

**THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

**F.C.A.No.56 OF 2019
AND
F.C.A.No.58 OF 2019**

COMMON JUDGMENT:-

1. The appellant in F.C.A.No.56 of 2019 and F.C.A.No.58 of 2019 is the wife and the respondent being her husband. The appellant filed a petition for restitution of conjugal rights vide F.C.O.P.No.16 of 2015 which stood pending before the Family Court, Nizamabad. The respondent, seeking nullity of marriage, filed F.C.O.P.No.62 of 2015 and the said case also stood pending before the same Court. The Family Court, Nizamabad, through a common order dated 31.12.2018, negatived the relief claimed by the appellant-wife i.e., for restitution of conjugal rights. The Court granted the relief sought for by the respondent-husband and consequently annulled the marriage between the parties by a decree of nullity. Aggrieved by the same, the wife preferred both these appeals.

2. Heard Sri K.Venu Madhav, learned counsel for the appellant as well as Sri Vedula Srinivas, learned senior counsel who argued on behalf of Sri M.Ravinder Reddy, learned counsel on record for the respondent.

3. Gone through the pleadings of parties in both the cases; the common evidence recorded i.e. the evidence of PWs 1 & 2, RWs1 to 5 and also perused the contents of Exs.A1 to A5 and Exs.B1 to B8.

4. The fact that the marriage of the appellant was performed with the respondent as per Hindu rites and customs on 15.08.2014 is not in dispute. When the appellant contended that dowry was given and some other amounts were paid for purchase of clothes, household articles, etc., the respondent denied the same. The fact that after marriage, a marriage reception ceremony was hosted by the father of the respondent at Hyderabad is not in dispute. Likewise, neither the educational qualification of the parties nor their avocation is in serious dispute. Also, it is not in dispute that the appellant left the matrimonial home on 23.08.2014. While the appellant

states that the respondent, at the instance of his father and sisters, sent her out, the version of the respondent is that though after marriage, nuptial ceremony was arranged on the night of 21.08.2014, the appellant did not cooperate and due to her refusal, the marriage was not consummated. The nuptial ceremony was postponed to the next day i.e. on 22.08.2014. But on 22.08.2014, the father of the respondent received an e-mail that the appellant married another person prior to marriage with respondent and the said mail contained two attachments i.e. photographs which shows that she was wearing yellow thread and further, the father of the respondent also received a phone call from one Srinivas who informed that he had already married the appellant and that he himself sent the mail and the photographs and also that they were in love for about seven years. It is also the case of the respondent that the said Srinivas is the cousin of the appellant i.e. son of the younger sister of her mother. On coming to know about the said fact, the parents of the appellant were informed.

5. The fact that the appellant gave complaint to police against the said Srinivas and also filed a civil suit for damages is also borne by record. By the material available on record, it is also clear that the respondent took steps to verify about the genuineness of the photographs by getting them subjected to forensic analysis. Also, the person who analyzed the photographs was examined as RW5 and the report issued was also got marked.

6. The main point urged and argued by the learned counsel for the appellant is that the marriage of Hindu male with Hindu female becomes complete and valid only after the performance of relevant ceremonies and thus, mere presence of a yellow thread around the neck of the appellant does not mean that she had undergone valid marriage. Learned counsel also stated that in case the appellant really married the alleged Srinivas, she would not have given complaint to police against him and filed a suit for damages and that itself goes to show that the appellant is innocent. But the said fact was not taken into consideration by the Family Court. Learned counsel also submitted that the appellant was sent out from her

matrimonial home basing on a mere suspicion and thereafter, basing on the same suspicion, respondent filed an OP seeking for nullity of marriage and indeed, the appellant intends to lead happy marital life with the respondent and therefore, she filed an OP for restitution of conjugal rights. Learned counsel stated that instead of decreeing the O.P. filed by the appellant and thereby ordering for restitution of conjugal rights, the Family Court annulled the marriage which is highly unjustifiable. Learned counsel, during the course of submission, also stated that Rules of Evidence were not followed and the Family Court failed to verify whether the electronic material produced is a primary evidence or secondary evidence and did not adhere to insisting of required certification under Section 65-B of the Indian Evidence Act and thereby came to a wrong conclusion. Learned counsel, by submitting thus, sought to allow both the appeals.

7. Contradicting the submission made by the learned counsel for the appellant, learned counsel for the respondent contended that the appellant was not interested in marrying the respondent from the beginning.

Learned counsel stated that though the marriage was performed, the appellant refused to lead matrimonial life with the respondent. Learned counsel submitted that no reason was accorded by the appellant either in her pleadings or in her evidence as to why she refused for consummation of marriage. Learned counsel stated that the appellant fell in love with the son of her maternal aunt by name Srinivas and both continued their love affair for a period of about seven years and on one fine day, they went to a temple and got married. But, as the said relationship is a prohibited one under the customs prevailing in Hindu community, both of them did not disclose the same. Learned counsel submitted that the parents and elders of the appellant who were not aware of the existence of such relationship and marriage, proceeded with choosing an appropriate alliance and getting her married and thereby, the marriage with the respondent was performed. But, as the appellant had an affair with the said Srinivas, she could not give consent for consummation of marriage.

8. Learned counsel also stated that the appellant, who examined herself as PW1, clearly admitted that the

photographs produced before the Court depicts her presence and it is she, who is present therein and therefore, no further certification or proof is required to establish the genuineness of the said photographs. Learned counsel submitted that the appellant only denied the presence of yellow thread around her neck. But the said fact was established by the evidence of RW5, who analysed the said photographs. Learned counsel stated that the evidence of the analyst and the report of the analyst clearly goes to show that the said yellow thread was not introduced or morphed thereafter and therefore, it has to be held that there was a valid marriage between the appellant and the said Srinivas. Learned counsel also submitted that the appellant, being a person who attained the age of majority, who had higher studies i.e. M.Sc (Mathematics) and Law Degree and who worked as Part-time lecturer, ought to have been visualized the consequences of marrying again during the life time of her spouse. Learned counsel also stated that having evaluated all the evidence that was brought on record by both the parties, the Family Court came to a just conclusion.

Learned counsel also submitted that the respondent, who had many hopes of leading happy marital life, had his dreams shattered to the acts of the appellant and observing all those factors, the Family Court rightly annulled the marriage by a decree of nullity which needs no interference.

9. The appellant, who in her pleadings and during her chief examination, contended that lot of amount was paid towards dowry and towards other expenses by her parents, during the course of cross-examination admitted that her parents- in- law paid double the amount to her for purchase of her clothes than the amount paid to the respondent by them. She further admitted that there is no dispute with regard to dowry. She further admitted that the respondent never approached her elders demanding dowry. Likewise, the appellant, who stated that she was sent away from her house by the respondent and his family members, during the course of cross-examination, clearly deposed that on 23.08.2014, her parents were called to the house of the respondent by the father of the respondent and sent her along with her parents. Coming to the

disputed photographs, she, during the course of cross-examination, admitted that the photographs confronted to her, are the photographs sent by Srinivas to her father-in-law to his email. She further admitted that the dress, the face and spectacles present in the photographs belongs to her. She further admitted that those photographs belong to her. She volunteered that the yellow thread with piece of turmeric is created around her neck in those photographs. She, however, stated that those photographs were taken at Pochamma Temple at Nizamabad one month prior to her marriage. She also stated that those photographs were taken by Srinivas. She further deposed that herself and Srinivas went to Pochamma temple on the date of taking photographs. She also stated that the said photographs were taken through the tab of Srinivas. All these facts clearly goes to show that the appellant, along with the said Srinivas, went to Pochamma temple, Nizamabad one month prior to marriage and the photographs that were produced before the Court, were taken by Srinivas. The appellant is well aware about the date on which those photographs were taken and also who had taken those photographs.

Taking of photographs and her presence thus is admitted by the appellant. Her only contention is that the yellow thread with a piece of turmeric that is found in the photographs around her neck was created. The said contention is disproved by the respondent by producing cogent and convincing material.

10. The evidence of RW5 is that he is working as Deputy Director at Truth Labs, Bangalore. He stated that Mr.N.P.Chary (RW2-Father of the respondent) approached Truth Labs, Hyderabad with a CD requesting for examination of two images contained therein and the case was registered at their office and it was allotted to him for examination. The case file and the CD were received at their Bangalore office. The CD contained two relevant images which were marked as Q1 and Q2 by him and he examined them by means of file signature analysis and photo image authentication techniques and on examination, he is of the opinion that the images i.e. Q1 and Q2 are authentic and are free from any form of tampering, morphing or insertions. He stated that Ex.B5 is the report issued by him after completion of his analysis.

Though RW5 was subjected to cross-examination, nothing could be elicited through him to discredit his testimony. A perusal of the contents of the report goes to show that the images Q1 and Q2 were shot using Lenovo A3000H camera. The report also states that the images Q1 & Q2 contained in the CD are authentic and represent true images recorded in an event truly occurred. It is also mentioned that the pixel level analysis of Q1 & Q2 images do not indicate any pixel manipulation or abrupt changes. It is further mentioned that the pixels of Mangalasutra/yellow thread merges with the pixels of the female person indicating that it was present at the time of photographing. The report also reveals that the file signatures of the images Q1 & Q2 do not indicate the use of image editing software indicating that those images are authentic and have not been created using image manipulation techniques.

11. Thus, the respondent, through all the evidence he produced, had clearly established that the appellant was wearing an yellow thread embedded with a turmeric piece and the same was photographed by the said Srinivas.

Also, it is not in dispute that the said Srinivas had indeed passed information to the father of the respondent. Had it not been so, the appellant might not have given complaint against the said Srinivas and filed a suit for damages. When the respondent had produced such an overwhelming evidence alleging that the appellant had got married, it is incumbent atleast on part of the appellant to state as to why she was present along with the said Srinivas at the alleged temple, that too, wearing an yellow thread containing a piece of turmeric depicting Tali. Admittedly, strict rules of evidence are not ordered to be followed by the Family Court. Section 14 of the Family Courts Act says that Rules of Evidence need not be strictly adhered to and that the Family Court can adopt its own procedure for culling out the truth and for deciding the matter on merits.

12. In the case on hand, we are of the opinion that having considered all the evidence that is produced by both sides, the learned Judge of the Family Court, Nizamabad, had come to a just conclusion that the appellant, who is at fault, is not entitled for the relief of restitution of conjugal rights. On the other hand, the respondent-husband who

had established that the case falls under the ambit of Section 5 read with Section 11 of Hindu Marriage Act is entitled to get the marriage annulled. We fail to find any ground for interfering with the well reasoned order of the Family Court, Nizamabad.

13. Thus, having discussed the merits of the case at length, we are of the opinion that both the appeals lacks merits and deserves dismissal.

14. Resultantly, both the Appeals stand dismissed. Consequently, the common order of the Family Court, Nizamabad, passed in F.C.O.P.No.16 of 2015 and F.C.O.P.No.62 of 2015, dated 31.12.2018, is confirmed.

15. Miscellaneous petitions, if any pending, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

JUSTICE M.G.PRIYADARSINI

Dt.20.01.2023

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