
(1983) 08 KAR CK 0041

Karnataka High Court

Case No: Misc. First Appeal No. 1405 of 1978

Srikantaradhya

APPELLANT

Vs

Kamalamma and Others

RESPONDENT

Date of Decision: Aug. 1, 1983

Acts Referred:

- Hindu Marriage Act, 1955 - Section 12, 12 (1) (c)

Citation: AIR 1984 Kar 236

Hon'ble Judges: R.S. Mahendra, J; G.N. Sabhahit, J

Bench: Division Bench

Advocate: K.N. Shankaralingappa, for the Appellant; P.K. Padmanabhan, for the Respondent

Judgement

Sabhahit, J.

This appeal by the husband is directed against the judgment and order dated 27-10-1977 made by the Second Addl. Civil Judge, Mysore in M. C. No. 8 of 1975 on his file, dismissing the petition of the husband for annulment of marriage with respondent- 1.

2. The husband averred in his petition instituted under S. 12(1)(c) of the Hindu Marriage Act, 1955, that he was married with the 1st respondent on 25-4-1974 at Chandrakavadi village, that he went to see the girl along with his friend and his wife, 20 days prior to the marriage and that both himself and his friend found two patches on the cheeks of the girl and on enquiry they learnt that they were patches of good luck which would disappear. They stayed for the night in the house of the bride and next morning the petitioner gave consent for the marriage, approving the girl hereafter the marriage took place on 25-4-1974. After the marriage he took the girl to his place Govinapura village, Kanakapura Taluk and they stayed there together for about four days and then he discovered that there were white patches on her body also and according to the custom the girl was sent back to her parent's

place and then the husband informed the parents of the girl that they should get the girl examined by a doctor in Mandya Hospital. Accordingly, the girl was taken to Mandya Hospital for examination and the doctor opined that it was curable form of leprosy. Thereafter the girl was also examined at Leprosorium by the doctor (P. W. 1) who issued a certificate. According to him, the girl was suffering from curable form of leprosy and it was not contagious. Thereafter, he instituted the petition for avoiding marriage before the Civil Judge, Mysore at M. C. No. 8/75 on 10-4-1975. He averred therein specifically that he was not told that the patches on the cheeks of the girl were leprosy patches and on the other hand according to him the father of the girl told that they are good luck patches which would disappear soon. So he averred that his consent for the marriage was taken by fraud. Hence, under S. 12(1)(c) of the Hindu Marriage Act, 1955. he sought for annulment of the marriage by a decree of nullity.

3. The petition was resisted by the wife as also by respondent 2. They denied that any fraud was played on the petitioner. They denied that the father of the girl misrepresented that the patches were good luck marks on the face. The father in his statement averred that there was a white patch on the right cheek of the girl which soon disappeared and petitioner gave his consent to the marriage even after observing the same. Hence, there was no case of any fraud in obtaining the consent for the marriage. He further averred that the patch was curable and that the patch on the right cheek had disappeared. Hence, respondents 1 and 2 prayed that the petition should be dismissed.

4. The trial court raised the following points as arising for its consideration from the pleadings.

(1) Does the petitioner prove that his consent was obtained by force or fraud?

(2) Does the petitioner prove that the respondent No. 1 was suffering from a virulent and incurable form of Leprosy for a period of not less than one year immediately preceding the presentation of the petition?

(3) Is the petitioner entitled for a decree for divorce on those grounds?

5. It may be noted in this context that the learned Civil Judge did not even care to look into the pleadings. He did not obviously know as to what was the prayer made in the petition. Point No. 2 raised by him is irrelevant. Point No. 3 would not arise from the pleadings. The petition as stated above, was simply for annulment of marriage by holding that the marriage was nullity because consent was obtained by fraud. There is no whisper about divorce in the petition. While, the learned Civil Judge has indulged in raising points 2 and 3, he did not raise necessary point in regard to the annulment of marriage. But, since the evidence is fully on record and the matter was argued before us on the point of nullity of marriage, we do not propose to remit the case back on the ground after this long lapse of time.

6. The learned Civil Judge after discussing the evidence under point No. I held under it in the negative that the petitioner failed to establish that his consent for marriage was obtained by fraud and in that view he dismissed the petition of the husband for annulment of marriage. Aggrieved by the said judgment and order, the husband has instituted the above appeal before this court.

7. The learned Counsel appearing for the appellant- husband strenuously urged before us that the evidence on record was sufficient to prove that the girl did suffer from leprosy. He further submitted that that fact was concealed from the petitioner and as such fraud was practised on him to obtain his consent. So he submitted that the appeal was entitled to succeed.

8. The learned Counsel appearing for the respondent wife was. not present before the Court though the case was. adjourned once before to enable him to be present before the Court.

9. The sole point that arises for our consideration in this appeal is: Whether the learned Civil Judge was justified in holding that the petitioner- husband failed to establish that his consent to the marriage was obtained by fraud?

10. S. 12(1)(c) as it stood at the relevant time in 1975 before amendment by the Amending Act of 1976 reads:

"12(l). Any marriage solemnized, whether before or after the commencement of the Act shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely.

(a)

(b)

(c) that the consent of the petitioner or where the consent of the guardian of the petitioner is required under S. 5, the consent of such guardian, was obtained by force or fraud."

The section does not speak of fraud in any general way or of every misrepresentation or concealment which may be fraudulent but fraud at the time of solemnization of the marriage. The clause "as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent", was introduced by the amending Act of 1976. In this connection we may refer to *Bodapati Ankamma v. Bodapati Bamanappa* AIR 1937 Mad 332, in which Varadachariar I has observed at page 334 that a Hindu Marriage is a sacrament and not a civil contract and that it will not be permissible to apply to a Hindu marriage all the principles of the law of contract. Similarly, in *Harbhajan Singh v. Smt. Brij Balab Kaur* AIR 1964 P & H 359 which is a case after the Hindu Marriage Act, 1955, came into force, the Punjab High Court has said that the word "fraud" is not used in Section 12 of the Hindu Marriage Act in a general way and on every misrepresentation or concealment, the marriage

cannot be dissolved. If the term "fraud" is to be interpreted according to the definition given in the Indian Contract Act then it would become impossible to maintain the sanctity of the marriage. All sorts of misrepresentations will be alleged by the petitioners in order to break the marriage tie. This obviously could not be the intention of the legislature. In [Anath Nath De Vs. Sm. Lajjabati Devi](#), also, the case was under the Hindu Marriage Act, 1955 and S. Datta, J., who delivered the Judgment, has observed at page 779 that the marriage according to Hindu Law not being a contract, the consent at the stage of negotiations though obtained by fraud cannot affect the validity of the marriage.

D. Tolstoy "On the law and Practice of Divorce", 6th Edition, has expressed on this aspect thus at page 112 :-

"The test in all cases is whether there is real consent, not only to marry, but also to marry the particular person. But, provided such consent exists, it is immaterial whether it is induced by a fraudulent misrepresentation."

Similarly, Rayden on Divorce, 10th Edition at page 98, says that "fraudulent misrepresentation or concealment, does not affect the validity of a marriage to which the parties freely consented with a knowledge of the nature of the contract. But if a person is induced to go through a ceremony of marriage by threats or duress, or in a state of intoxication, without any real consent to the marriage, it is invalid. In all cases, the test of validity is real consent to the marriage Latey on Divorce, 14th Edition, at p. 19 also observes that "misrepresentation or concealment of facts which if known to one of the parties might have prevented his or her marriage does not in validate a marriage, provided there was free consent" Direct in his introduction to Modern Hindu Law, 1973 Edition. at page 193, says thus --

"If in fact the marriage would have been agreed to even had the facts been known, it seems that the marriage cannot be annulled, nor, it seems, in even stronger cases where full disclosures would have prevented the marriage; for fraudulent misrepresentation or concealment does not affect the validity of a marriage to which the parties freely consented with knowledge of its nature, and with the clear and distinct intention of entering into the marriage in question."

10A. Thus, S. 12(1)(c) of the Hindu Marriage Act as it then existed before amendment does not speak of fraud in any general way or of every misrepresentation or concealment which may be fraudulent. A person who freely consents to the solemnization of marriage cannot object to the validity of the marriage on the ground that fraudulent representation or concealment was made earlier.

11. With this perspective of the legal position, we would proceed to appreciate the facts of the case. The husband petitioner in his evidence has clearly stated that he took his friend with his wife to see the girl about 20 days prior to the marriage. They did observe the white patch on the face. As a man of ordinary prudence it is quite natural that he suspected what it was. They stayed in the house of the bride for the

night and on the next morning the petitioner husband gave his consent to the marriage with his eyes wide open. A case, however, is made out before the Court that the husband and his friend did ask the father of the girl as to what the white patch was and the father of the girl according to them, gave an explanation that it was lucky spot which would disappear.

12. The next point that arises for our consideration is: Whether such question was put to the father of the girl? One thing becomes clear that the husband- petitioner did observe that there was white patch on the cheek of the girl and he suspected it. The evidence on record would not further establish that the father of the girl answered that it was lucky spot. The only corroborating evidence on behalf of the husband is that of his friend. The husband is examined as P. W. 3 and his friend is examined as P. W. 2. The husband in his

evidence has stated thus :

"Myself and P. W. 2, Siddaveerappa and his wife went to the house of the first respondent 20 days earlier to the marriage. When we went to the house of the respondent No. 1, at that time Mallaradhya was also present. We saw the first respondent, when she served coffee to all of us. We saw the girl. I saw some white patches on both the cheeks of the first respondent and I told that fact to my friend Siddaveerappa.

Siddaveerappa who is examined as P. W. 2 has stated in his evidence thus :

"We saw the girl who was no other than the respondent No. 1 who is before court. She brought eatables and coffee and placed before us. At that time the father of respondent No. 1, who is respondent No. 2 was also present and also third respondent and his wife were present. When we saw the girl she had one patch on each cheek of her face, which was black in colour.

(Underlining ours)

13. Thus, while describing the simplest thing as to whether the patches were black or white in colour, the husband P. W. 3 gave one version, that the patches were of white colour and his friend P. W. 2 gave another version that the patches were black in colour. Hence, we are constrained to hold that there is no corroborative evidence in this behalf. Moreover, being a friend working in the same department P. W. 2 must have consented to oblige the petitioner. That being so, the version of the husband that he put a question to the father of the girl about the nature of the patch cannot be relied upon in the absence of independent corroboration. The father of the girl is examined as D. W. 1. He has denied that the petitioner ever asked him such a question though he saw the patch on the right cheek of the girl. It may also be observed that the father has admitted that there was only one white patch on the right cheek. Thus, the evidence on record shows that the husband had ample opportunity to see the girl and that he saw the patch on the face of the girl clearly

with eyes wide open and gave his consent for marriage with the girl. There is thus no fraud practiced at all. When specifically a question was put to him in the cross examination" did you have or not have the opportunity to refuse the marriage?" he has stated that there was such opportunity to refuse the marriage as the marriage took place after 20 days and the husband stayed in the house of the bride for the night on the day when he first visited the bride's house. That being so, as rightly pointed out by several authorities quoted above, consent in the case was freely given to the marriage and no fraud was ever practised on the husband.

14. The doctors examined as P. Ws. 1 and 4 in the case have clearly stated that the girl was suffering from curable type of leprosy which was not contagious and there is no evidence that the girl was got treated by the husband. The trial Court has made a specific note on being requested by the Counsel, when she was in the court, that the white patch on the right cheek had disappeared. This is what the trial court has observed : "Mr. K. L Wants the court to observe respondent No. I who is before the court and to make the note about the existence or otherwise of the patch on the right cheek of her person." "In view of the above submission I am also of the view that such an observation would be helpful. In that view of the matter I have seen the respondent's right cheek and I did not find any white patch at present." Thus, it is obvious that though the girl suffered from curable and non-contagious type of leprosy, it could not be made a ground to avoid the marriage when consent to the marriage was freely given.

15. In [Raghunath Gopal Daftardar Vs. Sau, Vijaya Raghunath Daftardar](#) , the girl suffered from attacks of Epilepsy. Fraud alleged was the non-disclosure of Epilepsy from which the girl was suffering since before her marriage and the false representation given that she was healthy. The court found that that type of Epilepsy from which the girl was suffering was curable. and in that view the Court held that non-disclosure or concealment of such curable Epilepsy and false representation that the girl was healthy did not amount to fraud within the meaning of S. 12(1)(c) of the Hindu Marriage Act, 1955 as it existed before the amendment in 1976. We are keenly aware that the Bombay High Court in a recent decision in the case [P. Vs. K.](#), has held that the Ruling in [Raghunath Gopal Daftardar Vs. Sau, Vijaya Raghunath Daftardar](#), is no longer good law in view of 1976 amendment to S. 12(1)(c) of the Act. We are, however, concerned with the provision before amendment.

16. In the instant case as shown above, the patches of leprosy could be seen by any average prudent man. The husband did see it and he suspected it and even so he gave his free consent to the marriage. Moreover, as found above the doctors have opined that the said patches are curable and not contagious. Hence, it could not be said that any fraud was practised on the husband for taking his consent to the marriage. This Court in, order to ascertain the truth, directed the girl to be examined by a competent doctor. That is the order passed on 1. A. 11 filed before this Court by

the appellant and the doctor of Leprosorium has given his report with the letter dated 12-7-1979. In the medical report he has stated that the general and physical condition of the girl is good. He found patches all over the body. Two on the face. Two on the back. One on the left thigh and one on the posterior aspects of the right thigh. Two on the lower 1/3rd of the leg. Further he has stated on the basis of the result of investigation that he is of the opinion that, patches numbers, 6, 7 and 8 are now infective type of leprosy and the others are only hyper-pigmented patches and not of leprosy. Thus, the opinion of the expert also confirms the opinion of the earlier doctors examined before the trial court that the patches are curable and they are not contagious. That being so, we are satisfied with the conclusion of the trial court that no fraud was practised on the petitioner- husband in taking his consent to the marriage and that the consent to the marriage was given by the husband petitioner out of his free will and volition As such we have no reason to interfere with the order of dismissal of the petition passed by the trial court.

17. In the result, the appeal fails and is dismissed. No costs of this appeal.

18. Appeal dismissed