

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.4961 of 2018 (O&M)
DATE OF DECISION : 20.12.2019

Papinder Singh Antal alias Pindi ...Appellant

Versus

Samreet Kaur ...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. Kawalpreet SinghVirk, Advocate,
for the appellant.

Mr. Gaurav Gilhotra, Advocate.
for the respondent.

KARAMJIT SINGH, J.

The instant appeal has been filed by Papinder Singh Antal @ Pindi, the appellant, against the judgment and decree dated 24.05.2018 passed by the learned Family Court, Ambala, vide which the petition filed by him under Section 9 of the Hindu Marriage Act, 1955 (for short 'the HMA') was dismissed.

As per the appellant, marriage between the parties was solemnized on 26.03.2015 at Guru Teg Bahadur Gurudwara Sahib Sainik Vihar Jandli District Ambala according to Sikh rites and ceremonies. After the marriage, the parties cohabited together at a farm house in Village Singhawalan District Ambala. However, no child was born out of their wedlock. On 02.04.2015, the father of the respondent visited them and took the respondent alongwith him to his home. While leaving, his father-in-law told him to bring back his wife after about one week. On 10.04.2015, he along with Malkeet Singh went to parental home of Samreet Kaur to bring her back but her grandfather did not

allow him to take her back along with him. Again on 18.04.2015, he along with Malkeet Singh went to her parental home to bring her back but her parents refused to send Samreet Kaur along with them. She herself also refused to accompany the appellant to his house and she had withdrawn from his society w.e.f. 02.04.2015, without any reasonable cause.

On notice, respondent appeared in the Court and filed written reply in which it was denied that she is legally wedded wife of the appellant. Actually, no such marriage ceremony was performed with the free will and consent of the respondent. The alleged marriage was managed by the appellant by clicking photographs and by obtaining certificate from the gurudwara. Earlier, the appellant filed one false complaint under Sections 97/98 of the Code of Criminal Procedure (for short 'Cr.P.C.') seeking issuance of search warrants of the respondent. On this, respondent appeared before the Sub Divisional Magistrate on 07.07.2015 and got recorded her statement before the said officer that she was residing with her parents of her own free will and consent. The said complaint was dismissed on the same very day. Thereafter, appellant lodged a complaint with the police to harass the respondent. On this, she also lodged a complaint against the appellant with the police as he misbehaved with her. Police failed to take any action on her complaint and then she moved the Hon'ble High Court under Section 482 Cr.P.C. The respondent prayed for dismissal of the petition.

From the pleadings of the parties following issues have been framed:-

1. Whether the petitioner is entitled to a decree for restitution of conjugal rights under Section 9 of the Hindu Marriage

Act, 1955?

2. Relief.

The appellant adduced evidence in support of his case. He himself appeared in the witness-box as PW1 and also examined PW2-Malkeet Singh, PW3-Gursaran Singh, Photographer, PW4-Manjit Singh, Granthi and PW5-Gurdev Singh, Secretary of the concerned gurudwara. He also produced photographs (Exhibit P1 to Exhibit P5) of the alleged marriage ceremony, marriage certificate (Exhibit PW5/A) issued by the PW5 being Secretary of the concerned gurudwara, English transcription of the said certificate (Exhibit PW5/C), copy of the relevant entry of the register of gurudwara (Exhibit PW5/D) and the English transcription of the said entry (Exhibit PW5/E).

On the other hand, respondent tendered documents Exhibit R1 to Exhibit R5 but she herself did not appear in the witness-box.

The learned Family Court on the basis of the above-said evidence dismissed the petition filed by the husband while observing that he had miserably failed to prove the solemnization of legal and valid marriage between the parties.

Aggrieved by the impugned judgment dated 24.05.2018, the present appeal has been filed by the appellant.

We have heard learned counsel for the parties and have perused the record carefully.

Learned counsel for the appellant has challenged the findings of the learned Family Court, Ambala, regarding all the issues. It is contended that there was ample evidence on the record to prove that legal and valid marriage was solemnized between the parties on 26.03.2015 in gurudwara situated in

district Ambala. The granthi, who performed the religious ceremonies at the time of the marriage, was examined as PW4. The photographs of the marriage ceremony are Exhibit P1 to Exhibit P5, which were clicked by the PW3. It is further contended that the certificate regarding performing of the said marriage is Exhibit PW5/A, which was issued by the PW5 being the Secretary of the concerned gurudwara, the relevant entry relating to marriage ceremonies was made in the register of the aforesaid gurudwara, as is evident from Exhibit PW5/D. There is no rebuttal to said evidence. The respondent herself did not appear in the witness box. So, adverse inference has to be drawn against her.

Learned counsel for the appellant further argued that after the marriage, both the parties lived together as husband and wife but on 02.04.2015, she left his company without any rhyme or reason. All the efforts made by the appellant to bring her back failed, so the appellant is entitled to grant of decree for restitution of conjugal rights. It is contended that this appeal be allowed, accordingly.

On the other hand, learned counsel for the respondent submitted that no such marriage was performed between the parties as alleged by the appellant. No marriage ceremonies were performed on 26.03.2015 in gurudwara. It is further contended that PW2 to PW5 were having friendly relations with the appellant and that is why they appeared in the court as witnesses, in his support. The alleged photographs, marriage certificate and entries of the register were manipulated by the appellant with the help of the above-said PWs. No one from the side of the family of the respondent was present at the time of the alleged marriage between the parties. While concluding his arguments, learned counsel for the respondent made submission

that the appeal deserves to be dismissed being devoid of merits.

We have considered the submissions made by the learned counsel for the parties and have perused the record carefully.

The present case is based on peculiar facts. In this case, marriage has been denied by respondent-Samreet Kaur. The appellant has relied upon photographs Ex.P1 to Ex.P6 and depositions of PW1 to PW5 in order to establish that a valid and legal marriage was performed between the parties as per Sikh rites and ceremonies on 26.3.2015 in Guru Teg Bahadur Gurudwara Sahib, Sainik Vihar, Jandli, District Ambala. It has come into evidence that said gurudwara was not affiliated to Shiromani Gurudwara Prabandhak Committee. It has also come into evidence that at the time of the alleged marriage ceremonies, parents of either of the parties were not present. As per the testimony of PW5, one Advocate was also accompanying the parties at the time of aforesaid marriage ceremonies. The alleged marriage certificate Ex.PW5/A is not bearing the signatures of the parties. PW4-Manjit Singh Granthi had not given the details of the marriage ceremonies performed by him. Even the marriage certificate Ex.PW5/A was not signed by him. Even the relevant entry Ex.PW5/D relied upon by the appellant is not bearing the attestation of aforesaid Granthi. Rather the said entry bears the signatures of one Advocate namely Raman and PW2-Malkeet Singh who was close friend of the appellant. As per Ex.PW5/D, it appears that on 24.3.2015, PW2-Malkeet Singh got married with one Sonia Rani in same Gurudwara in the presence of the appellant. So, learned court below rightly observed that the testimony of PW2 does not inspire confidence, he being an interested witness.

In totality of the aforesaid circumstances, it could be easily inferred that it was not an arranged marriage and rather it appears to be marriage of a run away couple. Validity of such type of marriage cannot be proved just on the basis of the photographs. There is no valid evidence or document to prove the legal marriage between the parties. The non examination of the respondent is of no consequence as the evidence led by the appellant is not worth credance. Thus, learned court below has ignored the same in right perspective. In the absence of the valid marriage, petition filed by the appellant under Section 9 of Hindu Marriage Act is not maintainable.

Consequently, this appeal is hereby dismissed being devoid of merits. However, parties are left to bear their own costs.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

20.12.2019

adhikari/Paritosh kumar

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No