

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARHFAO-1092-2024 (O&M)  
Date of decision: 21.03.2024Sheetal Kaur

.....Appellant

Versus

Daljit Singh

.....Respondent

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

Present: Mr. Gaurav Dutta, Advocate, for the appellant.

**SUDHIR SINGH, J.**

The present appeal is directed against the judgment and decree dated 13.02.2024 passed by the learned Principal Judge, Family Court, Hoshiarpur, whereby the petition under Section 11 of the Hindu marriage Act filed, by the respondent-husband has been allowed and the marriage between the parties has been declared as null and void on the ground that the appellant-wife, had been having a living spouse at the time of her marriage with the respondent-husband.

2. The brief facts of the case are that the respondent-husband filed a petition under Section 11 of the Hindu Marriage Act, 1955 (for short 'the Act') inter alia, contending that the marriage between the parties was solemnized on 18.04.2015 as per Hindu rites. After marriage, the parties lived together as husband and wife, but no issue was born out of the said wedlock. It was averred that the appellant-wife in connivance with her parents and relatives got the marriage of the

respondent-husband performed with the appellant-wife, despite the fact that she had already been married to one Dharamvir and for that the respondent-husband had filed a complaint against them under Sections 420, 494, 120- B IPC. It was further averred in the petition that the factum of the previous marriage of the appellant-wife was admitted by her in the petition filed by her under Section 125 Cr.P.C. In the said petition itself, the appellant had falsely mentioned that her marriage with Dharambir was dissolved on 30.09.2010 mutually but there was no decree of divorce obtained by the appellant-wife or her previous husband from the competent Court of law. It was averred by the respondent-husband that the factum of the previous marriage had been concealed by the appellant-wife and her family members. The appellant wife had also furnished false information by saying that she was unmarried at the time of her marriage with the respondent-husband, before the Registrar of Marriage, Talwara and before the Income Tax Authorities, while obtaining PAN card. The appellant-wife had cheated and deceived the respondent-husband by providing wrong information regarding her identity before the law authorities. Besides this, the appellant wife had filed a false complaint on 20.12.2016 before the Senior Superintendent of Police, Fatehgarh Sahib, against the respondent-husband and his parents regarding demand of dowry and faced with such a situation, the respondent-husband had to withdraw the petition under Section 9 of the Act for restitution of conjugal rights. On

these premises, it was pleaded by the respondent-husband that the marriage between the parties be declared as null and void.

3. Upon notice, the appellant-wife appeared and filed her written statement. It was stated therein that the petition filed by the respondent-husband was barred by the conduct of the respondent-husband. The factum of marriage was admitted. Still further, the factum of her earlier marriage with one Dharamvir was also admitted, but it was averred that the respondent-husband was aware of the previous marriage of the appellant-wife and he had performed marriage with the appellant-wife in his sound disposing mind. It was further pleaded that the parties were the followers of Nirankari Sect and they were governed by the customs of the said Sect. According to the customs prevailing in the Nirankari Sect, dissolution of the marriage by customary divorce was recognized and therefore, the customary divorce obtained by the appellant-wife before her marriage with the respondent-husband was valid and can be treated to be equivalent to a decree of divorce. It was further pleaded that the factum of her previous marriage was in the knowledge of the respondent-husband and he had admitted the same in his petition under Section 9 of the Act. It was further averred that the respondent-husband and his family members had been torturing the appellant-wife by raising demand of dowry and they had compelled her to abort her child against her desire. Accordingly, prayer for dismissal of the petition was made.

4. On the basis of the pleadings of the parties, the learned trial Court had framed as many as seven issues which are as under:-

- “1. Whether the marriage of petitioner with respondent is null and void and petitioner is entitled for decree of Divorce that the marriage is null and void under Section 11 of HMA? OPP
2. Alternatively, whether respondent has concealed the factum of her earlier marriage and marriage is voidable under Section 12 of HMA? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petition of the petitioner is within limitation? OPP
5. Whether the petitioner has been estopped by his act and conduct? OPR
6. Whether the respondent has been estopped by her own act and conduct? OPP
7. Relief.”

5. In evidence, the respondent husband had examined himself as PW1 and further examined Paramjit Singh and Subhash Chander Kathuria as PW2 and PW3 and also tendered in evidence document Exhibit PA. On the other hand, the appellant-wife in her evidence, examined herself as RW2, her father as RW1, Jaspal Singh as RW3, Harnek Singh as RW4 and Lakhvir Singh as RW5, besides leading documentary evidence.

6. The learned trial Court while allowing the petition filed by the respondent-husband, declared the marriage between the parties as null and void. The said judgment and decree is under challenge in the present appeal.

7. Learned counsel appearing for the appellant-wife has vehemently argued that there was no proof of her previous marriage with Dharamvir, inasmuch no evidence was brought on record as regards the performance of Saptapadi or lawan Fera in the said marriage. It is further contended that in fact, the factum of her earlier marriage with Dharambir was in the knowledge of the respondent-husband and he had admitted the said fact in the petition filed under Section 9 of the Act. It is further submitted that though the respondent-husband had pleaded in his petition before the trial Court that the appellant had cheated him, yet the fact of the matter is that having known fully well that the appellant-wife had been married at the time of her marriage with the respondent-husband, it is the respondent-husband who had committed cheating with the wife by firstly deserting here and then filing the divorce petition. It is, thus, argued that once the appellant wife had produced on record the mutual agreement for divorce 30.09.2010, there was no occasion for the trial Court to discard the same and hold that the marriage between the parties was null and void. It is, further argued that the appellant-wife had been maltreated by the respondent-husband and his family members and thrown out of the matrimonial home and in order to save them from the criminal prosecution at the hand of the appellant-wife, the respondent-husband had devised the mechanism of filing the petition.

8. We have heard the learned counsel for the appellant and have also gone through the judgment and decree passed by the trial Court.

9. The sole issue that arises for consideration before this Court is whether the finding recorded by the trial Court that the appellant-wife was already married at the time of her marriage with the respondent-husband and, therefore, the marriage between the parties was null and void, suffers from any perversity or illegality.

10. In this regard it is worth noticing that the appellant-wife in her written statement had admitted the factum of her previous marriage with Dharambir. However, she took a plea that her marriage with said Dharambir had been dissolved by way of a mutual agreement of divorce dated 30.09.2010. Now the question arises whether the said mutual agreement of divorce was valid in law or not. The stand of the appellant-wife before the trial Court was that the parties were governed by the Nirankari Sect and as per the customs prevailing in the said Sect, a marriage between the followers of the said Sect, can be dissolved by way of a mutual agreement of divorce. The trial Court had noticed in detail that the proof of antiquity, continuance and uninterrupted custom, involved presentation of historical evidence, testimonies and documentation spanning a considerable period and that this could include historical records, community traditions passed down through generations and expert opinions affirming the consistent practice of the custom. It was found by the trial Court that none of the

witnesses of the appellant-wife had come forward to state that the marriage(s) as well as dissolution thereof in the family of both the parties, was governed by any specific custom i.e. the custom prevailed and followed by the followers of the Nirankari Sect. The relevant extracts from the trial Court judgment would read as under:-

“.....Importantly, for establishing antiquity, continuance, and uninterrupted custom, it involves presentation of historical evidence, testimonies and documentation spanning a considerable period. This could include historical records, community traditions passed down through generations, and expert opinions affirming the consistent practice of the custom. The evidence should demonstrate the long standing existence and consistent practice of the custom over an extended period. None of the witnesses on behalf of respondent has come forward to state that the marriages as well as dissolution of marriages in the family of both parties is governed by specific custom i.e. the custom provided by the Nirankari Sect. RW1 who is the father of respondent has admitted in his cross-examination that he belongs to Sikh community and accordingly, as per the provisions of Hindu Marriage Act they come under the definition of Hindu, therefore, they are governed by Hindu Marriage Act. The respondent was having ample opportunities to summon the witness from Nirankari Mandal to establish and prove the custom for the dissolution of marriage by way of panchayati talaqnama but the respondent has not brought on record any evidence to prove this fact except RW3 to RW5. But their testimony does not fulfill the essentials as mentioned above in order to prove the valid custom. Conversely, the petitioner has examined PW3 Subash Chander Kathuria who is Sewadar Sant Nirankari Mandal (Regd.) Administrative Block, Nirankari Sarovar Complex Burari Road, Delhi and his testimony was objected on the ground that he was not the person who was summoned in the present case. The petitioner moved an application on 18.09.2023 for summoning the witness from Mandal would go to show that petitioner summoned Joginder Sukheja Secretary and Member in-charge Social Welfare Department Sant Nirankari Mandal, Nirankari Chowk, Burari Road, Delhi. The

petitioner summoned all the rules, regulations and custom regarding marriage and divorce approved by Sant Nirankari Mandal/Sant Nirankari Mission prevalent amongst followers of Nirankari Mission. PW3 Subash Chander Kathuria has submitted in Para No. 2 of his affidavit Ex.PW3/1 in examination-in-chief that he was authorized by the Secretary of Sant Nirankari Mandal (Regd.) to depose in this case. Therefore, the objection raised by Ld. Counsel for respondent for the competence and examination of present witness is not sustainable. PW3 has proved document Ex. PW3/D. The testimony of PW3 was challenged regarding the marriages and customs applicable to the Nirankari Sect. PW3 has proved rules and regulations governing all the marriages in Nirankari Sect which is Ex.PW3/D. It is clear from Ex. PW3/D that for a marriage in Sant Nirankari Mandal the marital status of a woman should be unmarried, divorcee, widow or widower. It is further clarified that in case of divorcee, copy of divorce issued by Court of land should be attached. Nay, it is further categorically written that divorce agreement made on Non-Judicial Stamp Papers with Notary/Gram Panchayat Attestation will not be accepted. Also, in case of widow, widower death certificate of deceased should be attached. The respondent was having ample opportunity to rebut the oral evidence as well as documents produced by PW3 but respondent has not brought on record any evidence to contradict the testimony of P3. Rather, it has become clear from the witnesses of the petitioner that Nirankari Sect only permits marriages in consonance with the provisions of law of the land. A lengthy cross-examination was conducted upon PW3 but the testimony of PW3 is clear and consistent on each and every relevant point. Nothing favourable to respondent could be elicited from his cross-examination. Therefore, the testimony of PW3 inspires confidence. Moreover, RW3 to RW5 have not brought on record any instance of customary marriage in Nirankari Sect having recognition of law land. Therefore, the agreement RW3/A has no value in the eyes of law. At the cost of repetition, it was the incumbent duty of the respondent to prove the valid custom by leading cogent and convincing evidence but the respondent has miserably failed to prove such custom and it can be safely concluded that the marriage of the respondent with Dharamvir was subsisting at the time of marriage of petitioner with respondent.

Furthermore, the agreement Ex.RW3/A can be considered as Panchayati divorce having no value in the eyes of law.....”

From the above finding of the trial Court, it is clear that the appellant-wife had failed to establish any custom under which the agreement of divorce produced by her could be held to be valid. Accordingly, it was held that the Panchayati divorce produced by the appellant-wife was having no value in the eyes of law.

11. The Hon’ble Supreme Court in Yamanaji H. Jadhav Vs. Nirmala, (2002)2 SCC 637, has held that prevalence of customary divorce in community to which parties belong, contrary to general law of divorce must be specifically pleaded and established by the party propounding such custom failing which, submission based on it, cannot be entertained by the Court. It was held as under:-

“7. In the view that we are inclined to take in this appeal, we do not think it is necessary for us to go into the contentions advanced by the learned counsel for the parties in this case, because we find that the courts below have erroneously proceeded on the basis that the divorce deed relied upon by the parties in question was a document which is acceptable in law. It is to be noted that the deed in question is purported to be a document which is claimed to be in conformity with the customs applicable for divorce in the community to which the parties to this litigation belong to. As per the Hindu law administered by courts in India divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only

exception where it is recognised by custom. Public policy, good morals and the interests of society were considered to require and ensure that, if at all, severance should be allowed only in the manner and for the reason or cause specified in law. Thus such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since the said custom of divorce is contrary to the law of the land and which, if not proved, will be a practice opposed to public policy. Therefore, there was an obligation on the trial court to have framed an issue whether there was proper pleadings by the party contending the existence of a customary divorce in the community to which the parties belonged and whether such customary divorce and compliance with the manner or formalities attendant thereto was in fact established in the case on hand to the satisfaction of the court. In the instant case, we have perused the pleadings of the parties before the trial court and we do not find any material to show that prevalence of any such customary divorce in the community, based on which the document of divorce was brought into existence was ever pleaded by the defendant as required by law or any evidence was led in this case to substantiate the same. It is true that in the courts below the parties did not specifically join issue in regard to this question and the lawyers appearing for the parties did orally agree that the document in question was in fact in accordance with the customary divorce prevailing in the community to which the parties belonged but this consensus on the part of the counsel or lack of

sufficient pleading in the plaint or in the written statement would not, in our opinion, permit the court to countenance the plea of customary divorce unless and until such customary divorce is properly established in a court of law. In our opinion, even though the plaintiff might not have questioned the validity of the customary divorce, the court ought to have appreciated the consequences of there not being a customary divorce based on which the document of divorce has come into existence bearing in mind that a divorce by consent is also not recognisable by a court unless specifically permitted by law. Therefore, we are of the opinion to do complete justice in this case it is necessary that the trial court be directed to frame a specific issue in regard to customary divorce based on which the divorce deed dated 26-6-1982 has come into existence and which is the subject-matter of the suit in question. In this regard, we permit the parties to amend the pleadings, if they so desire and also to lead evidence to the limited extent of proving the existence of a provision for customary divorce (otherwise through the process of or outside court) in their community and then test the validity of the divorce deed dated 26-6-1982 based on the finding arrived at in deciding the new issue.”

12. Section 5 of the Act stipulates that a marriage may be solemnized between two Hindus, if neither party has a spouse living at the time of the marriage. Still further, Section 11 of the Act, stipulates that any marriage solemnized after the commencement of the Act, shall be null and void and may, on a

petition presented by either party thereto against the other party, be so declared by a decree of nullity, if it contravenes any of the conditions specified in clauses (i), (iv) and (v) of Section 5. Section 29(2) of the Act, provides that nothing contained in the Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

13. The respondent-husband by way of his evidence has proved on record that the marriage between the parties was in contravention of the provisions of Section 5 of the Act and, accordingly, it was declared as null and void by the trial Court under Section 11 of the Act. The only exception to that is contained in Section 29(2) of the Act, which the appellant-wife had failed to establish. No evidence had been produced by the appellant to prove that she was governed by the provisions of Section 29(2) of the Act. Though the learned counsel for the appellant-wife has argued that the respondent-husband was aware of her previous marriage with one Dharamvir at the time of her marriage with the latter, yet no evidence was brought on record to that effect and no witness has been examined to prove that the said fact was in the knowledge of the respondent husband or the same was brought to his notice in the presence of any person.

14. It could not be shown by the learned counsel for the appellant that any evidence has been misread or not taken into consideration by the trial Court. Therefore, we do not find that

the judgment and decree passed by the trial Court, suffers from any illegality or perversity so as to warrant interference by this Court in the present appeal.

15. No other point has been urged.
16. In view of the above, finding no merits in the present appeal, the same is here by dismissed.
17. All pending applications (if any) shall also stand disposed of.

(SUDHIR SINGH)  
JUDGE

(HARSH BUNGER)  
JUDGE

21.03.2024  
Ajay Prasher/ds

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