

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

FAO No.3025 of 2020 (O & M)

Decided on: 14.12.2020.

KULDEEP KAUR

.....Appellant

VS

MANPREET SINGH

....Respondent

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Naveen Sharma, Advocate
for the appellant.

SANT PARKASH J.

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

CM-10549-CII-2020

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 30 days in filing the present appeal.

For the reasons given in the application, delay in filing the present appeal is condoned.

The application is allowed.

FAO-3025-2020

The present appeal has been preferred by appellant-Kuldeep Kaur against judgment dated 04.11.2019 passed by the Additional Principal Judge, Family Court, Ludhiana, whereby the petition filed by the appellant under Section 12 of the Hindu Marriage Act 1955 (for short, 'Act') was

dismissed.

Succinctly, respondent-Manpreet Singh came in contact with appellant in January 2012 and proposed her for marriage to which she flatly refused. Thereafter, respondent started teasing her one way or the other. On 14.05.2012 the appellant was taken away by respondent on the point of knife and solemnized marriage with her as per Sikh rites in Gurudwara Sri Akalgarh Sahib, New Defence Colony, Zirakpur. The respondent got clicked photographs while performing Anand Karaj ceremony and also forced her to sign on certain papers. After solemnizing the marriage, respondent dropped the appellant to her parents house and threatened not to disclose anything to her parents or anybody else. After sometime, the appellant being fed up with the illegal acts of respondent, talked to her parents about the incident where-after her mother moved an application dated 05.11.2016 to Senior Superintendent of Police, Khana, District Ludhiana, levelling allegations against the respondent that the alleged solemnization of the marriage was under pressure, coercion, duress and compelling circumstances created by the respondent. The appellant never cohabited with respondent. In this backdrop of facts the appellant preferred a petition under section 12 of the Hindu Marriage Act declaring the aforesaid marriage as nullity.

The respondent appeared and filed a detailed written statement denying therein the allegations contained in the petition. It was asserted that the parties were having love affair and since parents of the appellant were not happy with the said relation, they took recourse to the solemnization of marriage as per Sikh rites in Gurudawara Sri Akalgarh Sahib New Defence Colony, Zirakpur. Even after the marriage, they sought protection by way of

filing a petition before this Court viz. Criminal Miscellaneous No. M-14910 of 2020. Denying that any force or fraud was ever played by the respondent, dismissal of the petition was sought.

Initiating the arguments, learned counsel for the appellant has vehemently contended that the impugned judgment is based upon conjectures and surmises. The learned trial court totally ignored the material facts of the case and dismissed the petition, wrongly interpreting the provisions of Section 12 of the Act. The learned trial court erroneously observed that the petition was barred by limitation whereas the petition was covered under clause (2) (ii) of the Act.

We have heard the submissions made by the counsel for the appellant and perused the record.

If glanced through the record of the file, it would reveal that the parties had love affair and wanted to marry. As the parents of the appellant were against the said marriage, they performed marriage on 14.05.2020 by Sikh rites in the aforesaid Gurudawara. The said facts have been admitted by the appellant while appearing in witness box as PW-1. She further admitted the factum of issuance of marriage certificate dated 14.05.2012 (EX. R-1) issued by the Head Granthi of the Gurudawara as well as photographs, Mark D-1 to D-6.

The solitary ground taken in the petition by the appellant was that she was forced to get married with the respondent by playing fraud. In order to appreciate this submission, the reproduction of Section 12 of the Act is necessary:-

“Section 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) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is on contravention of the condition specified in Clause (ii) of Section 5; or

(C) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under Section 5, the consent of such guardian was obtained by force or fraud as the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(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-

(1) 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) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) xxx

(1) xxx (iii)”

In view of plain reading of the aforesaid provision, no petition for annulling a marriage on the grounds specified in Section 12 (2) of the Act shall be entertained if it is presented more than one year after the fraud has been discovered. The marriage was solemnized on 14.05.2012 whereas the first complaint was filed on 05.11.2016 by mother of the appellant to SSP Khanna against the respondent and the petition was filed by the appellant on 13.12.2016. If the period of one year is reckoned from 14.05.2012, the appellant was required to file the petition seeking annulment of marriage on the ground of force/fraud on or before 14.05.2013 whereas the present petition was filed as late as on 13.12.2016. The legislature has explicitly provided that no petition for annulling a marriage

would be entertained if it is filed more than one year after fraud has been discovered. There is no relaxation or any proviso added extending the aforesaid time of one year.

In view of the above, the matter in question squarely falls within the ambit of Section 12 (1) (C) and consequently Section 12 (2) (a) (i) of the Act. Resultantly, the petition filed by the appellant is hit by the bar of limitation of one year as contemplated under Section 12 (2) (a) (i) of the Act.

In the light of the aforementioned position, we find no infirmity with the impugned judgment passed by the Additional Principal Judge, Family Court, Ludhiana, rejecting the petition filed by the appellant under Section 12 of the Act so as to warrant interference in appeal. The appeal is bereft of merit and is accordingly dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

14.12.2020
monika*

Whether Speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No