

(2008) 12 MAD CK 0319

Madras High Court

Case No: C.M.A. No. 113 of 2001

Sharmila Devi

APPELLANT

Vs

S. Sridhar

RESPONDENT

Date of Decision: Dec. 3, 2008**Citation:** (2009) 1 CTC 481**Hon'ble Judges:** Prabha Sridevan, J; K.K. Sasidharan, J**Bench:** Division Bench**Advocate:** P.R. Raman, for the Appellant; V.P. Raju, for the Respondent**Final Decision:** Allowed

Judgement

Prabha Sridevan, J.

The wife is the appellant, aggrieved by the judgment and decree for restitution of conjugal rights granted in favour of the respondent. The facts of the case are stated hereunder. The respondent claimed that he had married the appellant on 2.3.1997 at Door No. 9, Muthukumaraswamy Street, Perambur, Chennai-11. The marriage was performed in accordance with Section 7A of the Hindu Marriage Act, 1955. Even before the marriage, the two were in love and the marriage was consummated. The appellant obtained a seat in B.E. Course and till her marriage, her parents were meeting her educational expenses. But, after her marriage, it was only the respondent who paid for the appellant's education. During June 1997, the appellant became pregnant, but that pregnancy was terminated. There was a regular letter correspondence between the respondent and the appellant till the end of 1998. Thereafter, the appellant stopped writing. She did not even care to reply to the respondent's letters. She avoided meeting him and withdrew from the society of the respondent. The respondent sent a lawyer's notice, for which there was no positive response from the appellant and therefore, he was compelled to file the suit.

2. The appellant, in her counter, denied the marriage. She denied that there was any tying of Thali or of exchange of rings. She denied all the averments in the petition,

including the termination of pregnancy. She has only admitted that there was exchange of letters since she had fallen in love with the respondent, but subsequently, since the respondent's character had changed and for other reasons, she discontinued her contact with him. She has stated that it was the respondent who pressurized her to marry him and therefore, the appellant prayed that the petition filed by the respondent for restitution of conjugal rights be dismissed.

3. The Second Additional Principal Judge, Family Court, framed the following questions for consideration :-

(i) Whether the petitioner married the respondent on 2.3.1997 at Chennai according to Section 7A of the Hindu Marriage Act?

(ii) Whether the appellant is entitled to the relief of restitution of conjugal rights?

(iii) To what relief?

Thereafter, the learned trial Judge came to the conclusion that the respondent had married the appellant on 2.3.1997 and that the appellant had withdrawn herself from the society of the respondent without reasonable cause and therefore, the respondent was entitled to the relief of restitution of conjugal rights. Against that, the present appeal has been filed.

4. Learned counsel for the appellant would submit that the specific case of the respondent is that he married the appellant on 2.3.1997 and that the marriage was performed in accordance with Section 7-A of the Hindu Marriage Act. Learned counsel submitted that though the trial court had believed the evidence of P. Ws. 1 to 4 for accepting the case of marriage, the documents produced, which are private and personal letters written by the respondent himself to the appellant, would show that the marriage had not taken place on 2.3.1997 and if so, the marriage between the parties remains unproved and therefore, the petition for restitution of conjugal rights is not maintainable. Learned counsel submitted that even if they had had an intimate relationship with each other, which resulted in the appellant becoming pregnant, that would not automatically give rise to a presumption that there was a marriage. Learned counsel submitted that all the witnesses who had spoken of a ceremony like that were interested witnesses, being the respondent's friends. Learned counsel submitted that the appellant had produced two certificates from her college to the effect that she was inside the college hostel on 2.3.1997 and therefore, the respondent had come to court with a false case. Learned counsel read the various portions of the exhibits to show that there was no marriage.

5. Learned counsel for the respondent would submit that it is not correct to state that there was no marriage. In fact, in the letters, the appellant has referred to the respondent as her husband and herself as the wife; she has signed herself as Sharmila Sridhar; and she has sent an anniversary card, which was also marked as an exhibit. All this would go to show that there was in fact a marriage. He would

submit that for a Suya Mariyadhai or Seerthiruththa Marriage u/s 7-A of the Act, no ceremony is required; it is enough if there is exchange of rings or tying of Thali or a declaration that they should get married to each other. Learned counsel also submitted that in fact, it is the respondent who had spent on the education of the appellant and this itself would show that there was a marriage. Learned counsel submitted that the order of the court below did not warrant any interference.

6. According to the pleadings, there was a marriage between the parties, in the presence of the friends of both sides, on 2.3.1997 and that the appellant had become pregnant. The pleadings did not show in what form they had actually married, except to state that the marriage was held as per the provisions of Section 7A of the Act. In her counter, the appellant had denied the marriage and had also denied the pregnancy and the termination thereof. In the oral evidence, P.W.1, the respondent, would depose that they had exchanged rings and garlands and that for the wedding, his friends and her friends had and that her parents did not come. He had stated that in June 1997, the appellant had become pregnant and against his will, she had terminated her pregnancy. In his cross-examination, he had admitted that he had written the letters, Exs.R.1 to R.3. In the cross-examination he had stated that the wedding ring was purchased by the appellant's sister. P.Ws.2 to 4 are the friends of the respondent. P.W.2 had stated that he had gone to the respondent's office at No. 9, Muthukumaraswamy Street on 2.3.1997 and that at that time, the respondent and his friends were there and the appellant and her sister Umadevi were there and that they exchanged rings and garlands. He has denied the suggestion that he is lying to help his friend. P.W.3 is a person who is a resident of the same street as the appellant herein. According to him, it was the respondent who contacted him over telephone and asked him to go over to the office in March, 1997. According to him, on that date, the appellant and the respondent exchanged rings and garlands. P.W.3, in his cross-examination, has mentioned that the appellant's sister alone had come there. P.W.4 had also stated to that he went to the respondent's office on his request and that both the parties exchanged rings and garlands.

7. R.W.1 is the appellant herein. In her chief-examination, she had admitted that she had loved the respondent, but had denied that there was a marriage. Though the learned counsel for the respondent would submit that the appellant had admitted her pregnancy in her evidence, we see that she has merely denied the suggestion that she had terminated amount to admission of pregnancy. R.W.2 is the sister of the appellant. She has denied all the allegations relating to the marriage, purchase of ring, etc. and in her cross-examination, she has also denied that she helped her sister in terminating the pregnancy. When P.Ws.2 to 4 had referred to the presence of the appellant's sister at the wedding, it is curious to note that P.W.1 has merely stated that his friends and her friends were present at the wedding. He has not mentioned that the appellant's sister was present. If she had been present, he would have mentioned her name first. The presence of the appellant's sister would

very strongly support his case. No other witness mentioned the presence of the appellant's friends. This itself shows that there is something not reliable in the oral evidence regarding the marriage.

8. Now we come to the documentary evidence. Many letters were marked and they have been enclosed in the typed set of papers. Ex.P.1 is the letter which the appellant had admittedly written to the respondent. This is written on 19.7.1997 and in this letter, she has stated, Ex.P.3 is a letter dated 24.9.1997. In this, the appellant has signed as Priyanka Sridhar. Ex.P.4 is a letter dated 5.11.1997. Here too, she has signed as Priyanka Sridhar, but she has stated that she will have intimate relationship with the respondent only after marriage. Ex.P.5 is a letter dated 20.12.1997. In this letter, the appellant has referred to some sin that she has committed and that God will punish her. Perhaps, there had been some intimate relationship in the mean time. Ex.P.6 is a letter dated 22.1.1998, in which she has addressed the respondent as her husband. She has also referred to the termination of the pregnancy in this letter. Ex.P.8 is a letter dated 21.3.1998. In this letter, she has written that they should get married only after her sister's marriage, there are photographs and other such exhibits, which are Exs.P.12 to P. 14.

9. Ex.R.1 is a letter written by the respondent to the appellant herein. This is the first such letter and is an undated one, in which he has written about his plans of marriage. Ex.R.2 is dated 5.5.1998. This is very another later which is undated, in which again the respondent speaks of marriage as something that is to take place in the future.

10. The learned trial Judge has not taken into account all these letters. True, he finds, and rightly so, that all the letters reveal that the appellant loved the respondent and shared bed with him. The learned trial Judge appears to have been more influenced by the fact that she had terminated the pregnancy and had "destroyed the symbol of their love and affection". When there are so many letters which show that even subsequent to the date on which the marriage is alleged to have taken place, both the parties refer to the marriage as something to take place in the future, we are unable to understand how the learned trial Judge ignored the implication of these letters. The learned trial Judge has glibly accepted the evidence of P.Ws.1 to 4 which, as we have stated earlier, is not very convincing because, while P.Ws.2 to 4, swear to the presence of the appellant's sister at the wedding, even the respondent himself does not speak of her presence there. They do not refer to the presence of the appellant's friends, which is seen from the respondent's evidence. Therefore, we are not convinced by the credibility of the evidence of P.Ws.2 to 4. If we ignore that, then we are left with the self-serving evidence of P.W.1. Even the pleading that they had married in accordance with Section 7-A of the Act is not convincing because the respondents should have clearly stated in their evidence whether they exchanged rings or tied Thali, thereby satisfying the conditions of the Seerthiruththa Marriage. Even if it is proved that the appellant and the respondent

had intimate relationship which had resulted in her pregnancy, that does not prove that there was marriage between the two.

11. In fact, in [Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another](#), the Supreme Court held the bare fact that a man and a woman were living as husband and wife does not, at any rate, normally give them the status of husband and wife. Long cohabitation may, in some cases, give rise to presumption of marriage. But that cannot apply to this case where the pleadings are to the effect that on a specific date, the couple got married. When this is not proved, then the basis of the petition falls. In [Jolly Das \(Smt\) alias Moulick Vs. Tapan Ranjan Das](#), he appellant prayed for a declaration that the marriage with the respondent was a nullity on the ground that her consent was obtained by fraud. The appellant was taking music lessons from the respondent. According to her, her signatures were obtained on blank forms and she did not realize that there had been a registration of marriage. On the side of the respondent, several witnesses were produced to speak as to the proof of the marriage. The Supreme Court held that since the registration of the marriage is admitted, their evidence need not be referred to, since the only question is whether her signatures were obtained by fraudulent misrepresentation. However, the Supreme Court held that their evidence did not inspire much confidence and they were all persons connected in one way or the other with the school run in the house of the respondent.

12. In the present case also, three witnesses who were roped in to speak of the marriage are all known only to the respondent and according to them, they were asked by the respondent to be at his office premises at a particular time on the relevant date. In view of the other contradictions which have already been spoken of, their evidence also does not inspire much confidence. In the case cited supra, there was actually a marriage certificate issued by the Marriage Officer. In spite of that, the Supreme Court held that except the marriage certificate, there is no trace of the marriage. Of course, in that case, it was factually found that there was no consummation of marriage, whereas in the present case, there appears to have been some intimacy between the appellant and the respondent, but there is no satisfactory evidence with regard to the performance of the marriage between the two. As discussed earlier, when the very performance of the marriage is not proved, there is no basis whatsoever for the petition.

13. I (1986) D.M.C. 185, [Kanchan Malhotra vs. Yashvir Singh] is the judgment of a learned single Judge of the Madhya Pradesh High Court and we are in entire agreement with the following view expressed by the learned single Judge in the appeal filed by the wife:

"I have scrutinised the pleadings and the evidence on record. When a party asserts the factum of marriage with the other party and the other party vehemently denies it, the burden obviously is of the heaviest nature more particularly when allegation of marriage is by male-spouse. The Courts in these circumstances, have to be very

careful and cautious in appreciating the whole evidence and have to guard themselves against any fictitious evidence since the whole course of the life of the parties depend on the crucial question of the existence or otherwise of a valid marriage."

What is meant by the words "conjugal rights" has been explained by the Supreme Court in [Smt. Saroj Rani Vs. Sudarshan Kumar Chadha](#), in the following words:

""Conjugal rights" which means right of the husband or the wife to the society of the other spouse is not merely a creature of the statute. Such a right is inherent in die very institution of marriage itself."

So, the factum of marriage should be proved for this right to follow. From the above decisions, it can be seen that if the factum of marriage itself is not proved, then there can be no decree for restitution of conjugal rights. Therefore, the judgment and decree of the Second Additional Family Court, Madras dated 11.4.2005 made in O.P. No. 1833 of 1999 is set aside, The civil miscellaneous appeal is accordingly allowed. Consequently, C.M.P. No. 8318 of 2001 is closed.