

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Family Court Appeal No.193 of 2019

Date: 08 - 01 -2020.

Between:

Maj Pankaj Rai

..Appellant

And

Ms.Krishna Veni Rai, Nee  
Ms.Krishnaveni Challa

...Respondents

Counsel for the Appellant : Maj.Pankaj Rai,  
Party-in-person

Counsel for the Respondent : Sri C. Srinivas

The Court made the following:



**JUDGMENT:** (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the Order, dated 21.09.2019, passed in O.P.No.475/2015 by the Judge, Additional Family Court, Hyderabad, whereby the learned Family Court had dismissed the petition filed under Section 151 of the Code of Civil Procedure by the appellant herein seeking extension of time for paying the maintenance amount, allowed I.A.No.300 of 2019 filed by the respondent herein, and dismissed the main O.P. on the ground that the appellant herein has not complied with the order passed in I.A.No.1192 of 2017, dated 19.12.2018, and which was confirmed by the High Court in C.R.P.No.242 of 2019, the present Appeal is filed.

2) The brief facts of the case are that the appellant herein had filed O.P.No.475 of 2015 seeking annulment of marriage under Section 12 of the Hindu Marriage Act, 1955 (for short "the Act"), against the respondent herein. It is the case of the appellant that though the marriage between the parties was solemnized on 13.12.2014, in accordance with the Hindu Temple rites, the same could not be registered with the Registrar of Marriages, Hyderabad, as the respondent, who was a divorcee, could not produce the divorce decree, which she has stated to have obtained from a competent Court. Subsequently, the appellant discovered that in fact the respondent had not filed for the divorce. Instead, it was her first husband who had filed for divorce before the Family Court, Hyderabad. The O.P. filed by the first husband was numbered as O.P.No.847 of 2000, and decree of divorce was granted on 28.06.2005. Aggrieved by the said order, the respondent had filed a Family Court Appeal before the High Court and the same was pending. It is the further case of the appellant that during the pendency of O.P. No.475 of 2015 filed by the appellant herein for divorce, the respondent herein had filed I.A.No.1192 of 2017

seeking an interim maintenance under Section 24 of the Act; the Family Court has awarded an interim maintenance of Rs.20,000/- per month from the date of petition, besides awarding Rs.20,000/- towards legal expenses, and also directed the appellant herein to pay the arrears in three equal monthly installments commencing from January, 2019, and also to pay the monthly interim maintenance on or before 10<sup>th</sup> of every succeeding calendar month. Aggrieved by the orders of the Family Court in granting interim maintenance, the appellant had preferred a Civil Revision before this Court and the same was numbered as C.R.P.No.242 of 2019. Vide order, dated 19.03.2019, this Court had dismissed the said C.R.P. holding that the interim maintenance granted by the lower Court was not exorbitant in view of the status of the parties. Thereafter, the respondent herein had filed I.A.No.300 of 2019 seeking dismissal of the main O.P.No.475 of 2015 on the ground that the appellant herein has not paid the interim maintenance and legal expenses contrary to the orders of the Family Court and High Court. The Judge, I Additional Family Court, Hyderabad, vide order, dated 14.09.2019, granted time to the appellant herein till 21.09.2019, to comply with the order passed in I.A.No.1192 of 2017, dated 19.12.2018, granting interim maintenance. Subsequently, the appellant had filed an Interlocutory Application seeking extension of time by four weeks for complying with the order passed in I.A.No.300 of 2019, dated 14.09.2019, ostensibly on the ground that he wanted to prefer a Civil Revision Petition against the order, dated 14.09.2019. Vide order, dated 21.09.2019, the Family Court has dismissed the application filed by the appellant herein seeking extension of time for payment of the interim maintenance and legal expenses; the learned Family Court allowed I.A.No.300 of 2019 filed by the respondent herein, and dismissed the main O.P. on the ground that the appellant herein has not complied with the order passed in I.A.No.1192 of 2017, dated 19.12.2018, and which was

confirmed by the High Court in C.R.P.No.242 of 2019 vide order, dated 19.03.2019. Impugning the order passed in I.A.No.300 of 2019, dated 21.09.2019, the present appeal is filed.

3) The appellant has preferred the present Appeal mainly contending that he was not liable to pay any maintenance as the marriage between the parties itself is null and void. Secondly, this Court vide order, dated 09.04.2019, in CrI.R.C.No.2587 of 2017, has observed that *“the material placed on record clearly establishes that there was marital relationship between the petitioner and her first husband and the marriage between them subsisted as on 13.12.2014. It establishes that the second marriage in between the petitioner and the 2<sup>nd</sup> respondent was performed during the subsistence of the first marriage of the petitioner. Therefore, it is a nullity. There is also material to substantiate that by suppressing the material facts with regard to the first marriage of the petitioner, the marriage in between the petitioner and respondent No.2 was performed. Even though there was a second marriage in between the parties to the litigation on 13.12.2014, it is not a marriage in the eye of law. It is only a nullity. Therefore, there is no marital relationship in between the parties to the dispute.”*. Thus, according to the appellant, in view of the finding recorded by the High Court in CrI.R.C.No.2587 of 2017, the order of maintenance and the dismissal of O.P. itself are bad. Hence, he is not liable to pay any maintenance. The appellant has relied on **LILA GUPTA v. LAXMI NARAIN & ORS<sup>1</sup>, MR.ANURAG MITTAL v. MRS.SHAILY MISHRA MITTAL<sup>2</sup>, DEOKI PANJHIYARA v. SHASHI BHUSHAN NARAYAN AZAR & ANR<sup>3</sup>, INDRA SARMA v. V.K.V.SARMA<sup>4</sup>, CHANDI**

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<sup>1</sup> AIR 1978 SC 1351

<sup>2</sup> Civil Appeal No.18312 of 2017, Supreme Court of India

<sup>3</sup> Criminal Appeal Nos.2032-2033 of 2012, Supreme Court of India

<sup>4</sup> Criminal Appeal No.2009 of 2013, Supreme Court of India

**PRASAD & ORS v. JAGDISH PRASAD & ORS<sup>5</sup>, UNION OF INDIA AND ORS. v. WEST COAST PAPER MILLS LTD., & ANR<sup>6</sup>, and S.P.CHENGALVARAYA NAIDU v. JAGANNATH<sup>7</sup>** to buttress his case.

4) Heard Mr.Maj Pankaj Rai, the party-in-person, and Mr.C.Srinivas, the learned Counsel appearing for the respondent.

5) The main thrust of the argument of the appellant herein is that in Crl.R.C.No.2587 of 2017, Crl.R.C.No.149 of 2019, and Crl.P.No.14188 of 2015, this Court has declared the marriage between the parties as null and void. Therefore, the order of the lower Court in directing to pay the maintenance to the respondent herein is *non est* in the eye of law. It is to be noted that Crl.R.C.No.2587 of 2017 was filed against the order passed in M.C.No.152/2015 by the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Judge, Hyderabad; Crl.R.C.No.149 of 2019 was filed by the respondent herein aggrieved by the order of the learned Metropolitan Sessions Judge, Hyderabad, in Criminal Revision Petition No.192 of 2017, wherein the Criminal Revision Petition was allowed by the learned Metropolitan Sessions Judge discharging the appellant/accused for the offence under Section 498-A I.P.C., by setting aside the order, dated 15.03.2017 in Crl.M.P.No.6829 of 2016 in C.C.No.159 of 2016 on the file of the XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad; Criminal Petition No.14188 of 2015 was filed by the appellant herein to quash the proceedings in D.V.C.No.170 of 2015 on the file of the IV Metropolitan Magistrate, Hyderabad.

6) In all the above three cases, the learned Single Judge of this Court had made an observation that the marriage between the parties is

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<sup>5</sup> Civil Appeal No.599 of 2003, Supreme Court of India

<sup>6</sup> Civil Appeal No.1061-62 of 1998, Supreme Court of India

<sup>7</sup> AIR 1994 S.C. 853

void in terms of Section 15 of the Hindu Marriage Act. It is trite to state that these observations made by the learned Single Judge will not operate as decree for divorce annulling the marriage between the parties. It is well accepted principle of law that even in case of marriages, which come within the purview of Section 11 (void marriages) and Section 12 (voidable marriages) of the Act, the parties to the marriage have to file a petition before a competent Civil Court to declare the said marriage as null and void. Unless and until the decree of divorce dissolving the said marriage between the parties is passed by the competent Civil Court, the marriage is held to be in subsistence till passing of the decree of divorce. Any observations made in criminal proceedings either under the provisions of Criminal Procedure Code, Hindu Marriage Act, or Domestic Violence Act, are intrinsic for the limited purpose of deciding the issue in that application and it cannot be said that the marriage is declared as a nullity, unless and until a competent Civil Court passes a decree of divorce. In the absence of any decree of divorce, it cannot be countenanced that the observations made in the criminal proceedings, will become a binding precedent and the same has to be given effect to in all the cases.

7) In **KISHAN SINGH (D) THROUGH L.Rs., Vs. GURPAL SINGH & ORS (Criminal Appeal No.1500 of 2010)**, the Hon'ble Supreme Court held that:

*The law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the*

*provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent case may be taken into consideration.*

8) In this particular case, the order of maintenance granted by the Family Court in I.A.No.1192 of 2017, dated 19.12.2018, has been confirmed by the High Court in C.R.P.No.242 of 2019, by order, dated 19.03.2019. Hence, the appellant herein cannot re-agitate the said issue in the present F.C.A., which is filed against the order, dated 21.09.2019, whereby I.A.No.300 of 2019 was allowed dismissing the O.P.No.475/2015 for non-compliance of the order for payment of interim maintenance and legal expenses. The other judgments relied by the appellant are also of no help.

9) In **RAMESH CHANDRA RAMPRATAPJI LAGA v. RAMESHWARI RAMESH CHANDRA DAGA**<sup>8</sup>, the Hon'ble Supreme Court has held that *"a Hindu marriage can be dissolved only in accordance with the provisions of the Act by obtaining a decree of divorce from the Court. In the absence of such a decree of dissolution of marriage, it has to be held that in law the first marriage of the wife subsisted when the wife went through the second marriage with the present husband"*.

10) In **Deoki Panjhiyara v. Shashi Bhushan Narayan Azad**<sup>9</sup>, the Hon'ble Supreme Court has held that:

*19. In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a relationship in the nature*

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<sup>8</sup> AIR 2005 SC 422

<sup>9</sup> (2013) 2 SCC 137

*of marriage would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005.*

11) The appellant has relied upon **Lila Gupta's case (supra)**, wherein the Hon'ble Supreme Court was dealing with a case where the husband – Rajendra Kumar had filed a petition seeking decree of divorce from his wife – Sarla Gupta, and the same was decreed on 08.04.1963. Subsequently, the husband – Rajendra Kumar married one Lila Gupta on 25.05.1963 and he expired on 07.05.1965. Thereafter, disputes arose regarding the succession to the Bhumidari rights between Lila Gupta (the 2<sup>nd</sup> wife) and the brothers of Rajendra Kumar. The contention raised by the brothers of Rajendra Kumar was that the second marriage of Rajendra Kumar was hit by proviso to Section 15 of the Hindu Marriage Act, 1955, and as such, the marriage between the parties was null and void. In the claim petition filed before the Deputy Director of Consolidation, the right of Lila Gupta was upheld; the brothers of Rajendra Kumar filed a writ petition under Article 227 of the Constitution of India in the High Court of Allahabad. A learned Single Judge had allowed the Writ Petition declaring the marriage between Rajendra Kumar and Lila Gupta as null and void, as it was in contravention of proviso to Section 15 of the Hindu Marriage Act, 1955. A Division Bench upheld the order of the learned Single Judge;

aggrieved by the same, the second wife (Lila Gupta) filed S.L.P. before the Hon'ble Supreme Court. In these set of facts, the Hon'ble Supreme Court while setting aside the order of the learned Single Judge and the Division Bench, has held as follows:

*20. Thus, examining the matter from all possible angles and keeping in view the fact that the scheme of the Act provides for treating certain marriages void and simultaneously some marriages which are made punishable yet not void and no consequences having been provided for in respect of the marriage in contravention of the proviso to S. 15, it cannot be said that such marriage would be void.*

*21. The appellant was denied the status of the wife of Rajendra Kumar and, therefore, his widow, and an heir to him on his death on the only ground that her marriage with Rajendra Kumar was void, being in contravention of the proviso to S. 15. As her marriage, even though in contravention of the provisions of S. 15, is not void, she cannot be denied the status of wife and, therefore, the widow of deceased Rajendra Kumar and in that capacity as an heir to him...*

12) In **Anurag Mittal's case (supra)**, the Hon'ble Supreme Court while dealing with a petition filed by the wife under Section 13 (1)(i)(a) of the Hindu Marriage Act, has held as under:

*18. Section 15 of the Act provides that it shall be lawful for either party to marry again after dissolution of a marriage if there is no right of appeal against the decree. A second marriage by either party shall be lawful only after dismissal of an appeal against the decree of divorce, if filed. If there is no right of appeal, the decree of divorce remains final and that either party to the marriage is free to marry again. In case an appeal is presented, any marriage before dismissal of the appeal shall not be lawful. The object of the provision is to provide protection to the person who has filed an appeal against the decree of dissolution of marriage and to ensure*

*that the said appeal is not frustrated. The purpose of Section 15 of the Act is to avert complications that would arise due to a second marriage during the pendency of the appeal, in case the decree of dissolution of marriage is reversed. The protection that is afforded by Section 15 is primarily to a person who is contesting the decree of divorce.*

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*What is held in essence is that if a provision of law prescribes an incapacity to marry and yet the person marries while under that incapacity, the marriage would not be void in the absence of an express provision that declares nullity. Quae incapacity imposed by statute, there is no difference between an incapacity imposed by negative language such as it shall not be lawful or an incapacity imposed by positive language like it shall be lawful (in certain conditions, in the absence of which it is impliedly unlawful). It would thus appear that the law is already settled by this Court that a marriage contracted during a prescribed period will not be void because it was contracted under an incapacity....*

13) In view of the above mentioned facts and circumstances and the law laid down by the Hon'ble Supreme Court, unless and until the competent Civil Court passes a decree of divorce annulling the marriage between the parties under any of the conditions laid down in Sections 11 and 12 of the Act, it cannot be said that the marriage between the parties is null and void. In the present case also, the appellant herein is seeking to avoid payment of maintenance on the ground that the marriage between the parties is null and void, as the marriage was performed in contravention of Section 15 of the Act, and also on the ground that in the Criminal Revision Case, this Court has held that the marriage between the parties is null and void.

14) In view of the aforesaid facts and circumstances, the Appeal is devoid of merit and the same is hereby dismissed.

Pending Miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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**RAGHVENDRA SINGH CHAUHAN, HCJ**

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**A.ABHISHEK REDDY, J**

Date : 08-01-2020.  
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