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**(2009) 05 P&H CK 0229**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Miscellaneous No. 20941 of 2002 and F.A.O. No. 230-M of 2002

Arpana Sharma

APPELLANT

Vs

Rajinder Sharma and Others

RESPONDENT

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**Date of Decision:** May 30, 2009

**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 12

**Citation:** (2009) 4 CivCC 344 : (2009) 3 RCR(Civil) 958

**Hon'ble Judges:** S.D. Anand, J

**Bench:** Single Bench

**Advocate:** S.D. Sharma, with Ms. Bindu Goyal, for the Appellant; M.S. Jandiala, for the Respondent

**Final Decision:** Allowed

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**Judgement**

S.D. Anand, J.

The respondent-husband filed a plea u/s 12 of the Hindu Marriage Act for annulment of the marriage. The averments, in the course of the petition, were as under:-

2. The respondent-husband and the appellant-wife had their business premises adjacent to each other. They developed friendly relationship. The appellant-wife requested the respondent-husband to agree to the performance of a mock marriage in order to enable her to wriggle out of the predicament of having to undergo marriage with a boy whom her parents had selected for her and with whom she did not want to enter into a matrimonial alliance. For that purpose, the appellant took respondent-husband and few others to the residence of respondent No.2 who provided them the bridal wear. The mock marriage was gone into in the presence of respondents No.3 and 4 who are real sons of respondent No.2. They had reached the spot with camera in order to able, to click the pictures evidencing the Anand Karj ceremony. The parties went their separate ways thereafter. The

marriage of respondent-husband was fixed thereafter with another girl. That marriage could not be gone through as girl side people got information that the respondent-husband was already married. The information obtained by them obviously pertained to the mock marriage undergone by him with the appellant-wife. It is thereafter that the appellant-wife lodged an FIR u/s 420 IPC against the respondent-husband with a view to blackmail him. It was under the above circumstances that the respondent-husband applied for the grant of above indicated decree for annulment of the marriage.

3. The plea raised by the appellant-wife at the trial was in reiteration of the validity of the marriage she undergone with the respondent-husband. She denied the allegation that it was all a mock affair. In that very context, she averred (in preliminary objection No.3 of the counter) that the respondent-husband, who had filed Criminal M isc.3959-M of 1997 to obtain anticipatory bail in the aforesaid FIR, had made a statement before the Court that apprehension in the mind of the appellant-wife about former's inclination to undergo second marriage was unfounded and that he had neither solemnised second marriage nor was he inclined to do so.

4. The petition was ultimately allowed by the learned Trial Court.

5. In appeal, the appellant wife has filed a plea under Order 41 Rule 27 CPC (Civil Misc.No.28941-CI I of 2002) with a view to obtain the leave of the Court to adduce the following additional evidence:-

i) Copy of application given by applicant and respondent No.1 to respondent No.2 for solemnization of their marriage dated 29.09.1996.

ii) Copy of Marriage certificate issued by the respondent No.2 dated 29.09.1996.

iii) Extract copy of Register showing the entry of marriage at Sr.No.23 issued by the respondent No.2.

iv) Copy of complaint dated 10.02.1997 given to SSP, Chandigarh by applicant against respondent No. 1.

v) Copy of DDR dated 13.02.1997.

vi) Copy of order passed by Sh.M.R.Batra, Addl.Sessions Judge, Chandigarh dated 18.02.1997.

vii) Copy of application for anticipatory bail filed by respondent No.1 dated 19.02.1997 in the Hon"ble High Court.

viii) Copy of affidavit filed by applicant dated 24.02.1997 before Hon"ble High Court in Crl.Misc.No.3959-M of 1997.

ix) Copy of order passed by Hon"ble High Court on 05.03.1997 in Crl.Misc.No.3959 of 1997.

- x) Copy of application for withdrawal of Criminal case against the respondent No.1 dated NIL.
- xi) Copy of joint written statement filed by respondents No. 1 to 4 dated 01.04.1999.
- xii) Copy of second written statement filed by the respondents No.2 to 4 dated 21.09.1999.
- xiii) Copy of statement made by Karam Chand Sharma, father of respondent No. 1, dated 12.02.2001 as PW2 in the court of Addl.District Judge, Chandigarh.
- xiv) Copy of statement made by respondent No. 1 dated 04.05.2001 in the aforesaid court.
- xv) Copy of Birth Certificate of Muskan Sharma d/o.Rajinder Sharma and Anita Sharma.
- xvi) Photographs showing that marriage between appellant & respondent No.1 was duly solemnized.

6. In support of the plea for leave of the Court to adduce additional evidence, the learned Senior Counsel appearing on behalf of the appellant-wife argued that her plea with regard to validity of the impugned marriage had been negated just for want of the documentation etc. which could not be placed on record at the trial. It was also argued, in the context, that the documents proposed to be introduced are of the type which could not be forged or falsely brought into being. In that context, it was pointed out that the documents entered at item Nos.6 and 9 are copies of orders (dated 18.02.1997 and 05.03.1997 respectively) passed by the Court learned Additional Sessions Judge and this Court. Likewise, item No.7 purports to be copy of an anticipatory bail plea filed by the respondent-husband only. Documents indicated as item Nos.1 1 to 14 purport to be copies of pleadings/statements made at the trial. The other documents were also self-speaking in character and veracity thereof could be tested on the touchstone of the cross-examination at the trial. The pure and simple plea advanced in support thereof was that the documentation proposed to be introduced would have a very relevant bearing on the disposal of the controversy.

7. The plea was resisted on behalf of the respondent-husband on an averment that the plea for adducing additional evidence is mala fide and is aimed at wriggling out of the finding that there was complete want of evidence to prove that the parties had undergone the necessary ceremonies for the performance of the marriage. It was argued that these documents were to the notice of the appellant-wife from the very beginning and there is no justification for raising of the plea for additional evidence in appeal before this Court.

8. The respective averments of the parties in the case make interesting reading. However, there can be no dispute with the fact that the controversy between the

parties is about whether the impugned marriage was a mock affair or whether the marriage ceremony had been validly gone through and the respondent-husband had acted mala fide in raising a plea that the impugned ceremony was a mock affair. It is apparent from a perusal of the relevant application (Civil Misc.No.28941-CII of 2002) that all these documents shall have a very relevant bearing on the disposal of the controversy in issue. That these documents were in existence and to the knowledge of the appellant-wife from the very beginning cannot be denied. At the same time, it also cannot be questioned that these documents shall enable the Court to dispose of the controversy completely and effectively. The relevant documentation including the photographs would enable the Court to record a finding either way about validity of the impugned marriage. The Court shall also have an opportunity to notice and take into consideration the averments made by the respondent-husband before this Court in the course of the proceedings for anticipatory bail (Criminal Misc.No.3959-M of 1997). A large number of proposed documents would not require any formal proof. However, there are certain facts which may have to be compulsively proved by examining certain witnesses. Their testimony shall, of course, be open to test on the touchstone of the cross-examination.

9. A marriage, in terms of Hindu Marriage Act, is a sacrament. The Courts have, of course, to decide the controversy between the estranged spouses on the basis of material obtaining on the file. At the same time, the Court has to be circumspect in allowing indulgence to the parties to adduce whatever evidence having relevant bearing on the controversy is available. Even if one of the parties committed dereliction in refraining from adducing relevant evidence, the Court would be reluctant to order severance of relationship just on account of want of evidence. This would be particularly so when the evidence proposed to be introduced as additional evidence includes of photographs and judicial record as well.

10. In the totality of the circumstances of the case, this Court is of the considered opinion that it would be in the larger interest of justice to allow the plea for additional evidence on behalf of the appellant-wife because the reception of that evidence would enable the Court to dispose of the controversy completely and effectively. Ordered accordingly. The allowance of the plea shall be subject to payment of Rs.2000/- as costs.

11. In view of the allowance of plea for adducing additional evidence, the appeal shall stand allowed. The impugned judgment and decree shall stand set aside.

12. In the light of the foregoing discussion, the parties are relegated to the learned Trial Court which shall proceed to allow the reception of additional evidence. Of course, the respondent-husband shall have the right to rebut that evidence. Thereafter, the learned Trial Court shall proceed to decide the matter afresh.