

## Nand Kishore Agrawal Vs Smt. Meena Agrawal and Another

**Court:** Chhattisgarh High Court

**Date of Decision:** April 30, 2007

**Acts Referred:** Hindu Marriage Act, 1955 " Section 12, 12(1), 12(1), 12(1)(b), 12(1)(c)

**Citation:** (2007) 2 MPJR 76

**Hon'ble Judges:** Dilip Raosaheb Deshmukh, J

**Bench:** Division Bench

**Advocate:** H.S. Patel, for the Appellant; Pankaj Agrawal, for the Respondent

**Final Decision:** Dismissed

### Judgement

Dilip Raosaheb Deshmukh, J.

The petitioner-husband is aggrieved by the judgment dated 8.11.1995 in Civil Suit No. 55-A of 1992 by 3rd Additional District Judge, Raipur,

whereby the application u/s 12 (1) (b) and (c) of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act), was dismissed.

It is not disputed that the marriage between the petitioner and the respondent was solemnized on 20.06.1991.

The petition u/s 12 (1) (b) and (c) of the Act for annulment of the marriage was filed on the ground that on 21st June 1991 during cohabitation, the

respondent was wholly unresponsive, cold and made nauseating gestures and lay like a corpse. Thereafter, the respondent used to be silent and

used to make smiling gestures for no reason, although she remained calm and quite when asked about it. Her thinking was incoherent and behavior

unusual. It was noticed that she used to mutter that either she is goddess of purity ravaged by a demon or was kindled with spirit which would

shatter her life. She always appeared to be sleepless and many a times showed emotional outburst either by weeping or by thumping of feet and

hands etc., intending to show that she hated the petitioner. She used to sit in the toilet for hours. On 25.06.1991 she started muttering that she

should be called Chandramukhi and that problems would be falling on the house. The petitioner intimated the condition of the respondents to her

father Shri Bankelal Agrawal at Bilaspur who was an Income Tax and Sales Tax Advocate. On 26th June, 1991, the respondent's mother and

brother took her to Bilaspur saying that similar symptoms were revealed in 1985 for which the respondent was treated by doctors. The petitioner

also learnt that on 2.7.1991, the respondent had been admitted in the hospital of Dr. Prakash Narayan Shukla. On enquiry, Dr. Shukla told him

that the deceased would require regular treatment. The respondent got discharged from the hospital on 10.07.1991. On 2.8.1991, upon receiving

a letter the petitioner went to Bilaspur and found that the respondent was being treated by a ""Baiga"" who said that some evil spirit had entered her

body. On 11.11.1991, the petitioner went to Raipur and met Dr. Prakash Narayan Shukla who informed him that the respondent was being

treated for a serious mental disorder. The father of the respondent intimated the petitioner vide letter dated 20.12.1991 that he had got the

respondent examined by Dr. Rakesh Agrawal, an expert in the field of Neurology and Psychiatry. However, having already learnt from Dr.

Prakash Narayan Shukla that the respondent was suffering from Paranoid Schizophrenia, the petitioner did not visit Raipur.

It was alleged that the respondent and her father did not disclose before marriage that the respondent was undergoing treatment for a serious

mental disorder. On the other hand, they assured him that the respondent is a very simple and normal person. In this manner, fraud was practiced

on the petitioner. The consent of the petitioner was thus obtained by fraud. On these premises, the petitioner prayed that the marriage between the

petitioner and the respondent solemnized on 20.06.1991 at Bhatapara, District Raipur, be annulled by a decree of nullity.

The respondent denied the allegations in toto and pleaded that she was a well educated lady of sound health. Since the petitioner had become over

age and was not getting a suitable match, his family members had arranged the petitioner's marriage after seeing the respondent and talking to her

family members. No information was concealed from the relatives of the petitioner. The respondent had a degree of Master of Arts and there was

no question of concealment of any material fact before marriage with the petitioner. It was also alleged that since the petitioner was not satisfied

with the dowry given by the father of the respondent, he had left her at her maternal home on 27.06.1991 i.e. seven days after marriage. The

behavior of the respondent was completely normal and she fully cooperated in cohabitation on the wedding night with the petitioner. The

allegations leveled against the respondent relating to the disease of Schizophrenia and mental disorder, were completely false. The respondent was

not treated by Dr. Prakash Narayan Shukla for any mental disorder but was treated for an ailment which was the result of some witchcraft. On

these premises, it was urged that the ground u/s 12 (1) (b) and (c) of the Act was not made out, and therefore, the petition was liable to be

dismissed.

Learned Additional District Judge, Raipur, upon appreciation of evidence oral as well as documentary, recorded a finding that it was possible that

the respondent was suffering from Schizophrenia, but placing reliance on Ramnarayan Gupta vs. Smt. Rameshwari Gupta, AIR 1988 SC 207, held

that it was not proved that the respondent was suffering from a disease to such an extent so as to be unfit to marry and the procreate children. It

also held that the petitioner had failed to prove that fraud was practiced in obtaining the petitioner's consent for the marriage.

Shri H.S. Patel, learned counsel for the appellant/petitioner assailed the impugned judgment on the ground that the evidence led by the petitioner

oral as well as documentary clearly revealed that the respondent was suffering from a serious mental disorder called Schizophrenia and was taking

treatment from Dr. Prakash Narayan Shukla, A.W.-1 (Certificate, Ex.P-1). It was also contended that the letter Ex.P-2 written by Shri B.L.

Agrawal to the petitioner clearly showed that the respondent was being treated by Dr. Rakesh Agrawal, an expert in Neurology and Psychiatry.

The petitioner had examined himself and also led the evidence of his brothers Amirchand Agrawal, A.W.-3 and Kamal Kishore Agrawal, A.W.-4

to prove the unusual behavior and conduct of the respondent. It was argued that before solemnization of the marriage of the respondent with the

petitioner, Shri B.L.Agrawal never informed the petitioner that the respondent was undertaking treatment for a serious mental disorder called

Schizophrenia. It was urged that in this manner, the petitioner had proved satisfactorily the ground u/s 12(1) (b) and (c) of the Act, and therefore,

the judgment and decree of the lower Court was liable to be set aside and the marriage between the parties ought to have been annulled by a

decree of nullity. Reliance was placed on Naveen Kohli Vs. Neelu Kohli, , Vinita Saxena Vs. Pankaj Pandit, , Praveen Mehta Vs. Inderjit Mehta,

and Tarlochan Singh Vs. Jit Kaur,

On the other hand, Shri Pankaj Agrawal, learned counsel for the respondents urged that there was absolutely no material to show that the consent

of the petitioner for his marriage with the respondent was obtained by fraud, and therefore, the ground u/s 12 (1)(c) of the Act was not made out.

So far as the ground u/s 12 (1) (b) of the Act is concerned, it was urged that there was no material on record to show that the respondent was

suffering from Schizophrenia on or before the date of marriage. The certificate of Dr. Prakash Narayan Agrawal Ex.P.I did not show that the

ailment suffered by the respondent was of such a nature so as to render her unfit for marriage and the procreation of children. The respondents was

an educated lady and had appeared before the trial Court during a period of three years and the trial Court had noted in paragraph 8 that at any

time during appearance before the Court or while testifying the respondent had not shown any symptoms of suffering from a mental disorder like

Schizophrenia. It was also urged that the testimony of the petitioner revealed that he had cohabitated with the respondent on 20.06.1991 itself. If

during the subsequent years, the respondent had shown some symptoms of illness for which she was treated, it would not constitute a ground for

annulling the marriage by a decree of nullity u/s 12 (1) (b) of the Act.

Having heard rival contentions, I have perused the record, Section 12 of the Act deals with voidable marriages and contains ground under which

any marriage solemnized, whether before or after the commencement of the Act, shall be voidable and may be annulled by a decree of nullity.

Grounds (b) and (c) of Section 12 read as under:

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:

(b) that the marriage is in contravention of the conditions specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where 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 circumstances concerning the respondent]; or

In order to obtain a decree of nullity on the ground mentioned in sub-clause (b), the petitioner is required to prove that the marriage is in

contravention of the condition specified in clause (ii) of Section 5 of the Act.

Section 5 of the Act read as under:

5. Conditions 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 of 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.

Section 5 of the Act provides that a marriage may be solemnized between any two Hindus if the conditions specified in the section are fulfilled.

Amongst the other conditions stated therein sub-section (ii) it is laid down that at the time of marriage neither party is incapable of giving valid

consent to it in consequence of unsoundness of mind or though capable of giving a valid consent, has been suffering from mental disorder of such a

kind or to such an extent as to unfit for marriage and the procreation of children. The clause lays down that a Hindu marriage shall be voidable and

may be annulled if the marriage is in contravention of the condition specified in Clause (ii) of S. 5. On a plain reading of the said provision it is

manifest that the conditions prescribed in that Section, if established, disentitles the party to a valid marriage. The marriage is not per se void but

voidable under the clause. Such conditions in the very nature of things call for strict standard of proof.

The onus of proof is very heavy on the party who approaches the Court for annulling a marriage already solemnized.

An objection to a marriage on the ground of mental incapacity must depend on a question of degree of the defect in order to rebut the validity of a

marriage which has in fact taken place. The onus of bringing a case under this clause lies heavily on the petitioner who seeks annulment of the

marriage on the ground of unsoundness of mind or mental disorder of the other spouse. The Court is required to examine the matter with all

possible care and anxiety. Thus, in order to prove the ground u/s 12 (1) (b) of the Act, heavy onus is on the petitioner to prove that at the time of

solemnization of marriage, the respondent was suffering from a mental disorder of such a kind or to such an extent as to be unfit for marriage and

the procreation of the children.

The Apex Court has, in similar situation in *R. Lakshmi Narayan Vs. Santhi*, held as under:

...It is not the case of the appellant husband that the respondent wife was incapable of giving valid consent to the marriage in consequence of

unsoundness of mind at the time of marriage. To draw an inference that the respondent has been suffering from mental disorder merely from the

fact that the spouses had no cohabitation for a short period of about a month, is neither reasonable nor permissible. To brand the wife as unfit for

marriage and procreation of children on account of the mental disorder it needs to be established that the ailment suffered by her is of such a kind

or such an extent that it is impossible for her to lead a normal married life. This is the requirement of the law as appears on a fair reading of the

statutory provisions. Merely giving a finding that the respondent wife was suffering from some mental disorder and she did not have cohabitation

with her husband during the period they stayed together is not sufficient to comply with the condition prescribed under S. 5(ii) (b) of the Act.

Thus, merely showing that the respondent was undertaking treatment from Dr. Prakash Narayan Shukla for some mental disorder would not

constitute the ground u/s 12 (1) (b) of the Act. It has to be proved that the mental disorder, if any, was of such a nature or to such an extent that it

rendered the respondent unfit for the marriage or the procreation of children.

The testimony of the petitioner shows that he had sex with the respondent on the night on 21.6.1991. It has also to be noticed that the

appellant/petitioner had admitted before the lower Court that after cohabiting with his wife on 21.06.1991 she was menstruating from the next day.

This also explains non-cohabitation by the wife for the period during menstruation.

Dr. Prakash Narayan Shukla A.W.I was examined by the petitioner. He could not identify the respondent as the person who had undergone

treatment under him. The certificate Ex.P.1 is dated 11.11.1991 and shows that the respondent had undergone treatment for a mental disorder

called (sic) (Paranoid Schizophrenia). Dr. Prakesh Naryan Shukla stated in paragraph 2 that he did not remember the symptoms that he found on

the respondent. In paragraph 3, he stated that he would not remember as to how did the respondent behave during treatment. However, he was

positive in saying that the respondent had shown much improvement at the time of discharge i.e. 10th July 1991. there is nothing in his testimony to

show that the disease suffered by the respondent was of such a nature so as to render her unfit for marriage or for the procreation of the children.

The petition was filed on 5.5.1992 and the respondent used to remain present on most of the hearings including for her evidence. The learned

lower Court had observed that during such period it never noticed any such symptom in the respondent which indicated that the respondent was

differing from a serious mental disorder. The learned lower Court merely recorded a possibility that the respondent might have suffered from

Schizophrenia. The letters written by the respondent to the petitioner dated 15.07.1991 Ex.P.4. and 8.9.1991 Ex.P.6. also rule out the possibility

that the respondent suffered from any mental disorder. The letters reveal that they were written by a person of sound mental health. In the absence

of any evidence whatsoever to prove that the respondent was suffering from mental disorder of such a kind or to such an extent so as to be unfit

for the marriage or the procreation of the children, the petitioner had utterly failed to prove the ground u/s 12 (1) (b) of the Act.

So far as the ground u/s 12 (1) (c) of the Act is concerned, the petitioner admitted in paragraph 17 that he had consented to the marriage without

seeing the respondent merely on the basis of the information given by his elder brother regarding the educational qualification of the respondent.

Amirchand Agrawal A.W. 3 also stated that he had settled the marriage on the basis of information given by Shri B.L. Agrawal that the respondent

was well educated and efficient in household activities and behaviour. There is thus nothing to show that the consent of the petitioner was obtained

by fraud as to nature of ceremony or as to the any material fact or circumstances concerning the respondent. The petitioner also admitted that

during the period when the respondent was living with him, he never showed the respondent to any doctor because he felt that the respondent was

newly married and was therefore showing unusual behavior. Had the respondent suffered from a serious mental disorder or revealed symptoms, as

narrated by the petitioner, in the petition as also in his evidence, the petitioner would have shown her to a doctor for confirming the nature of her

ailment. The petitioner further admitted in paragraph 20 that excepting the certificate of Sr. Prakash Narayan Shukla Ex. P.I. he had no

documentary evidence that the respondent was suffering from a serious disorder prior to the marriage. The finding recorded by the learned lower

Court on the basis of a mere possibility that the respondent had suffered from Schizophrenia is a mere guess-work of the lower Court. No positive

finding has been recorded. Much importance has to be given to the demeanor and the behavior of the respondent noticed by the Court in such

matrimonial matters. Where the Court has observed that during a long span of the hearings as also during evidence, it did not notice any such

symptom which would be indicative that the respondent was suffering from any serious mental disorder, much weight had to be given to such an

observation of the lower Court.

Having thus considered the arguments advanced by the learned counsel for the parties and perused record. I am of the considered opinion that the

appellant-petitioner has miserably failed to prove the ground u/s 12 (1) (b) and (c) of the Act for annulment of the marriage.

The appeal being devoid of merit is dismissed.