



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1919-2019 (O&M)
Date of decision: 20.05.2024

PriyankaAppellant

Versus

DeepakRespondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Hardeep Singh Kasan, Advocate, for the appellant.

Mr. Saurabh Dalal, Advocate, for the respondent.

SUDHIR SINGH, J.

Present appeal is directed against the judgment dated 30.01.2019 passed by the Principal Judge, Family Court, Rohtak, whereby the petition under Section 9 of the Hindu Marriage Act, 1955, filed by the respondent-husband (hereinafter referred to as 'the respondent') was dismissed, however a finding was given that there has been a valid marriage between the parties. The appellant is aggrieved by this finding.

2. The respondent had filed the aforesaid petition alleging therein that his marriage was solemnized with the appellant-wife (hereinafter referred to as 'the appellant') on 05.12.2015 according to Hindu rites at Delhi. The marriage was stated to be solemnized in a very simple manner. After marriage, both the parties lived together at village Nakloi, District Sonapat for five days only. Thereafter, she went to her parental house and did not return back. It was further stated that the parties were known to each other for a long time and decided to perform their marriage. Since, the family



members of the appellant were against the marriage, they decided to solemnize their marriage at Arya Samaj Mandir, Delhi. It was further stated that after one week, parents of the appellant called a meeting of both the families and disclosed that they had no objection to the said marriage. On their request, the respondent sent the appellant with them. After that the appellant did not return to her matrimonial home. Efforts were made by the respondent-husband to get her back to the matrimonial house on 25.12.2015, 31.12.2015 and 03.01.2016, but she refused to do so.

3. Upon notice, the appellant-wife appeared and filed her written statement before the Family Court stating that no marriage was solemnized between the parties as per Hindu Rites and Customs. It was stated that the respondent, along with his two colleagues namely Jagdeep and Manjeet, had forcibly taken the appellant in a building situated at Delhi and forcibly garlanded her against her will. Jagdeep and Manjeet also took photographs through their mobile phones. It was further stated that under duress, the respondent had taken the appellant to Gate No.2 of Tis Hazari Court and brought some typed papers. He fraudulently took her signatures on those papers without her consent. She also got lodged an FIR under Sections 161, 120-B, 365, 376, 506 IPC against the respondent at Woman Police Station, Rohtak on 07.01.2016. It was further stated that the said marriage was not performed as per Section 7 of the Act as the ceremony of *saptapadi* was not performed. It was further stated that the parties have no legal status of husband and wife. As per appellant, the respondent had forcibly committed rape upon her. The appellant was not willing to marry the respondent. It was alleged that the respondent



had already spoiled the life of other girls and in this regard, criminal cases were registered against him. All other allegations leveled in the petition were denied and a prayer for dismissal of the petition was made.

4. On the basis of the pleadings of the parties, the trial Court framed the following issues:-

“1. Whether the respondent has willfully deserted the petitioner without any justification? OPP

2. Whether the petitioner has no cause of action or locus standi to maintain this petition in its present form? OPR

3. Relief.”

The parties led their respective evidence.

5. After hearing the rival contentions of the parties and considering the evidence on record, the learned Family Court dismissed the petition, but gave a finding that there was a valid marriage between the parties.

6. Learned counsel for the appellant has vehemently contended that there was no issue framed by the learned family Court regarding the validity of the marriage and, therefore, the finding given by the learned Family Court in this regard, is patently illegal and unwarranted. It is further submitted that by way of her written statement as also evidence on record, the appellant had denied the existence of any valid marriage between the parties and rather, it was stated that the marriage, so done with the appellant, was void-ab-initio, as it was performed under duress, coercion and life threats. It is further submitted that as per the respondent (husband), he had performed the alleged marriage with the appellant in the presence of his two colleagues, namely, Jagdeep



Family Court and therefore, it cannot be said that there had been a valid marriage between the parties. Learned counsel for the appellant has made reference to para 9 of the impugned judgment in this regard. It is further submitted that the appellant has already lodged a criminal case under Sections 161, 120-B, 365, 376, 506 IPC at Woman Police Station, Rohtak, on 07.01.2016 against the respondent and hence, there does not arise any question of there being a valid marriage between the parties.

7. On the other hand, learned counsel for the respondent, while defending the finding of the learned Family Court with regard to the valid marriage between the parties, submits that the Family Court, while adjudicating upon the matter in restitution of conjugal rights, has every right to record a finding regarding the validity of the marriage. He, however, submits that the denial of the decree under Section 9 of the Act by the learned Family Court is illegal and in fact, as a sequel to the entire discussion in the impugned judgment, the respondent was entitled to grant of decree for restitution of conjugal rights. He further submits that he has laid challenge to the said part of the impugned judgment by way of FAO-2244-2019 (Deepak Vs. Priyanka).

8. We have heard learned counsel for the parties and have also gone through the impugned judgment.

9. The issue that arises for consideration in the present appeal are:-

“Whether the finding recorded by the learned Family Court, regarding the existence of a valid marriage between the parties, in a petition under Section 9 of the Hindu Marriage Act, 1955, is liable to be set aside?



10. It may be noticed that the learned Family Court has dismissed the petition filed by the respondent and denied him the decree of restitution of conjugal rights. However, in view of the rival contentions of the parties, where claims/counter-claims were made by them with regard to the performance of a valid marriage, the finding recorded by the learned Family Court, is required to be examined.

11. The appellant, in her written statement, had denied the existence of performance of any valid marriage stating therein that the said marriage was against the provisions of Section 7 of the Act as no *saptapadi* was performed. It was further stated by the appellant that she had been raped by the respondent by putting her in fear of injury and death and in this regard, she had already lodged a criminal case against the respondent and others under Sections 161, 120-B, 365, 376, 506 IPC at Woman Police Station, Rohtak on 07.01.2016. It may be noticed that there was no issue framed regarding the validity of marriage. The only issues framed were with regard to the willful desertion of the respondent by the appellant; cause of action and *locus standi* etc.

12. The learned Family Court, in respect of the performance of a valid marriage between the parties, believed on the testimony of one Vindhya Bakhsh (PW-1) that the marriage was conducted by the said witness. It was further held that the CD Ex.PX along with photographs was produced on record and that the appellant had failed to lead any evidence to rebut the same. In Para 12 of the impugned judgment, it was observed by the learned Family Court that there was a dispute regarding the *gotra* of the mother of appellant and the respondent being the same. Thus, it is



contended that the findings recorded by the learned Family Court regarding the existence of a valid marriage between the parties are contradictory and not tenable in the eyes of law. Still further, it has come on record that the appellant has got lodged an FIR for various offences, including the one under Section 376 IPC against the respondent. The registration of the said FIR was not denied by the respondent. Rather, the said fact gives credence to the assertions of the appellant that she had been compelled and forced to perform marriage with the respondent under the life threat. Still further, as has rightly been argued by the learned counsel for the appellant, the respondent failed to examine the two persons namely Jagdeep and Manjeet, who had allegedly accompanied him during the performance of his marriage with the appellant. It is, thus, held that the findings recorded by the learned Family Court are contradictory to each other.

13. We find that there was no evidence on record to prove that there had been a valid marriage between the parties. Still further, in the absence of any issue regarding the validity of the marriage and the evidence led by the parties in that regard, the finding of the Family Court, is perverse. The said finding is accordingly, set aside and as a sequel thereof, it would stand expunged from the impugned order. The issue for consideration by this Court is decided accordingly.

14. So far as the filing of FAO-2244-2019 by the respondent is concerned, we find that in the given circumstances, where indisputably, the appellant has got a criminal case registered against the respondent for various offences, including the offence under Section 376 IPC and there being no evidence of a valid



marriage, as noticed herein above, no decree could have been passed to compel the appellant to join the company of the respondent. Accordingly, the said part of the impugned judgment/order declining Restitution of Conjugal Rights is affirmed.

14. In view of the above discussion, the present appeal is allowed by holding that there was no valid marriage existing between the parties.

15. All pending applications (if any), shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

20.05.2024
Ajay Prasher

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No