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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 01.03.2021

% **MAT.APP.(F.C.) 111/2020 & CM APPL. 24463/2020**

DEEPAK KUMAR

..... Appellant

Through: Mr. Lakshay Joshi with Mr. Vaibhav Jain and Mr. Sagar Sisodia, Advocates.

versus

MEENU SIROHI

..... Respondent

Through: Mr. Gaurav Sarawat with Mr. Jaiveer Choudhary, Advs. with respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The appellant has preferred the present appeal under Section 19 of the Family Courts Act 1984 read with Section 28 of the Hindu Marriage Act 1955 to assail the judgment and decree dated 04.03.2020 passed by the learned Principal Judge (East), Family Court, Karkardooma in H.M.A. No. 1458/18, "Meenu Sirohi versus Deepak". The said HMA case had been preferred by the respondent Meenu Sirohi under Sections 11 and 12(1)(c) of the Hindu Marriage Act on the premise that the marriage between her and

the appellant herein was a nullity on the ground that the same had not been lawfully performed, having being performed under coercion and pressure, in conspiracy with the neighbor of the respondent herein on 22.04.2015.

2. The case set up by the respondent in her petition was that on 22.04.2015, she was called to the residence of her neighbour Smt. Usha w/o Sh Ashwani Kumar r/o 42/2, East Azad Nagar, Delhi to discuss some issue, where the family members of the appellant herein were also present. Smt. Usha and the father of the appellant offered a glass of cold drink to the respondent which, despite her reluctance, she was forced to consume under the insistence of the appellant and his father. Upon consuming this drink, she became unconscious. She claimed that when she re-gained consciousness she found herself lying in a bed at the house of Smt. Usha, and found the appellant there with her. When she objected to the same, the appellant told her that they had gotten married at Arya Samaj Mandir, near Tis Hazari Courts, Delhi, and she was now his wife. The respondent claimed to have protested against this marriage on the ground that the same had been performed without her consent, whereupon the appellant threatened to kill her and her mother by pointing a pistol at her. The respondent further claimed that the appellant repeatedly raped her without her consent, and then forcibly kept her captive in the house of Smt. Usha. She claimed that while she was undergoing this ordeal, her mother was not in Delhi and was visiting her ailing brother in their village.

3. The respondent claimed that at 06:00 P.M. on 27.05.2015, she managed to escaped from captivity from the house of Smt. Usha by running

away to the house of a relative. The next morning, she reached her mother's village and narrated the whole incident to her. On 30.05.2015, the respondent claims to have returned to Delhi with her mother, whereafter they lodged complaint at the Krishna Nagar police station, against the appellant and his family members, as also her neighbours, Smt. Usha and her husband Ashwani Kumar. Consequently, FIR No. 427/2015 was registered against these persons at the said Police Station under Sections 343/328/366/376/34 IPC on 07.06.2015. She claimed that, thereafter, she had been living at her mother's residence and did not have any communication with the appellant herein. After urging that the photos and certificate of this marriage – having being obtained without her consent and under pressure and threats, were null and void, the respondent moved the petition before the Family Court seeking a declaration of nullity in respect of her so-called marriage to the respondent.

4. The appellant filed his written statement opposing the petition, by disputing the case set up by the respondent as being wholly false and a misuse of the process of law. He claimed that the marriage between the parties was a love marriage which was solemnized on 20.04.2015, and not on 22.04.2015 as claimed by the respondent/petitioner, before the Family Court. The appellant stated that the marriage had been solemnized at Arya Samaj Mandir, with the consent of both the parties, and duly registered by Sh. B.L. Meena, the Registrar of Marriages under the Hindu Marriage Act vide serial no. DC(C)/KT/2015/9960 on 20.04.2015.

5. The respondent filed her evidence by way of affidavit and was partly cross-examined on 15.10.2019. However, thereafter - the appellant failed to cross examine her any further. This led to the Family Court treating her evidence as complete on 09.01.2020 and, subsequently, granting the appellant an opportunity to lead his evidence. However, since the appellant neither filed a list of witnesses,

nor any evidence by way of affidavit, the Family Court closed his evidence on 28.01.2020.

6. The learned Family Court, in the impugned decision, has taken note of some of the aforesaid averments pleaded by the respondent/petitioner, in respect whereof she had also filed her evidence by way of affidavit. In paragraph 22 of the impugned judgment, the learned Court summarized the cross examination of the respondent conducted by the appellant in the following manner:

“22. During cross examination, she deposed that she knew the contents of her affidavit Ex.PW1/A. She deposed that she do not have original of marriage certificate dated 20.04.2015. She did not go to the office of Sub-Registrar Sh. B. L. Meena. She did not file any affidavit regarding registration of her marriage. She deposed that she fell unconscious at about 11.00 a.m on 20.04.2015 at the home of Usha and Ashwani. She deposed that she was unconscious throughout the day due to this reason what happened with her she could not tell. She deposed that Ranvir and Usha gave her cold drink with drugs and she fell unconscious. When she gained consciousness she was at Usha's House but she did not remember the date and time. On 27.05.2019 in the evening she ran away from the house of Usha and went to her mother's place i.e. Badaut, District Bagpat. She reached Badaut at about 10.00 p.m. in the night. She went to Badaut by car. Her maternal uncle brought the car for her and took her to Badaut. She admitted that she had her cell phone in her possession during the period from 20.04.2015 to 27.05.2015. The same was active and from his mobile phone, she called her mother.”

7. The learned Family Court then proceeded to observe that since the appellant had not appeared in the witness box, the respondent's plea that she

did not give her consent for the alleged marriage stood un rebutted. For this reason, the learned Court also proceeded to believe the respondent's plea that her consent to the alleged marriage had been illegally obtained under influence, with the help of one Ashwani and his wife Usha, by administering a spiked drink to her; even the respondent's plea that she had not voluntarily gone to the office of Registrar of Marriages for registration of the marriage, was accepted as well. Resultantly, the learned Court held that the respondent's consent in respect of her alleged marriage with the appellant, and the marriage certificate, were illegally obtained in the circumstances explained by her and was not voluntary. As a consequence, the marriage between the parties was declared to be voidable, and stood annulled by the impugned decree of nullity under Section 12(1) of the Hindu Marriage Act.

8. The submission of learned counsel for the appellant, firstly, is that the respondent had claimed in her petition before the Family Court, that the so-called drugging and forcible marriage had taken place on 22.04.2015, whereas the marriage certificate issued by the Registrar of Marriages was dated 20.04.2015. To that end, he points out her statement from cross examination, wherein the respondent/ petitioner had stated that the drugging incident took place on 22.04.2015 at the house of Smt. Usha. By referring to the marriage certificate dated 20.04.2015, he submits that this completely falsifies the case set up by the respondent. He further points out that during her cross examination, the respondent had admitted to being left alone during certain periods while allegedly confined, and being in possession of her mobile phone at that time – wherefrom she had claimed to have made a call to her maternal uncle in Badaut. As per her claim, the said uncle, on

receiving her call, had come to pick her up in his car and take her to Badaut. Learned counsel submits that it is unbelievable that the respondent, despite having been in possession of her mobile phone throughout the period following 20.04.2015, did not think of reporting these alleged incidents of drugging, marriage by force or coercion, or repeated rape by the appellant. Though she claims to have called her maternal uncle on 27.05.2015 – to request him to take her to her mother, she still failed to make any complaint to the police at that stage. She claimed that she had reached her mother's house on 27.05.2015, but her mother was not available at the time and returned on 30.05.2015, yet she did not make a complaint till as late as 07.06.2015, when the FIR came to be registered.

9. Learned counsel for the appellant submits that the impugned judgment suffers from complete non application of mind to the evidence brought on record and the improbability of the case set up by the respondent. He submits that the appellant has also raised several other pleas in the written statement and had filed supporting documents, which have not even been noticed in the impugned judgment. He, however, concedes that the appellant did not lead evidence in respect of the documents placed by him on record along with the written statement. Nevertheless, he contends that the documents filed with the written statement show, *inter alia*, that his marriage with the respondent was valid and legal, having been performed at her free will and consent.

10. On the other hand, learned counsel for the respondent, who appears along with the respondent, when confronted with the excerpt of cross

examination noticed in paragraph 22 of the impugned judgment, submits that after the incident of 22.04.2015, the respondent/petitioner was in a state of shock and, therefore, despite being in possession of her mobile phone - did not report the matter and called her uncle only on 27.05.2015.

11. He has sought to support the impugned judgment by urging that once the appellant did not prove his defence, the learned Court was justified in accepting the respondent's case that the marriage had been performed without her consent, under force, and coercion and undue influence of a spiked cold drink.

12. We have perused the impugned judgment, as well as the pleadings before the Family Court, and the evidence led by the parties. In our view, the learned Court has fallen in grave error in passing the impugned judgment and decreeing the petition preferred by the respondent in her favour. The impugned judgment suffers from complete non application of mind to the evidence brought on record, and we find that there is no appreciation or evaluation of the same by the learned Judge. In fact, in our view, to say the least, the impugned judgment borders on perversity. The learned Presiding Judge, had himself noticed the fact that in the petition, the respondent had claimed that the incident took place on 22.04.2015, whereas, according to the marriage certificate, the marriage had taken place on 20.04.2015. There is no whisper in the impugned judgment about this discrepancy. This, itself, was sufficient to shake the credibility of the case set up by the respondent petitioner. Not only that, the fact that the marriage certificate had been issued by a competent officer, should have weighed with the learned Judge

to examine the case more deeply and the mere *ipse dixit* stand of the respondent that she, after being called, was drugged at the house of Usha w/o Ashwani Kumar, and then forced to marry the appellant could not have been accepted on face value. After all, it is the obligation of the Marriage Officer, before whom the marriage is performed and/or registered, to satisfy himself with regard to the fact that the marriage had been performed voluntarily. Once again, on this aspect, there is no whisper in the impugned judgment. The case of the respondent herself was that she continued to remain at the house of Smt. Usha from 20.04.2015 till 27.05.2015. Yet, the learned Judge has not examined as to how the respondent had continued to remain confined there for so many days, instead of going to her own house which was in the neighbourhood. Most importantly, the respondent had admitted that she was carrying her mobile phone throughout, and that it was only on 27.05.2015 she had called her maternal uncle in Badaut to come to her rescue. To say the least, we are shocked that the learned Judge did not even consider it necessary to apply his mind to these extremely relevant facts. If the respondent's story that she had been drugged; married to the appellant by force and coercion; confined in the house of Usha and; continuously raped by the appellant till she left the house of Usha on 27.05.2015 was to be believed— there is absolutely no explanation as to why, despite being in possession of her mobile phone, which she was using, and had not used the same till 27.05.2015 to call her maternal uncle, or why she failed to use the same to seek help from her relatives or police earlier. We are unable to comprehend how these important aspects were entirely ignored by the learned Judge. The learned Presiding Judge has failed to display

knowledge of even the most fundamental understanding of the principle that a plaintiff/ petitioner has to stand on his/ her own legs and has to make out his/ her case, and cannot rely on the weakness of the defence of the defendant/ respondent. There was not even a shred of evidence led by the respondent to support her case. She had set up an absolutely improbable and unbelievable story, which had gaping holes. Before us, the explanation offered by the respondent/ petitioner for not reporting about the alleged conduct of, *inter alia*, the appellant is that she was in a state of shock after the incident took place on 20/ 22.04.2015. However, no such plea was set up, much less substantiated before the Family Court. Thus, this plea cannot be accepted now, since it is merely an afterthought.

13. Mere failure of the appellant, who was the respondent in the said petition, to further cross examine the respondent petitioner or to lead his own evidence could not have automatically resulted in the learned Judge drawing any presumptions of the kind contained in the impugned judgment, much less the presumption that the appellant obtained the respondent's consent for marriage under the influence of a spiked cold drink, with the help of one Ashwani and his wife Usha. There is no evidence at all to support the said conclusion or even the conclusion that the respondent did not voluntarily go to the office of the Registrar for registration of the marriage, much less to conclude that the marriage between the parties was not voluntary.

14. The impugned judgment, therefore, cannot be sustained, and is set aside. Consequently, the petition preferred by the respondent being H.M.A

No. 145/2018 (2015) before the Family Court is dismissed. The parties are left to bear their respective costs.

VIPIN SANGHI, J.

REKHA PALLI, J.

MARCH 01, 2021

N.Khanna

