namberdar as PW3 and PW4-Harjinder Singh. Whereas PW1 to PW3 had proved their signatures on the customary divorce Ex.P1, PW4 testified that the respondent-husband stated before him that the appellant-wife was a lady of bad character.

On the other hand, respondent-husband appeared as RW1, besides examining RW2-Dharam Pal, who deposed about the solemnization of the marriage. In the documentary evidence, the respondent-husband tendered certified copy of the judgment and decree dated 10.3.2015 as Ex. DA and Ex. DB and registered notice as Mark-X, photocopy of certificate of Gurdwara Sahib as Mark-Y and photocopy of the order of this Court as Mark-Z.

As mentioned above, the learned trial Court, vide judgment and decree under appeal, has dismissed the divorce petition.

Learned counsel appearing for the appellant-wife has argued that the learned trial Court, while passing the impugned judgment and decree, did not take into consideration that the consent of the appellant-wife had been obtained by way of fraud and misrepresentation and the marriage could not have been termed to be solemnized out of the free will of the appellant-wife. Besides, the appellant-wife had led evidence in the form of the customary divorce (Ex.R1), which was duly proved by the witnesses examined by the appellant-wife. It is further argued that the respondent-husband, being the signatory of the said customary divorce, the learned trial Court, ought to have granted the decree of divorce. Thus, the impugned judgment and decree suffers from material illegality and perversity and the same is liable to be aside.

After hearing the learned counsel for the appellant-wife and having gone through the impugned judgment and decree, we do not find any merit in the arguments raised by the learned counsel for the appellant.

In our considered opinion, the learned trial Court has rightly found that none of the conditions as laid down in Section 5(i), (iv) and (v) of the Act, stood satisfied. Still further, while deliberating upon the provisions of Section 12(1)(c) of the Act, it was found by the learned trial Court, that the consent of the appellant-wife could not be said to be obtained by fraud, misrepresentation or force. It was held that as a matter of fact, besides the admitted factual position between the parties, various documents were produced and proved on record i.e.

marriage certificate issued by Gurdwara Guru Nanak Niwas, village Karor Kalan, Tehsil Kharar, District Mohali and the protection order dated 4.4.2012 issued by this Court in CRM-M-10037 of 2012. As regards the customary divorce dated 27.6.2012 (Ex.R1), it was found that the appellant-wife had failed to prove that there existed any custom between the parties to annul the marriage. It was further found that though the appellant-wife, had failed to prove on record the customary divorce, yet the said document being on record as Ex.R1, can very well be read for collateral purposes and that the perusal of the contents thereof would show that it finds mention that both the parties had solemnized the marriage out of their free will in the absence of their parents and that there was no recital regarding the marriage being the result of force. It was further found that the judgment and decree of the Civil Judge (Junior Division), Budhlada dated 10.3.2015 was produced and proved on record as Ex. DA and Ex. DB, wherein the appellant-wife was restrained from contracting second marriage.

However, the learned Civil Court did not believe the version of the appellant-wife and rather observed that the appellant-wife had failed to prove that the marriage was dissolved by way of a Panchayati Talakanama. No appeal or revision thereagainst was preferred by the appellant-wife, meaning thereby that the said judgment and decree had attained finality. It was held by the learned trial Court that the parties had, in fact, performed a runaway marriage and had there been any substance in the version of the appellant-wife

that she was forced to marry the respondent-husband, she ought to have approached the police authorities against the same as also the alleged threats extended by the husband.

It may be noticed that the marriage between the parties was solemnized on 2.4.2012. The Panchayati Divorce was signed by the parties on 27.6.2012. The divorce petition, however, was filed by the appellant-wife on 27.3.2015. As per the provisions of Section 12(2)(a) of the Act, no petition for annulling a marriage on the ground specified in clause (c) of sub-Section (1) of Section 12, shall be entertained if the petition is presented more than one year after the fraud had been discovered. The said provisions read as under:-

“12. Voidable marriages. (1) Any marriage solemnized, 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) and (b) xx xx xx

(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; or

(d) xx xx xx

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

(a) On the ground specified in clause (c) of sub-section (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; or
- (ii) xx xx xx”

From a perusal of the above provisions, it is apparent that the divorce petition presented by the appellant-wife, filed 27.3.2015 was in contravention of the above said provisions. Thus, the learned trial Court has rightly held that the appellant-wife could have filed the divorce petition within one year of the separation of the parties from 27.6.2012. Apart from that, the appellant-wife failed to prove the ground of cruelty and the learned trial Court has, thus, rightly found that the ground of cruelty was not proved and that the pleas taken by the appellant-wife were inconsistent as the grounds of cruelty and marriage being null and void, are inconsistent. Such finding could not be disputed by the learned counsel appearing for the appellant-wife, in the present appeal.

No other point has been urged.

In view of the above, we do not find any patent illegality or material irregularity in the impugned judgment and decree passed by the learned trial Court, which may warrant for any interference by this Court in the present appeal. Hence, the appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

07.03.2019

ds

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No