(1978) 09 MP CK 0016

Madhya Pradesh High Court

Case No: First Appeal No. 209 of 1977

Nandkishore Shaligram Vyas		APPELLANT
	Vs	
Munnibai Vyas		RESPONDENT

Date of Decision: Sept. 20, 1978

Acts Referred:

- Contract Act, 1872 - Section 17
- Hindu Marriage Act, 1955 - Section 12, 12(1), 12(1)(c), 12(1)(d), 12(2)
- Limitation Act, 1963 - Section 17, 5

Citation: (1979) MPLJ 105

Hon'ble Judges: C.P. Sen, J; B.C. Verma, J

Bench: Division Bench

Advocate: Y.S. Dharmadhikari, for the Appellant; S.D. Mukerjee, for the Respondent

Final Decision: Dismissed

Judgement

B.C. Verma, J.

Appellant Nandkishore (husband) has preferred this appeal u/s 28 of the Hindu Marriage Act, 1955 (hereinafter called the Act) dismissing his petition for a decree of nullity u/s 12(1)(d) of the Act.

The marriage between the parties was solemnized on 2-5-1975 at village Bara, tahsil Banda, district Sagar, according to Vaidic rites. The Bida ceremony took place on 3-5-1975 and they came back to Bina at the appellant''s place on 4-5-1975. However, according to the prevailing custom, they immediately did not enter the appellant''s house, but for sometime stayed in the house of a neighbour, Smt. Rajkunwarbai (P. W. 3). It appears from the statement of the appellant that they shared the bed for sometime and the marriage was thus consummated. The respondent (wife) lived with the appellant at Bina until middle of June, 1975. Thereafter, she left her matrimonial home and started living with her parents.

The appellant alleges that the respondent was at the time of the marriage pregnant by some person other than the appellant himself. Although aware of this fact, she wilfully concealed it so that the marriage could be performed. The appellant pleads that being ignorant of this fact and it was wilfully concealed from him, he consented to the marriage. He alleges that on the respondent''s exhibiting signs of pregnancy in the middle of June 1975 that it was revealed to him that she was carrying. He alleges that she was then immediately examined by a doctor who certified that the pregnancy was about 14-16 weeks old. It is the case of the appellant that on 10-6-1975 the respondent voluntarily executed a writing (Ex. P-1) admitting that she had illicit intimacy with one Ramkishore and had conceived from him. On 27-5-1976, he served a notice on the respondent and has filed this petition before the District Judge, Sagar.

This serious charge was very strongly refuted by the respondent who denied any co-habitation with any person prior to her marriage with the appellant. She denied that she was pregnant at the time of marriage. She accused the appellant of coercing her into writing the letter (Ex. P-1). According to her, she wrote it at the dictates of the appellant with ulterior motive of using it as a weapon of extracting money from her parents. She says that the appellant''s greed of dowry prompted him to come out with such false accusations against her. She has specifically stated in paragraph 12 of her written statement that they had frequent marital intercourse during her stay with the appellant.

The learned District Judge after very thorough scrutiny of the evidence adduced by the parties concluded that the charge levelled by the appellant against the respondent was false. He also held that Ex. P-1 was obtained from the respondent under coercion. In his assessment, the entire evidence adduced by the appellant is a piece of fabrication and concoction. Consequently, the petition was dismissed.

Shri Y.S. Dharmadhikari, Learned Counsel for the appellant, first tried to assail the judgment of the lower Court stating that the appreciation of the evidence is incorrect. He referred us to the evidence of P. W. 3 Rajkunwarbai and P. W. 4 Dr. Smt. N. Ahmed and also to Ex. P-1 and persuaded us to take a different view of the matter than the one held by the learned District Judge. With this submission of the Learned Counsel, we are unable to agree. P. W. 3 Rajkunwarbai is the appellant''s neighbour with whom the couple stayed immediately after their marriage on return from Banda. This witness speaks of having seen certain signs of pregnancy in the respondent. In her cross-examination, however, she admits that the parties stayed in her house only for a few hours and even during that period the respondent kept sitting with veil over her face. It is difficult to believe that, in such circumstances, she could detect the alleged pregnancy and that too in its early stage. She has, of course, not stated what such signs were which led her to suspect that the respondent was pregnant. P. W. 4 Dr. Smt. Ahmed is supposed to have examined the respondent on 12-6-1975 and issued a certificate Ex. P-3. At the first sight, her

evidence gives an impression that she had really examined the respondent and the certificate Ex. P-3 is genuine. However, a close scrutiny of her examination renders her testimony not beyond suspicion. Her opinion is based only upon the examination of the uterus of the respondent which, according to her, was wide enough to conclude pregnancy. No. X-ray examination was done. No biological tests were applied although she admits that biological tests are valuable tests for establishing pregnancy in earlier stage. According to her, the respondent was brought to her by her father-in-law whom she recognised in the Court. The appellant as P. W. 1, however, states that it is he who took her to the doctor and the doctor, who examined her, was one Usha Saini examined in this case as P. W. 2. This doctor, Ku. Usha Saini (P. W. 2) has emphatically denied that she ever examined the respondent or that the appellant ever brought the respondent to her for any medical check-up. These circumstances do not carry the matter beyond suspicion and by no standards can be said to be affording any proof of the respondent being pregnant at the time of her marriage. It is significant to note that there is no evidence that respondent thereafter delivered a child or aborted.

Reference may also be made to the document Ex. P-1. It was said to have been written on 10-6-1975 when admittedly the respondent was in the appellant''s house. The evidence discloses that by that time the appellant and his mother were practically certain that the respondent was pregnant at the time of the marriage. They cannot be said to be very happy with the respondent over this and we can well imagine the treatment the respondent must have been given at the appellant''s house then. The respondent, therefore, appears to be right when she says that she was made to write that letter under fear of death. Even a look at Ex P-1 would clearly show that it is not voluntarily written. It is scored out at many places including the date. The name of the alleged paramour as disclosed in the letter is not the same as is disclosed in evidence. The letter Ex. P-1, therefore, undoubtedly is a piece of fabrication and is the result of coercion and threat. It has been extorted from the respondent under duress. It has been, therefore, rightly rejected by the trial Court.

True it is that the Supreme Court in Dr. N.G. Dastane Vs. Mrs. S. Dastane, has laid down that proof beyond reasonable doubt is a proof of higher standard which generally governs criminal trials or trials involving inquiry into issues of quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities, but in trials of purely civil nature such consideration need not be imported. All that has to be done is to weed out the impossible at the first stage and the improbable at the second. There the Court was concerned with the consideration of charge of cruelty and to find out whether the facts proved would cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for him to live with the respondent. Imputing unchastity to a woman is charge of a very serious nature. The charge, if established, may result in serious consequences. Not only that such a woman be condemned in the society and be lowered in the eyes of her relatives and associates,

but may also suffer a child, if any, being called a bastard. It shall, therefore, be just to seek for a more cogent and convincing evidence in such cases than the one which may only be sufficient to create a doubt. Indeed, the Supreme Court in Mahendra Manilal Nanavati Vs. Sushila Mahendra Nanavati, has under such circumstances desired that the petitioner should be allowed to succeed only if he proves beyond reasonable doubt that the respondent was pregnant by some one else at the time of marriage. It is, however, further observed that admissions of the parties in such cases can also be considered. Needless to say that the evidence adduced by the appellant in this case does not satisfy the tests laid down by the Supreme Court in the above cases.

We, therefore, agree with the learned District Judge that the appellant has not been able to prove that the respondent was pregnant by some person other than the petitioner at the time of the marriage.

In the present case, there is yet another hurdle which the appellant must successfully cross before he can be held entitled to the relief claimed. Various clauses of sub-section (2) of section 12 of the Act require compliance of certain further conditions to grant a decree of nullity of marriage even if a case is made out under sub-section (1) of that section. Section 12(2) of the Act runs thus :

12(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 is 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 the 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 marriage solemnized 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 grounds for a decree.

Reading of this sub-section (2) would indicate that a petition for annulment of a marriage shall not be entertained if the conditions laid down in its various

sub-clauses are not satisfied. It is, therefore, incumbent on a petitioner to plead and for a Court to find that the petitioner has strictly fulfilled the requirements of those sub-clauses. In order to succeed under clause (d) of section 12(1) of the Act, the petitioner must not only show the existence of pregnancy at the time of marriage, but should also prove that he was ignorant of that fact at the time of marriage, that the proceedings were instituted within a period of one year fixed by the statute and that he did not have marital intercourse with the wife subsequent to the time when he had grounds for reasonably inferring the cause on which he is seeking annulment. In the instant case, the marriage took place on 2-5-1975. The petition was filed on 14-6-1976. The summer vacation that year commenced from 10-5-1976. The Courts did function on 3-5-1976. Obviously the petition was presented beyond the period of one year fixed by the statute. Again, it is in the evidence of the appellant and his witnesses that he had practically become certain of the alleged pregnancy of the respondent soon on her arrival to the appellant''s house. The respondent has specifically pleaded that after the marriage she had marital intercourse with the appellant and with his full consent. She also deposed so in the witness-box. In spite of this, the appellant did not amend the petition to deny any cohabitation with the respondent. The respondent was put no question in cross-examination to challenge that part of her testimony. It can, therefore, be safely held that marital intercourse had taken place with the appellant''s consent since discovery of the alleged pregnancy. That being so, the appellant has utterly failed to prove compliance of conditions incorporated in section 12(2)(b) (ii) and (iii) of the Act. His petition must fail on this count also.

Yet another submission in this regard which remains to be considered is this. Section 12(2)(b)(ii) of the Act requires that the petition should be presented within one year of the date of marriage. Counsel urges that for computing the period of one year the starting point should not be the date of marriage but the date when the fact of pregnancy was revealed to the appellant. According to him, in construing this clause, equitable considerations applicable to statutes of limitation may be invoked. The counsel invited our attention to section 17 of the Indian Limitation Act and urged that the time should not start running until the fraud is discovered. It is not the period of limitation which the Act prescribes in the sense the statutes of limitation do. All that it says is that action beyond specified period cannot be founded upon certain grounds. In Vellinayagi Vs. T. Subramaniam, section 5 of the Limitation Act has not been held applicable to petition u/s 12 of the Hindu Marriage Act. Considering like provisions under the Matrimonial Causes Act, 1937, the Court of Appeal in Chaplin v. Chaplin 1948 (2) All E R 408 held that such equitable principles could not be applied to matrimonial causes. Provisions of section 7 (1) of the Matrimonial Causes Act, 1937, appear to be practically similar to those contained in clause (b) of section 12(2) of the Act. What has been observed in that case is this:

One must appreciate the subject-matter with which it is dealing, viz., proceedings to alter the status of the parties, the result of which will affect the children of the

marriage, and that in all the cases specified in the sub-section Parliament has thought fit to prescribe in the clearest possible language that the Court shall not grant a decree unless it is satisfied that proceedings were instituted within a year of the date of the marriage.

It is pertinent to note that in earlier part of the Act, i.e., section 12(2)(a)(i), it is specifically mentioned that the action should be launched within one year of the discovery of the fraud. We cannot read such words even by implication while construing sub-section (2) (b) (ii) of section 12. That course is not permissible. This contention of the Learned Counsel also fails.

Faced with difficulty, Learned Counsel for the appellant resorted to the ground contained in clause (c) of section 12(1) of the Act and submitted that the appellant can be afforded relief of nullity of marriage under the said provision. Clause (c) of section 12(1) of the Act runs as under:

12 (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:--

.. ..

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required u/s 5, the consent of such guardian was obtained by force or fraud; or.....

We may at the outset point out that such a ground was not present in the mind of the appellant in the trial. Court and, therefore, we find no mention of any discussion on it in the impugned judgment. However, Learned Counsel urged before us that the necessary averments to attract the provisions of clause (c) of sub-section (1) of section 12 of the Act have been made in the petition and from the evidence on record that ground is made out. Since the entire future of a young couple is at stake in the litigation, we have permitted the counsel to urge that ground also.

We have already found above that the spouse lived as husband and wife even after the fact of alleged pregnancy became known to the appellant. The length of the period of their so living together is immaterial. This finding is sufficient to disentitle the appellant any relief founded on clause (c) of sub-section (1) of section 12 of the Act. Such is also the view expressed in Raghunath Gopal Daftardar Vs. Sau, Vijaya Raghunath Daftardar, Learned Counsel, however, urges that the consent of the appellant was obtained by fraud inasmuch as the fact of pregnancy of the respondent at the time of marriage was wilfully concealed and the petition was presented within one year of the discovery of fraud. According to the Learned Counsel, the term ''fraud'' has not been defined under the ''Act'' and, therefore, it should be attributed the same meaning as it has u/s 17 of the Indian Contract Act. With this submission of the Learned Counsel, we are unable to agree. The words

''force'' or ''fraud'' appearing in that sub-section must be interpreted to mean such circumstances or condition as to show want of real consent to the marriage. A Division Bench of this Court in Madhusudan Vs. Smt. Chandrika, has repelled the contention that the term ''fraud'' can have the same meaning as is assigned to it under the Indian Contract Act. ''Fraud'' within the meaning of section 12(1)(c) of the Act is such which procures the appearance without the reality of consent and thereby becomes an act fitted to deceive. In Rani Bala Debnath Vs. Ram Krishna Debnath, , it was held that the concealed unchastity of the wife before marriage is not fraud which invalidates consent u/s 12(1)(c) of the Act. Another Division Bench of this Court in Rajaram Vishwakarma Vs. Deepabai, has interpreted this term in almost the like manner. This is what is stated in paragraph 19 of the said report:--

The conclusion is that: (1) fraud within the meaning of section 12(1)(c) of the Act means either (a) deception as to the identity of the other party to the marriage, or (b) deception as to the nature of the ceremonies being performed; (2) where consent is given with the intention to marry the other party and with the knowledge that what is being solemnized is marriage, an objection to the validity of the marriage on the ground of any fraudulent misrepresentation or concealment is not tenable.

In Bimla Bai Vs. Shankerlal and Others, A single Bench of this Court applied the provisions of section 17 of the Indian Contract Act, 1872, to invalidate a Hindu marriage to which consent of the bridegroom was obtained by fraudulent misrepresentation. It was held in paragraph 15 of the judgment that there was misrepresentation which amounted to fraud and consequently the marriage in question which was induced by it is liable to be set aside. We have seen above that the term ''fraud'' appearing in section 12 of the Hindu Marriage Act has a special meaning with reference to the context where it is used. In view of this special enactment, the aforesaid decision in Simla Bai v. Shankarlal (supra) has been expressly dissented from the Bombay High Court in Raghunath v. Vijaya. This Bombay case has been cited with approval by the Division Bench of this Court in Madhusudan v. Chandrika. We have already held above that the decision in Madhusudan''s case gives out the the correct meaning of the term ''fraud'' appearing in section 12 of the Act. In view of this, the decision in Bimla Bai v. Shankarlal (supra) cannot be applied to the case arising u/s 12 of the Hindu Marriage Act. It can, therefore, be clearly seen that the appellant has not been able to establish that his ''consent'' to marriage was obtained by fraud within the meaning of section 12(1)(c) of the Act.

The appeal, therefore, has no merits and is dismissed with costs. Counsel''s fee Rs. 100, if certified.