

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1010 of 2017

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Priyanka Kumari Wife of Anurag Mishra, daughter of Dwarika Goswami
resident of Hansa, Police Station - Raniganj, District - Araria.

... .. Appellant/s

Versus

Anurag Mishra Son of Bharat Mishra resident of Village - Kajhi, Police
Station - Banmankhi, District - Purnia, presently resident of Teachers Colony,
Madhopara, Purnia Municipality, Police Station - Sahayak, Khajanchi Hat,
District - Purnia.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Vijay Bharti
For the Respondent/s : Mr.Rang Nath Choubey

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY)

Date : 08-10-2024

Re.: I.A. No. 2026 of 2018

1. Having heard Learned counsel for the parties and
taking into consideration the submissions made together with
the contents of the petition, the Court is of the opinion that the
appellant has made out a case for condonation of delay in filing
of the instant appeal.

2. The delay is condoned.

3. I.A. No. 2026 of 2018 is allowed.

Re.: M.A. No. 1010 of 2017

4. This appeal is filed by the appellant against the
judgment and order dated 12.09.2017 passed in Matrimonial



Case No. 68 of 2011 on the file of Principal Judge, Family Court, Purnea, whereby the marriage solemnized between the appellant and the respondent has been decreed null and void. It is the specific contention of the appellant that the decree was passed by the Court below, without any written statement of the appellant and ignoring the statements of defendant witnesses in violation of Section 12 of the Hindu Marriage Act, 1955.

5. The brief facts of the case of the appellant is that the appellant Priyanka Kumari is the wife of the respondent Anurag Mishra. The respondent is son of one Bhagwan Mishra alleged to have born in the year 1990. The mother of the respondent died in his childhood. Subsequently, the respondent was under the care of his uncle, namely, Bharat Mishra whose name was recorded as his father in the School registration certificate and the respondent lived with his uncle (Bharat Mishra) for education purposes at Purnea. The respondent and one Deepak Goswami are friends and neighbours Deepak Goswami is related to the appellant's family and as such the respondent used to visit the house of the appellant along with Deepak Goswami. Later the respondent Anurag Mishra and Deepak Goswami became close to the appellant and her younger sister Ritu Kumari respectively. The father of the



appellant contacted with father of the respondent, namely, Bhagwan Mishra and because of willingness of both the families the marriage was solemnized between the appellant and the respondent on 18.05.2011 at Kali Mandir, Araria. On the same day, Deepak Goswami also got married with Ritu Kumari.

6. Later, uncle of the respondent raised dispute for dowry and left the respondent at his *Sasural*. The respondent and appellant cohabited as husband and wife till 26.05.2011. The respondent approached his uncle for *Vidai* on 26.05.2011, but the uncle restrained the respondent to do so. Subsequently, uncle of the respondent on 27.05.2011 after nine days of the marriage carved out a story of kidnapping of his minor son, filed a complaint case of kidnapping, before the Chief Judicial Magistrate, Purnea vide Complaint Case No. 1193 of 2011 for the offence punishable under Section 323, 347, 365 of the Indian Penal Code and under Section 5 of the Child Marriage Restraint Act and also filed Matrimonial Case No. 68 of 2011 on 28.05.2011.

7. It is the specific contention of the Learned counsel for the appellant that the appellant and the respondent were majors as on the date of marriage i.e. 18.05.2011. The date of birth of appellant is 20.12.1992 as per the certificate. It is also



contended by the appellant that the appellant also filed a Complaint Case No. 1929 of 2011 before the Chief Judicial Magistrate, Araria on 04.08.2011 for the offences punishable under Section 498A, 323 read with 34 of the IPC and under Section 3 and 4 of the Dowry Prohibition Act.

8. During the pendency of the cases, the respondent met the appellant, won her confidence and asked her not to pursue the case either filed by his uncle or by her and also assured her that both will live happily as husband and wife for which the appellant did not file her written statement before the Family Court.

9. It is also contended by the appellant that the respondent, his uncle (Bharat Mishra) and one Swatantra Kumar (elder brother of the respondent) and one Dharmendra Kumar (cousin of the respondent) were examined before the Family Court. Further, the Family Court passed an *ex parte* decree declaring the marriage as null and void. Being aggrieved by the same, the present Miscellaneous Appeal has been preferred by the appellant.

10. Heard the rival contentions of the Learned counsel for the appellant as well as the Learned counsel for the respondent and we have given a thoughtful consideration.



11. On perusal of the record, it is evident that the Trial Court allowed the Matrimonial Case No. 68 of 2011 on 12.09.2017 by declaring the marriage of the appellant with the respondent (solemnized on 25.05.2011) as null and void under Section 12 of the Hindu Marriage Act. The case of the respondent before the Family Court is that the respondent was aged about 16½ years and the appellant was aged about 16 years as on the date of their marriage and that the respondent was abducted and kidnapped by Deepak Goswami in conspiracy with the father of the appellant. Later the appellant and respondent got married at the temple. Some how, the respondent manage to escape from the illegal custody of the miscreants and reached his father's place at Purnea wherein the respondent's father filed a Complaint Case No. 1193 of 2011 dated 27.05.2011 before the Chief Judicial Magistrate, Purnea and the Court was pleased to take cognizance and the Case was made over to the Court of Judicial Magistrate 1st Class, Purnea. The order of the Family Court also disclose that PW Nos. 1 to 4 were examined and Ext-1, Ext-2, Ext-2/1, Ext-3 and Ext-3/1 are marked. Ext-1 is the certified copy of the plaint of Matrimonial Case No. 68 of 2011, Ext-2 is the Admission Card issued by Central Board of Secondary Education, Delhi of the respondent.



Ext.-2/1 is the registration card of respondent issued by the Central Board of Secondary Education, Delhi. Ext.-3 is the certified copy of order sheet of the Complaint Case No. 1193 of 2011 and Ext-3/1 is the certified copy of order sheet in Complaint Case No. 3025 of 2011.

12. On perusal of record, it is evident that as per Ext-2 and Ext-2/1, the respondent pursued his study from Central Board of Secondary Education, Board from S.R.D.A.V. Public School, Chunapur Road, Aerodrome, Purnea. But the birth certificate of the respondent was not marked as Exhibit before the Family Court to prove that the respondent was minor and aged about 16 ½ years as on the date of his marriage i.e. 18.05.2011, so as to declare the marriage as null and void.

13. On the other hand, the marriage photographs of the appellant and respondent was marked for identification as Ext – X and Ext-A is Transfer Certificate of Priyanka Kumari, Ext-B is Adhar Card of the appellant, Ext-C is the certified copy of order sheet of Complaint Case No. 511 of 2017 and Ext-D is the certified copy of Complaint Petition of C.A. No. 511 of 2017. The evidence of PW 1 i.e. the respondent disclose that his marriage was solemnized on 25.05.2011 with the appellant Priyanka Kumari forcefully and no conjugal



relationship was established between them and at the time of marriage the respondent and the appellant were minors. Except the oral evidence of the respondent and his witnesses there is no evidence on record to prove that the age of the respondent was 16 ½ years as on the date of marriage. PW-4 is the natural guardian of the respondent. His evidence disclose that the date of birth of Anurag Mishra/the respondent is 23.10.1994 but no documentary evidence was filed before the Family Court to support their contention. In the absence of any documentary evidence, it is not proper on the part of the Family Court to declare the marriage as null and void.

14. Section 12 of the Hindu Marriage Act deals with voidable marriages, which reads as follows:

“12. Voidable marriages.—(1) Any marriage solemnised, 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:—

3[(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in 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 1[was required under section 5 as it stood immediately



before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force 2[or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in subsection (1), no petition for annulling a marriage—

(a) on the ground specified in clause (c) of subsection (1) shall be entertained if—

(i) 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) on the ground specified in clause (d) of subsection (1) shall be entertained unless the court is satisfied—

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of



the petitioner has not taken place since the discovery by the petitioner of the existence of 3[the said ground].

15. Admittedly, the petition for annulment of marriage was filed within one year of marriage i.e. 18.05.2011. Further in absence of the birth certificate of the appellant and the respondent, the Family Court has come to the conclusion that the respondent was a minor and that the consent of the guardian of the respondent was not obtained at the time of marriage and as such the marriage is a voidable marriage as contemplated under Section 12 of the Hindu Marriage Act. As discussed above, the Family Court has annulled the marriage as null and void without proper evidence on record and hence it is a fit case to set aside the judgment passed in Matrimonial Case No. 68 of 2011. Accordingly, the judgment dated 12.09.2017 passed by the Principal Judge, Family Court, Purnea in Matrimonial Case No. 68 of 2011 is hereby set aside. The Matrimonial Case No. 68 of 2011 shall stand restored on to the file of Family Court, Purnea.

16. Further both parties are directed to appear on 30.11.2024 before the Principal Judge, Family Court, Purnea and in turn, the Principal Judge, Family Court, Purnea shall receive the written statement of the appellant, birth certificates



of both the parties and further proceed with the trial in accordance with law and shall dispose of the matter within a period of six months. Respective parties are hereby directed to co-operate in deciding the matter.

17. This order shall not prejudice the rights of the parties in any manner before the Trial Court.

18. Interlocutory application(s), if any, shall stand disposed of.

19. With the above observations, this appeal stands disposed of.

(P. B. Bajanthri, J)

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	03.09.2024
Uploading Date	08.10.2024
Transmission Date	08.10.2024

