VIRENDRA SINGH ADHIKARI
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.M-259 of 2018 (O&M)
DATE OF DECISION : 06.12.2019

Meenu Rani …Appellant

Versus

Rishu Garg …Respondent

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

Present : Mr. G.S.Madaan, Advocate,
for the appellant.

Mr. Himanshu Chhabra, Advocate,
for the respondent.

KARAMJIT SINGH, J.

The present appeal has arisen from the judgment and decree dated 21.02.2018 passed by the Additional District Judge, Patiala, vide which the petition filed by respondent-husband under Section 11 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the HMA'), for grant of decree of nullity of marriage against respondent-wife, has been allowed.

In brief, the facts are that the respondent-husband's paternal aunt (bua) Nirmala Devi Gupta @ Rani and her son namely Rajesh Kumar @ Pappa came to his house with a proposal of his marriage with the appellant-wife and told that the appellant-wife was unmarried and doctor by profession. On 08.02.2014, a meeting with the appellant-wife along with her parents was organized at Rishi Dhaba, Gill Chowk, Ludhiana, in which he and his other family members were present. On the assurance of appellant-wife being a doctor and unmarried lady and on pressure put on him and his family members by his parental aunt and her son, marriage between the parties was solemnized on the very same day, i.e., on 08.02.2014 in the after noon in a very simple

manner without giving and taking anything. On the very first night of marriage, appellant-wife didn't allow the respondent-husband to touch her and refused to maintain any relation of husband and wife. Due to this, their marriage was not consummated. Appellant-wife told the respondent-husband that she was a divorcee and had studied upto class 10th. She also disclosed that she had got divorce from one Avtar Singh only with mutual consent in the Panchayat and no decree of divorce had been passed by any court of law. Appellant-wife also disclosed that her previous husband, i.e., Avtar Singh had filed a petition under Section 9 of the HMA in the Court of Ambala. On 08.05.2014, appellant-wife left the matrimonial house and took Rs.85,000/- with her, in the absence of the respondent-husband. During her stay in the matrimonial home, the behaviour of the appellant-wife was not good towards him and his parents. Respondent-husband had filed a complaint under Sections 494, 420, 379, 506 and 120-B of the Indian Penal Code (for short 'IPC') to the Senior Superintendent of Police, Patiala, for taking action against the appellant-wife, her parents, his paternal aunt (bua) Nirmala Devi Gupta @ Rani and her son namely Rajesh Kumar @ Pappa, all of whom deceived him. But no action had been taken by the police against them. Hence, petition under Section 11 of the HMA was filed, as appellant-wife performed 2nd marriage with the respondent-husband, during the subsistence of her first marriage with Avtar Singh.

The divorce petition was contested by the appellant-wife and she admitted the marriage but denied all the other allegations being false and frivolous by filing written statement and added that the petition was filed just to harass and defame her. It was submitted that earlier she got married with Avtar Singh but the said marriage was dissolved on 01.04.2011 by way of

panchayati rajinama, i.e., customary divorce. So the first marriage came to an end and thereafter, she got re-married with respondent-Rishu Garg on 08.02.2014 and the parties cohabited at Samana but no child was born out of the said wedlock. The fact regarding dissolution of first marriage by way of customary divorce was disclosed to respondent-Rishu Garg before the solemnization of their marriage dated 08.02.2014. It was further pleaded that such type of customary divorce was prevalent and acceptable under law, in that area. The marriage between the parties was performed in a very decent manner. After the marriage, appellant-wife came to know about the illicit relations of the respondent-husband with his sister-in-law and when she objected to it, she was beaten by her husband and his parents. Finally, she was thrown out of the matrimonial home. All the efforts made by her for reconciliation had failed. It was pleaded that the petition deserves to be dismissed.

The respondent-husband filed replication, whereby he controverted the assertions made by the appellant-wife in her written statement.

From the pleading of the parties, following issues were framed by the learned trial Court:-

1. Whether the marriage between the parties is null and void?OPP
2. Whether the petitioner is entitled to decree of nullity?OPP
3. Whether petitioner has not approached to the court with clean hand, if so, its effect?OPR
4. Whether the present petition is not maintainable?OPR
5. Whether the present petition is based on false and frivolous grounds?OPR

6. Relief.

Both the parties adduced evidence in support of their respective stands. The respondent-husband himself stepped into the witness box as PW1 and examined his brother, Rajesh Kumar Garg, as PW2. PW3-Avtar Singh (first husband of Meenu Rani) tendered into evidence documents, i.e., certified copy of his Aadhar Card (Exhibit PW3/1), photographs of his marriage (Exhibit PW3/2 to Exhibit PW3/7), certified copy of the petition under Section 9 of the HMA (Exhibit PW3/8), Panchayati Talaknama (Exhibit PW3/9) and the affidavit of appellant-Meenu Rani (Exhibit PW3/10). Documents Mark A, B, C and D were also tendered in evidence on behalf of the respondent-husband.

On the other hand, appellant-wife herself stepped into the witness box as RW1 and also examined her brother Amit Kumar as RW2. RW3-Kulwinder Kaur, real sister of PW3-Avtar Singh, was also examined by the appellant-wife.

After hearing learned counsel for the parties, the court of learned Additional District Judge allowed the petition of the respondent-husband under Section 11 of the HMA on the ground that the marriage between the parties was solemnized in contravention of the statutory provision of Section 5(i) of the HMA.

Aggrieved by the said judgment and decree dated 21.02.2018, the present appeal has been filed by the appellant-wife.

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

Learned counsel for the appellant-wife contended that earlier Meenu Rani got married with Avtar Singh and thereafter, she took customary

divorce from him on 01.04.2011 and to that effect panchayati divorce deed was executed, which is Exhibit PW3/9. The affidavit of the appellant-wife, Meenu Rani, to that effect is Exhibit PW3/10. Both these documents were proved by aforesaid Avtar Singh while appearing in the witness-box as PW3. Learned counsel for the appellant-wife further contended that such type of customary divorce is recognized and is acceptable under Section 29(2) of the HMA. As per the said statutory provision, a marriage may be dissolved in accordance with the custom governing the parties.

Learned counsel for the appellant-wife further argued that customary divorce was recognized in the community of Avtar Singh and appellant-Meenu Rani, as is evident from the testimony of RW3-Kulwinder Kaur, the real sister of Avtar Singh (the first husband of appellant-Meenu Rani). RW3-Kulwinder Kaur also took panchayati divorce from her first husband-Kuljeet.

Learned counsel for the appellant-wife further argued that in the case in hand, the first marriage of the appellant-wife with Avtar Singh was dissolved in accordance with a custom governing the parties and the said custom is recognized under law and the first marriage of the appellant-wife was legally dissolved. It is further contended that the second marriage of appellant-Meenu Rani with respondent-Rishu Garg was not in contravention of the condition mentioned in Clause (i) of Section 5 of the HMA. So the said marriage is not nullity and rather is a legal and valid marriage. In support of his arguments, learned counsel for the appellant-wife referred to judgment cited in **Balwinder Singh Vs. Gurpal Kaur, AIR 1985 Delhi 14,** wherein the legality of customary divorce amongst Sikh Jats of District Amritsar under which the marriage can be dissolved out of court preferably through a written

instrument, was upheld.

On the other hand, learned counsel for the respondent-husband submitted that the person claiming custom has to plead and prove the same. In the case in hand, the appellant-wife has no-where pleaded in her petition that customary divorce was prevalent in their community. It is further contended that appellant-wife had failed to prove existence of any such custom in the community of the parties, by which the divorce could be granted. It was further argued that there is no illegality in the impugned judgment and decree passed by the learned trial Court. It is pleaded that the appeal deserves to be dismissed being devoid of merits. In support of his arguments, learned counsel for the respondent-husband has relied upon the judgment of a Division Bench of this Court in **Kala Singh Vs. Jaspreet Kaur, 2016(3) R.C.R.(Civil) 9**, wherein it was held that the husband was unsuccessful in proving his plea that he obtained customary divorce from his first wife.

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

It is the admitted case of the appellant-wife that she was earlier married with PW3-Avtar Singh and after getting panchayati divorce by way of panchayati rajinama from her first husband, she performed marriage with respondent-Rishu Garg. It is also the specific case of the appellant that the deed of said customary divorce (panchayati rajinama) is Exhibit PW3/9.

Section 29(2) of the HMA reads as follows:-

> "29. Savings.
>
> (1) XX XX XX
>
> (2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a

Hindu marriage, whether solemnized before or after the commencement of this Act."

Section 3(a) of the HMA reads as follows:-

"3. Definitions.- In this Act, unless the context otherwise requires,-

(a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:"

In the written statement, appellant-wife took a plea that the marriage between her and Avtar Singh was dissolved by way of above-said written agreement, as in that area anyone can take customary divorce in that manner. In the written statement, it was nowhere pleaded that such type of customary divorce was prevalent in the caste/community of Meenu Rani and Avtar Singh. No reliable evidence was adduced by the appellant-wife that there did exist a custom amongst her community and community of Avtar Singh, under which a marriage could be dissolved out of court preferably through a written instrument (panchayati rajinama). In the panchayati divorce deed (Exhibit PW3/9), there was no mention that it was based on the custom prevalent in the community of the parties to the aforesaid deed of divorce. RW3-Kulwinder Kaur was examined by the appellant-wife to prove prevalence of such type of customary divorce in their society. However, no written panchayati rajinama or divorce deed with regard to a divorce of Kulwinder Kaur from her first husband Kuljeet was produced, in order to establish that their marriage was also dissolved in a customary manner without seeking the intervention of the court. PW3-Avtar Singh nowhere stated that such type of customary divorce was acceptable as a custom in their society. Even RW3-

Kulwinder Kaur nowhere stated that such type of customary divorce was recognized in her community.

In this case, no reliable evidence was led by the appellant to prove the existence of any such custom in the caste/community of the parties under which the marriage between the appellant and her first husband could be dissolved through panchayati divorce.

So the divorce deed (Exhibit PW3/9) is of no legal consequence, meaning thereby that appellant-Meenu Rani performed marriage with respondent-Rishu Garg during the subsistence of his first marriage with Avtar Singh. The said second marriage of the appellant being performed in violation of the provisions of Section 5(i) of the HMA was nullity. So the learned court below correctly passed decree of nullity with regard to said marriage between the parties and the same does not require any interference. The case law referred to by the counsel for the appellant is not applicable to facts of this case.

Consequently, this appeal is hereby dismissed. However, the parties are left to bear their own costs.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

06.12.2019
adhikari

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