

(2008) 01 AHC CK 0090

Allahabad High Court

Case No: None

Smt. Triveni Singh

APPELLANT

Vs

State of U.P., The Judge, Family
Court, Sri Ram Bharosi Lal and
Voluntary Blood Testing Centre,
Central Jalma Institute for
Leposy

RESPONDENT

Date of Decision: Jan. 17, 2008

Acts Referred:

- Hindu Marriage Act, 1955 - Section 11, 12, 5

Citation: AIR 2008 All 81 : (2008) 2 AWC 1135 : (2008) 4 CivCC 525 : (2008) 4 RCR(Civil) 696

Hon'ble Judges: V.M. Sahai, J; R.N. Misra, J

Bench: Division Bench

Final Decision: Allowed

Judgement

V.M. Sahai and R.N. Misra, JJ.

The petitioner, widow of deceased Arun Kumar has sought relief by way of this writ petition to quash proceedings of Matrimonial Case No. 348 of 2004; Ram Bharosi Lal v. Smt. Triveni Singh, under Sections 11 and 12/5 of Hindu Marriage Act, pending before Family Court, Agra.

2. We have heard Sri Ram Autar Verma, learned Counsel for the petitioner and learned Standing Counsel for respondent Nos. 1 and 2. None was present for respondent Nos. 3 and 4. It has been alleged in the writ petition that the petitioner Smt. Triveni Singh was married with late Arun Kumar son of Ram Bharosi Lal, the respondent No. 3 on 9.7.1999. The marriage was consummated and a daughter was born from their wedlock on 25.6.2000, who is living with the petitioner. On 18.8.2000, Arun Kumar died. After his death, the petitioner and respondent No. 3 indulged in criminal litigation. Ultimately, the respondent No. 3 filed the aforesaid suit before Family Court, Agra, u/s 11 and 12/5 of Hindu Marriage Act (hereinafter

referred to as the Act) against the petitioner for declaration of marriage as void.

3. The respondent No. 4 has filed a counter affidavit but in para 1 of the counter affidavit, Dr. D.S. Chauhan has averred that he is filing counter affidavit on behalf of respondent No. 3. It may be pointed out here that respondent No. 3 is Ram Bharosi Lal, father-in-law of petitioner. This appears to be a clerical mistake. In his counter affidavit, Dr. D.S. Chauhan had disclosed that on 16.6.2000, the petitioner and her husband Arun Kumar along with respondent No. 3 Ram Bharosi Lal had come to his Laboratory. He had performed blood test of Arun Kumar and Smt. Triveni Singh and both were found HIV positive, whereas on blood testing of Ram Bharosi Lal, he was found HIV negative. In para 3 of the writ petition, the petitioner has alleged that her husband Arun Kumar was HIV positive, therefore, he could not pursue his further studies of Engineering course in Bangalore and come back to home. Arun Kumar died on 18.8.2000 date of death is disputed because in the impugned matrimonial suit No. 348 of 2004, date of death has been given 30.8.2000), but there is nothing on record to show that he died due to HIV infection, though according to the petitioner herself, he was HIV positive. The respondent No. 3 Ram Bharosi Lal, father-in-law of petitioner admittedly has filed a suit for annulment of marriage between petitioner and late Arun Kumar, the copy of which is Annexure-6 to the writ petition. The only ground taken in said Matrimonial Petition is that the petitioner was suffering from HIV infection since before her marriage with Arun Kumar and this fact was concealed by her and her parents and marriage was performed. It has been vehemently denied in the writ petition that the petitioner is suffering from HIV infection since before her marriage. As we have discussed earlier, in para 3 of the writ petition, the petitioner has disclosed that late Arun Kumar was HIV positive. It has been argued by learned Counsel for the petitioner that she was never examined by respondent No. 4 and even if for a moment it is presumed that she was found HIV positive, it cannot be said that she had transmitted HIV infection to her husband, vice-versa there were chances of transmission of HIV infection to the petitioner from her husband.

4. The legal position is against the respondent No. 3. As we have discussed earlier, the impugned matrimonial petition has been filed before the Family Court, Agra, u/s 11 and 12/5 of the Act. For ready reference, Section 11 of the Act is quoted below:

11. Void marriages- Any marriage solemnized after the commencement of this 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 one of the conditions specified in Clauses (i),(iv) and (v) of Section 5.

For maintaining a suit u/s 11 of the Act, it is necessary that ground given in Clause (i),(iv) and (v) of Section 5 of the Act must be fulfilled. For ready reference, Section 5 of the Act is quoted below:

Section 5: Condition for a Hindu marriage: A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party-
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity.
- (iii) The bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

5. A plain reading of the impugned matrimonial petition filed by respondent No. 3 for annulment of marriage shows that it contains no ingredient of Section 5. There is nothing in Section 5 to annul the marriage on the ground of HIV infection or any other disease. Admittedly, the parties were major at the time of marriage, therefore, there was no need for consent of guardians. Since there is no evidence to show that petitioner was HIV positive since before the marriage, hence no question of concealment arose. Probably, this was the reason that Arun Kumar made no complaint against the petitioner till his death. Now we come to Section 12 of the Act which runs as under:

Section 12- Voidable marriages- (1) Any marriage solemnized, 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:

- (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 whether the consent of the guardian in marriage of the petitioner was required u/s 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 or by fraud as to the nature of

the ceremony or as to any material fact or circumstance 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 Sub-section (1), no petition for annulling a marriage-

(a) on the ground specified in Clause (c) of Sub-section (1) shall be entertained if-

(i) the petition 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 Sub-section (1) shall be entertained unless the court is satisfied-

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

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized 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 (the said ground).

For declaring the marriage null and void, u/s 12 of the Act, it is necessary that ingredient of provisions provided under the Act are fulfilled. Since both the parties to the marriage were major, therefore, consent of guardian was immaterial. Admittedly Arun Kumar is no more. During his life time, he never disclosed that his consent for marriage was obtained by playing fraud or concealment of any material fact i.e. HIV infection of petitioner. On the ground of any disease except mental disease, no marriage can be declared null and void as provided u/s 5 and 12 of the Act.

6. As admitted by Dr. D.S. Chauhan in his counter affidavit, HIV test was performed on 16.6.2000. At that time, petitioner was pregnant and she gave birth to a female child on 25.6.2000 and Arun Kumar died in August 2000. There is nothing on record to show that before the marriage, the petitioner was having HIV infection. As we have discussed earlier, even if for a moment it is believed that the petitioner was having HIV infection before her marriage, even then there exist no ground under the Act for annulment of marriage on said ground. In para 39 of the writ petition, it has been alleged that incubation period of AIDS is 8 to 10 years which means late

Arun Kumar who died in August 2000 had become HIV positive 8-12 years back to his death. This is a probable explanation. Learned Counsel for the petitioner has argued that u/s 11 of the Act, only parties to the marriage can maintain the suit. The words "either party" appearing in Section 11 of the Act clarify the position by which, it is clear that either of spouse can maintain suit u/s 11 of the Act. But law is very clear on the point. In the case of [Smt. Ram Pyari Vs. Dharam Das and Others](#), Division Bench of this Court has clearly held that third party can also file a suit for annulment of marriage. The relevant observation is quoted below:

For what we have said above, we do not agree with the law laid down in [Smt. Sheel Wati Vs. Smt. Ram Nandani](#), We answer the question by saying that the validity of a void marriage being in contravention of the provisions of Section 5(i) read with Section 11 of the Hindu Marriage Act can be gone into at the instance of a third aggrieved party even after the death of one of the spouses to the marriage.

As we have discussed earlier, the petitioner and respondent No. 3 are draggers drawn and after the marriage of petitioner with Arun Kumar, they have indulged in criminal litigation also as is evident from Annexure-2 to Annexure-5 of the writ petition. The matrimonial petition filed by respondent No. 3 against the petitioner contains no ground for annulment of marriage of petitioner with late Arun Kumar as provided under the Act, therefore, no useful purpose would be served if matrimonial petition is allowed to continue. In our opinion this will be abuse of process of law. Therefore, such proceedings deserves to be quashed. The writ petition is allowed and proceedings of Matrimonial Suit No. 348 of 2004; Ram Bharosi Lal v. Smt. Triveni Singh, pending in Family Court, Agra is hereby quashed. No order as to costs.