

(1990) 07 MAD CK 0024

Madras High Court

Case No: None

M. Velayudam

APPELLANT

Vs

Kannagi

RESPONDENT

Date of Decision: July 30, 1990

Acts Referred:

- Hindu Marriage Act, 1955 - Section 12, 12(1)(c), 12(2)(b)
- Penal Code, 1860 (IPC) - Section 349

Citation: (1991) 2 MLJ 36

Hon'ble Judges: Srinivasan, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Srinivasan, J.

This appeal is against the order of the Additional District Judge, Pondicherry to Karaikal dismissing the petition filed u/s

12(1)(c) of the Hindu Marriage Act. The petitioner/appellant therein came to Court with the case that the respondent was married to him by force

and he did not consent for the said marriage. It is the case of the respondent that the appellant seduced her and both of them had sexual

intercourse several times. It is stated by the respondent that on the intimacy between the petitioner/appellant and the respondent being known to

the villagers, a panchayat meeting was convened on 12.9.1986 and it was decided at the Panchayat that the appellant should marry the respondent

and the date of marriage was fixed as 14.9.1986. According to her, the marriage took place in the presence of village panchayatdars and it cannot

be annulled u/s 12(1)(c) of the Act.

2. Learned Additional District Judge held that the marriage was brought about by force and the appellant herein did not consent to marry the

respondent voluntarily or out of his free will. However, learned Additional District Judge went on to find that the appellant had subsequently

condoned the same by having sexual intercourse with the respondent after the threat of force was over. On that finding the learned Additional

District Judge dismissed the application.

3. Learned Counsel for the appellant submits that the evidence on record is not sufficient to prove that the respondent and the appellant had sexual

intercourse after the marriage. On that aspect of the matter, the evidence of R.W. 6 has been relied on by the Court below. R.W. 6 is a

grandmother of the appellant and she has spoken to the effect that after the marriage the appellant and the respondent were staying in their house

for about a month and during their stay the couple had sexual intercourse. I do not find any warrant to reject the reasoning of the Court below for

accepting the evidence of R.W. 6 particularly when she is the grandmother of the appellant.

4. Learned Counsel for the appellant contends that the pleading on this aspect of the matter is insufficient and vague. I do not agree with him. In

paragraph 8 of the counter statement filed by the respondent, it is categorically stated as follows:

During this period of stay of the respondent in the house of the said Vaithilingam, the petitioner had consummated the marriage by having sexual

intercourse with the respondent.

The above statement is sufficient enough for the purpose of pleading. No better pleading could have been made by the respondent to prove that

the marriage had been consummated and the appellant had condoned the defect in the marriage if any.

5. Learned Counsel for the appellant submits that R.W. 6 was motivated as there was a quarrel between herself and her husband four months

before evidence was given by her in Court and her evidence should be treated as interested. While the grandfather of the appellant has given

evidence as P.W. 3, his wife has given evidence, as R.W. 6. The evidence of P.W. 3 shows that on the face of it, it cannot be accepted. He denies

knowledge of crucial matters such as village panchayat and the performance of marriage. Hence his evidences has been rightly rejected and the

evidence of R.W. 6 has been accepted. Just because there was some quarrel between R.W. 6 and her husband, she could not have any motive to

speak against her own grandson and in support of the respondent herein.

6. Section 12 of the Hindu Marriage Act provides that any marriage solemnized shall be voidable and may be annulled by a decree of nullity on

any of the grounds set out therein. One of the grounds is that the consent of the petitioner was obtained by force or fraud. In this case it is stated

that the consent of the petitioner/appellant was obtained by force. u/s 12(2)(b) no petition for annulling a marriage shall be entertained by the Court

on the ground of force if the petition is presented more than one year after the force had ceased to operate or 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.

7. The question to be considered for deciding this aspect of the matter is whether the appellant has with his full consent, lived with the respondent

as her husband after the force had ceased to operate. Admittedly the force if any, did not operate after the marriage. But the evidence on record

shows that the appellant and the respondent were staying in the house of P.W. 3 and the appellant was providing sufficient wherewithal for the

respondent. That could be only on the footing that she was his wife to live. Moreover the evidence of R.W. 6 which has been accepted by the

Court below shows that the appellant and the respondent has sexual intercourse. Learned Counsel for the appellant tried to read certain passages

in the evidence of each witness and to make out that the case of condonation after the marriage has not been established. It is unnecessary for me

to refer to those passages as I am of the view that the evidence of R.W. 6 is sufficient to establish the case of the respondent.

8. Hence I accept the finding of the Court below that there was condonation on the part of the appellant after the marriage by his living with the

respondent as her husband.

9. I am of the view that the finding of the Court below on the question of force being used for the performance of the marriage is not correct. What

is required for bringing a case u/s 12(1)(c) is that the consent of the appellant should have been obtained by force.

10. In the present case, the evidence makes out that the appellant had seduced the respondent and had sexual intercourse on several occasions.

The villagers on coming to know of the same held a panchayat and gave their verdict that he should marry her. No doubt the appellant was

contending all along before the Panchayatdars that he had not seduced the respondent. He was denying the statement put forth by the respondent

in entirety even after the decision was given by the Panchayatdars. The appellant was asserting that he did not have any connection with the

respondent and he would not marry her.

11. It is seen from the facts that the meeting of the panchayatdars was held on 12.9.1986 and it was decided that the appellant should marry the

respondent. Actually marriage took place only on 14.9.1986. If really the appellant did not want to abide by the decision of the Panchayatdars, he

could have effectively prevented the marriage taking place on 14.9.1986. According to him, he gave a complaint to the police and the police

refused to act on the lime, But the Sub-Inspector of Police of T.R. Pattinam village has given evidence as R.W. 8. He deposed that on 14.9.1986

at about 9.30 a.m. he received information that in the village of Vaakku Vanjoor there was a marriage that would involve law and order problem

and therefore he made band ho bust arrangements. He deposed that at about 10.30 hours the Head Constable and other constables returned from

the village and reported that the marriage celebration was completed peacefully and there was no law and order problem. He referred to the

relevant entry in the General Diary which is marked as Ex. R-10; He has deposed categorically that there was no entry to the effect that on the

previous day namely 13.9.1986 the appellant and his relatives lodged a complaint. No motive has been suggested as against R.W. 8 as to why he

should speak against the appellant. On the other hand, there is an admission on the part of P.W. 1 to the effect that the marriage was not performed

in the presence of Policeman. If really the appellant and his relatives had given a complaint to the police on 13.9.1986 there is no reason whatever as to why they should refuse to help the appellant.

12. The Court below has taken the view that even the evidence of the respondent would make out that there was force at the time of marriage. The learned Judge has entirely misunderstood the evidence of the respondent. The relevant portion of the evidence of the respondent reads thus:

The Panchayatdars and my father brought him and he was wearing an old shirt and an old lungi. After 10 minutes we exchanged garlands... Even

after arrival the petitioner refused to marry me and he informed the Panchayatdars that he did not have any connection with me and he was so

adamant. Then the Panchayatdars asked him to marry me, and then he tied the Thali.

The learned Judge has obviously been carried away by the statement of the respondent that the petitioner/appellant herein refused to marry her

even after arriving at the place of marriage. That would not prove by itself that force was used on the appellant to tie the Thali on the neck of the

respondent to marry her. It is only to the effect that even after the decision of the Panchayatdars was given on 12.9.1986, the appellant was trying

to stall the marriage by asserting that he did not have any connection with the respondent. That does not mean that the appellant never obeyed the

decision of the Panchayatdars. If the appellant had abided by the Panchayat and tied the Thali, then that would not amount to "force" within the

meaning of the section.

13. In N.R. Ragavachariar's Hindu Law, 17th Edition, Volume 11, the following passage is found at page 1005.

Cases have arisen of marriages having been brought about between a seducer and the woman seduced, by force or threat exhibited by the

relations of the seduced woman, who naturally thought that the only way of remedying what had happened was to compel the seducer to marry the

woman seduced. Even though by reason of the force or threat the consent of the husband cannot be said to be free consent, still Courts have held

that in such cases the force ought not to be allowed to vitiate the marriage and that a petition for declaring the marriage a nullity should not be

entertained with sympathy by any Court.

14. I am in full agreement with the view taken by the learned author. I go one step further in this case and hold that on the evidence available

before this Court it is not possible to say that the appellant was compelled and forced to marry the respondent. On the other hand, he took part in

the panchayat, contested the claim of the respondent and failed. Thereafter he has abided by the decision given by the Panchayatdars.

15. In Mayne's Hindu Law and Usage, 12th edition, page 208, it is pointed out that the Legislature has deliberately used the expression "force"

instead of "coercion" as coercion may be exercised without exerting force. Even if the panchayatdars decision is held to amount to "coercion" it is

not "force" within the meaning of the section. The Act does not define the word "force". Section 349 of the Indian Penal Code defines the word

thus:

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any

substance such motion, or change, of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or

with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided

that the person causing the motion, or change of motion, or cessation of motion causes that motion, change of motion, or cessation of motion in one

of the three ways hereinafter described : First - By his own bodily power.

Secondly : - By disposing any substance in such a manner that the motion or charge or cessation of motion takes place without any further act on

his part, or on the part of any other person.

Thirdly : - By inducing any animal to move, to change its motion, or to cease to move.

That definition is also not satisfied in this case.

16. Consequently, the finding of the learned Additional District Judge that the appellant married the respondent because of force being used on him

is set aside.

17. In the result, it goes without saying that the appeal has to fail and it is hereby dismissed. The appellant shall pay the costs of the respondent in the appeal.