

**(1994) 03 CAL CK 0023**

**Calcutta High Court**

**Case No:** Appeal No. 292 of 1985

Provat Kumar Chatterjee

APPELLANT

Vs

Smt. Gita Chatterjee

RESPONDENT

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**Date of Decision:** March 17, 1994

**Acts Referred:**

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

**Citation:** (1994) 2 DMC 621

**Hon'ble Judges:** Samir Kumar Mookherjee, J; Rabin Bhattacharyya, J

**Bench:** Division Bench

**Advocate:** Bhaskar Bhattacharyya and Asit Kumar Bhattacharyya, for the Appellant;  
Indrajit Mondal, for the Respondent

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### **Judgement**

Rabin Bhattacharyya, J.

This Appeal is directed against the judgment and decree passed in Matrimonial Suit No. 68 of 1993, by the learned Additional District Judge, dismissing the reliefs of the husband-petitioner sought for within the fold of Sections- 12(1)(c) & 12(1)(d) of the Hindu Marriage Act, 1955.

2. The factual exposure of the case reflects the pathos of the matrimonial life of both the spouses, an account of which has been well detailed in the judgment. But for appreciation of the points canvassed, we give a brief "resume" of the facts :

3. The petitioner and the respondent, a destitute, were married according to Hindu Rites on 13-8-1982, under strained circumstances as consent of the petitioner was procured of having recourse to fraud of which. Tapan was the author who was aided by the common friends in perpetrating such fraud on the petitioner. He was not only prevailed upon by them but was also caught up with fear psychosis which dominated the consent for such marriage. However, no cloud densed on the marital life soon after the marriage; but as the time rolled by, the petitioner bore a wounded feeling that he was deceived, since the maiden-life of the respondent was

cloudy. It revealed from the enquiries that she underwent a major operation for termination of her pregnancy during her maidenhood while living with one S.S. Roy in a lone tenement suggesting pregnancy by Roy, a fact so well nursed and kept concealed by the respondent and the common friends before and after the marriage. There was complete black out of menstruation and the child bearing capacity lost its prospect. It was not an idle belief that he fell prey to fraud. Marriage was forced upon him divorced from voluntary will. He could not sustain the onslaught of pressure and inducement. In consequence, cohabitation lost its momentum.

4. The respondent entered appearance and resisted the claim for declaration of void marriage on various grounds among which the story of fraud, as spoken to by the petitioner was colourable as he visited on a number of occasions the residence of Rabin Chatterjee, a relative of the respondent, the object being to discover that the bride if would be suitable for him. It was a negotiated marriage where orphanage was not denied. The date of marriage was fixed by him. After solemnisation of marriage, the petitioner left her at his residence at B.T.A. Road, in order to attend the ceremony of his cousin sister. Neither the mother nor the brothers shared the same residence with the petitioner as they used to live at Srirampore. She has acknowledged that she underwent a major operation at Calcutta Medical Research Centre for removal of stones in the Gallbladder in 1976, There was temporary rupture of menstruation which was regained. She was examined by an Obstetric Surgeon who advised a small operation to the knowledge of the petitioner and she underwent a minor operation on 19-5-83. Excepting the premature death in her father's family, the respondent had to pass through odds but her life was all along virgin before marriage. The dissension and dispute broke out in the family by the reason of her protesting the adulterous course of conduct pursued by him with one Kanchan, a Cook in the premises. She was not only humiliated but was subjected to cruel treatment meted out to her by her husband. The bickering and bitterness reached their extremity as the respondent was constrained to report to the Hon'ble Prime Minister and the Department of Police on 15-6-1983 against the petitioner for the torture inflicted on her.

5. There was a spate of litigations between the parties. The instant suit has been filed by the petitioner to bring the respondent to her knees with unfounded allegations which disentitled him to any matrimonial relief.

6. The learned Trial Court framed as many as 7 issues and dismissed the suit holding that the allegation of her being pregnant at the time of marriage was not proved; there was no material suppression of facts or force employed and the allegation of adultery committed by the husband even, if false, never showed its head within the temple of averments in the petition for relief.

7. The determination of the point is that the judgment and decree of the learned Court below, if suffer from perversity by the reason of refusing the reliefs to the

petitioner under the H.M. Act, 1955.

8. In the aforesaid premise, the judgment and decree came under severe criticism.

In assailing the impugned judgment and decree, Mr. Bhattacharyya, at the very threshold, has argued that the case of the petitioner is replete with evidence of material suppression of fact and fraud perpetrated on him, which included amongst other, the respondent's living in adultery with S.S. Roy in her maidenhood. The respondent became pregnant and the pregnancy terminated, as contended, affords the impregnable claim of the petitioner entitling him to a decree. According to him, both of them, since lived admittedly under the same roof, is a piece of weighty evidence to prove adultery which the learned Court below failed to consider. The concealment of relationship by the respondent after the marriage and the termination of pregnancy before marriage constituted fraud. She was saddled with an obligation to disclose his past relationship with S.S. Roy to him. The suppression or concealment of her maiden life brings the case of the petitioner with the wing of fraud by its enlarged concept after amendment effected in 1976. His consent was procured by perpetrating fraud and fear psychosis.

9. Mr. Bhattacharyya is sought to have taken support from the evidence surrounding the solemnisation of marriage, cost of operation borne by S.S. Roy for her termination of pregnancy and the post marital conduct of the respondent. The above, if considered in conjunction with each other or in isolation, according to him, is a glaring evidence of material suppression of fact constituting ground to secure the desired objective.

10. Mr. Bhattacharyya by way of substantiation of the petitioner's claim has studiously canvassed that S.S. Roy drove away his wife, son and daughter which leads to an irresistible conclusion of the respondent's living in adultery with S.S. Roy, the facts so preciously nourished by her without any exposure, the chief object of which is to keep the petitioner at bay.

11. He has taken us through the evidence of the parties, apart from the pleadings, to prove the claim of the petitioner as genuine and to forestall the allegations of the respondent aimed at the petitioner.

12. In rebutting the contention, Dr. Mondal has laid much stress that the allegation of fraud and pregnancy is a rumour afloat in the air. It has been exaggerated to snatch a decree. Not to speak of fraud in matrimonial proceedings, it must be proved beyond reasonable doubt in other civil proceedings as well. He was a victim of fraud before marriage of which Tapan, R.W. 3, was the main architect, as contended, does not stand to have been proved.

13. The evidence of P.W. 1, according to Dr. Mondal, does not suggest even remotely that the petitioner ever made any enquiry about the bride before marriage. On the contrary, it has been assiduously canvassed by Dr. Mondal that the

petitioner's visit to the residence of Rabin Chatterjee, the husband of the eldest sister of the petitioner was not few and far between. To disarm the allegations of fraud, premarital pregnancy and the operation following, Dr. Mondal has taken us through the countless lanes of the evidence of the parties. The evidence of the P.W.s has ridiculed the claim of material suppression of fact, fraud, premarital pregnancy and the operation. The above, according to Dr. Mondal, is founded on slippery foundation.

14. To inspire confidence, Dr. Mondal has referred to the evidence of P.W. 2 Anil who was constrained to admit that it was a negotiated marriage and made with a bid to rescue him from seclusion and loneliness. Requests formed part of it.

The evidence of P.W. 3 Ratan & P.W. 4 Bijoy is in tune with the evidence of P.W. 2 Anil. The above explodes the plea of fraud, inducement and fear psychosis.

15. Dr. Mondal in amplifying his contention has strongly urged that the case of the petitioner *stricto sensu* proceeded on the anvil of her being pregnant before marriage followed by abdominal surgery with intent to cause disappearance of the evidence of pregnancy during maidenhood. The untarnished documentary evidence on record Exhibits "1, B, & B/2" express the infirmity of the allegation of her termination of pregnancy. She underwent a surgery for removal of stones from her Gallbladder in 1976. Therefore, falsehood cannot dovetail with the fact.

16. Dr. Mondal in negation of the claim of Mr. Bhattacharyya about fraud and premarital termination of pregnancy has canvassed that P.W. 1, the petitioner has held back truth with an avowed object of getting a decree from the Court. He has twisted the fact to achieve his goal. But evidence of P.W. 1 is the last nail on the coffin when he says that only in October, 1992, he discovered the fraud when he wanted to have sexual intercourse with her. But the uncontroverted evidence of consummation of marriage expels the claim of discovery of fraud in October, 1992.

17. Mr. Bhattacharyya has waxed eloquent as it proceeds from the first limb of his submission that Section 17 of the Contract Act, 1872, could be taken aid of as the respondent was under an obligation to speak to her husband about her premarital life. The silence and non-disclosure, in view of amendment of Section 12(1)(c) of the Hindu Marriage Act, 1955 for the expressions, "or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent" have widened the scope of fraud. The non-disclosure and suppression of past life during maidenhood to her husband soon after the marriage or any time subsequent thereto, as argued, verges on the amendment of Section 12(1)(c) of the H.M. Act. To examine the viability of the argument, we have examined the core of Section 12(1)(c) of the H.M. Act, 1955, alongwith Section 17 of the Indian Contract Act, 1872. On perusal, we are of the view, that Section 12(1)(c) of the H.M. Act does not deal with fraud in a general way nor deals with every misrepresentation nor concealment, the object of which may be fraudulent. We have made a witch hunting of the pleadings

and the evidence to examine the potentiality of the petitioner's claim. But there is no slender material which could answer his claim. In the premise, we cannot but hold that they are mutually exclusive of each other and operate in difficult fields.

18. In the background of the evidence, there was no scope for perpetrating fraud. The allegation of premarital pregnancy and termination is a canard and his living with S.S. Roy for the evidence disclosed was not insalubrious. In this view of the case, further enquiry is unnecessary.

19. Realising the futility and the frailty of his arguments, Mr. Bhattacharyya tried to call into aid the allegations of adultery with Kanchan by the petitioner since disproved, the Court cannot take any oblique view but to pass a decree for cruelty perpetrated on him.

20. To fortify his claim reliance is placed by Mr. Bhattacharyya on [Srinivas Ram Kumar Vs. Mahabir Prasad and Others](#), . It was a suit for specific performance of contract and a sum of Rs. 30,000/-and odd was paid in earnest. The defendants took the\* plea of loan carrying interest. The Court decreed the suit on the case the defendants made.

21. But where, as here, the case when falls on a different premises, the relief as claimed by the petitioner on the allegation of adultery of the husband with another woman does not constitute any ground for relief to the petitioner. It is a counterblast against blasphemy and nothing more. The allegation of the respondent cannot be evaluated ia isolation of the petitioner's accusation. The claim of cruelty meted out to him by the respondent is axed, thus.

22. Mr. Bhattacharyya has broached an important point of law to tone up his argument. According to him there was an apparent error of law for making observation by the learned Court below :

"the respondent has also impugned illicit relation between the petitioner-husband and her mad-servant, Kanchan. If the allegation is false, it may be a ground for divorce but within the frame of the instant suit, these facts are not relevant".

23. The above observation of the learned Court below according to Bhattacharyya is a fatal flaw to the judgment and decree. The learned Court below completely over-looking the provision of law, dismissed the claim of the petitioner as a decree for cruelty ought to have been passed on the basis of unfounded allegations dwelling on adultery of which the wife respondent was the authoress.

24. In amplifying his claim, he has contended that the result of the dismissal of the suit on this count is to drive the petitioner to a second round of litigation. The argument at the first flush seems to be attractive but it looses its sting when considered with the tangible materials on record. The reason indicated by the learned Court below, in our view, perhaps proceeded on the footing that the allegation of adultery canvassed by the wife-respondent was not an independent

allegation and the same could hardly be dissociated from the reliefs claimed by the petitioner. The same, according to us, was introduced by way of defence against the diabolic allegation of unchastity when levelled against her. It was a mere attempt of her to catch the straw before drowning. Neither there is any confusion nor any hostility indulged in by the learned Court below for the observations so made. In our view, he did not ignore the statutory provision. The petitioner since spurred him into this kind of activity ought to have taken care of others mind before commencement of the litigation. In the background of the above, the observation made by the learned Court below does not seem to be incongruous. There is another aspect of the argument which cannot be lost sight of. If the Court is to act on the contention of Mr. Bhattacharyya, the Marriage Act being a social piece of legislation will pale into insignificance, as the marital bond could very often be blown off even for minor wear and tear in marital life. The object of the act will, therefore, fail to attain its goal and the Court cannot be a party to scrap the marriage tie, in particular, when the allegations of the petitioner are not sustained and the attempt made by the petitioner to seek relief on the basis of unfounded allegations of the other spouse made against the petitioner. The Court will decide the lis by the pleadings of the parties and evidence both oral and documentary. To explore the relief under the shade of cruelty for the unholy allegations made by the respondent against the petitioner, the amendment of the plaint was the only avenue open to him. The petitioner in complete disregard of his own case cannot rely on the averments in the written statement alone. His own allegations against the respondent prove to have been worn out thin, in the backdrop of which, he cannot fall on the averments of the written statement to capitalise his own goal or to make profit out of it.

Mr. Bhattacharyya has made an endeavour to make a mountain out of a mole hill for non-examination of S.S. Roy. An adverse interference, therefore, can be drawn. If we are to accept the contention of Mr. Bhattacharyya, he is also not relieved of his obligation to examine Kanchan. It is notorious that the petitioner had a cook named Kanchan who stayed in the residence of the petitioner. His mother and brother had a different place of abode. According to Dr. Mondal, it is alarming which the petitioner could not justify.

25. In the context, non-examination is not the meat of the matter. The Court is to consider the tangibility of the rival cases on the basis of the evidence produced and not on non-production of evidence. We cannot accept the contention either and reject it forthwith.

26. Mr. Bhattacharyya has next relied on *Dhanapati Dutta v. Gita Dutta and Ors.* 1987(2) Cal. L.J. 41. The facts of the case of the ruling under reference do not fall on the facts and circumstances of the case at hand. Their Lordships passed a decree for ejectment when the defendant admitted substantially the plaint allegation. We have indicated above, that the allegation of adultery given publicity by the respondent in her written statement cannot constitute any cruelty as it sprang up from the

unwholesome allegation of unchastity against the wife which was given currency by the petitioner for matrimonial relief. Therefore, this contention of Mr. Bhattacharyya does not survive and fails.

27. Dr. Mondal has put forward an argument that the expression used in Section 12(1)(d) that "the respondent was at the time of marriage pregnant by some person other than the petitioner", in the backdrop of the evidence of the petitioner and his witness has jettisoned the claim.

28. The case of the petitioner, as contended by Dr. Mondal, dwelt on suspicion than proof disentitling him to any relief u/s 12(1)(d).

29. The cost of the operation even if borne by S.S. Roy in 1976, as argued by Dr. Mondal, is no ground to hold that she was living in adultery as the relations used to look after her well being on the demise of her brother with whom not only the respondent but also her sisters and S.S. Roy used to put up in the same premises. She gave an immaculate account in her evidence of premarital residence. The above found its way in the evidence without any demur from any quarter. The uncontradicted evidence of the respondent descends as a Boomerang on the case of the petitioner. It, therefore, has put a lid on the claim of the petitioner.

30. There is also another very lone but vital and poignant fact which should not be lost sight of or drowned, if the attending facts and circumstances are weighed. It stands proved that the petitioner has two other sisters, one of whom was given in marriage to Rabin Chatterjee in whose residence the marriage was solemnised.

31. In the light of the above, in absence of any evidence to the contrary, it could be legitimately inferred that at least the petitioner's sisters would never tolerate her sister's leading a loose life before her marriage with S.S. Roy. She had none to look after her for the marriage of her two elder sisters and her brother, since passed away. She was left forlorn. The elder sisters would certainly raise the angers of protest about her mode of leading a reprehensible life.

32. Further, it looms large from the evidence of the petitioner that he had had no knowledge, if the wife and children of S.S. Roy were living in one room with him. This shows that his averments that the wife and children were driven away by S.S. Roy suffers from pollution. The petitioner has given an account of S.S. Roy's wife and children about which he has no knowledge. It was a mere allegation on the paper without anything more.

33. For the foregoing reasons and also in the background of the pleadings, we hold that the petitioner has given a false colouring to his case.

34. Thus, taking into account the lock, stock and barrel we hold that there is nothing to interfere with the judgment and decree passed by the learned Court below and, accordingly, we dismiss the Appeal. But considering the circumstances, we award no costs.

Samir Kumar Mookherjee, J.

35. I respectfully agree with the conclusions of my learned Brother R. Bhattacharyya, J. The facts have been well summarized by him in his foregoing judgment and there is very little scope for me to add to it. The conclusions, reached by him, on application of relevant legal provisions, to such facts are unexceptionable, I would, however, like to express the reasons, which have weighed with me, in accepting the legality of the said conclusions from my own stand point.

36. I would like to state, before I proceed to express my view upon analysis of the relevant statutory provisions, that the plaint or the petition filed before the Trial Court suffers from extreme vagueness, rendering it difficult for the Court to find out the grounds on which the relief had been asked for by the husband.

37. Section 12 of the Hindu Marriage Act embodies grounds on which a marriage can be declared void and annulled by a decree of nullity. Clause (c) of Sub-section (1) of the said Section provides for such annulment, when the consent of the petitioner is obtained by force or fraud under circumstances mentioned in the said Clause. Clause (d), thereof again, provides for such relief, if, at the time of marriage, the respondent is found to be pregnant by some person other than the petitioner.

38. Upon consideration of the submission made by the contesting parties and the materials on record it appears to us that the petitioner claimed annulment of the marriage, so far as Clause (c) is concerned, on the ground of fraud by suppression of premarital pregnancy of the respondent by one S.S. Roy. A careful reading of the said Clause (c) clearly indicates that the expression "fraud" used in the said Clause has a meaning in which such term is understood in legal parlance. Material fact or circumstance, concerning the respondent, which if known to the petitioner, might have dissuaded him from consenting to the marriage with the respondent.

39. So far as Clause (d) abovementioned is concerned the pregnancy of the respondent must have been in existence at the time of the marriage, ruling out thereby a pregnancy, which did not exist at such relevant time.

40. Sections 20 and 21 of the Act lay down what a petition should contain and attract the provisions of the CPC relating to the verification of the plaint to such petitions. It can, therefore, be said that in case of petition on the ground of fraud, the requirements of Order 6, Rule 4 must have to be fulfilled. In the instant case, from a reading of the petition, it appears that the fraud alleged consisted of suppression of previous pregnancy of the respondent from the petitioner. There is no material to show the alleged premarital pregnancy of the respondent. Such pregnancy not having been established by evidence, the allegation of fraud by suppression of the said suspected pregnancy cannot be effective as a ground for annulment of marriage. The other ground of respondent's pregnancy in terms of Clause (d) of Sub-section (1) of Section 12, as already stated herein-above, not having been proved by evidence, but being merely a product of suspicion, cannot be said to



constitute a ground in terms of the said Clause.

41. The conclusion of my learned Brother to uphold the judgment under Appeal is, therefore, fully justified.