

(2011) 05 SC CK 0110

In the Supreme Court Of India

Case No : Civil Appeal No. 4278 of 2011 (Arising out of S.L.P. (C) No. 1833 of 2010)

FLG. Officer Rajiv Gakhar

APPELLANT

Vs

Ms. Bhavana @ Sahar Wasif

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 12, 5, 8
Penal Code, 1860 (IPC) — Section 406, 419, 420

Citation : (2011) 2 ShimLC 299

Hon'ble Judges : P. Sathasivam, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Anitha Shenoy, for the Appellant; Kamal Mohan Gupta, for the Respondent

Final Decision : Disposed Of

Judgement

P. Sathasivam, J.—Leave granted.

2. This appeal is directed against the final judgment and order dated 01.09.2009 passed by the High Court of Punjab and Haryana at Chandigarh in FAO No. 72-M of 2006 (O and M) whereby the High Court allowed the appeal filed by the Respondent herein and set aside the judgment and decree passed by the Additional District Judge-I, Faridabad in favour of the Appellant herein.

3. Brief facts:

(a) The Appellant is a pilot with the Indian Air Force and was posted as Pilot Officer at Hakimpet (Hyderabad) in April, 1997. In the last week of April, 1997, the Appellant was traveling by train from Delhi to Hyderabad wherein the Respondent also happened to be traveling and at which time she introduced herself as Bhavana and claimed to be the Vice Principal of St. Peters Convent, Vikas Puri, New Delhi and a journalist. During the conversation, Respondent claimed to be a spinster, aged 27 years and disclosed that she was traveling to

Hyderabad in connection with a book she was writing on Anglo Indians. Much later the Appellant learnt that she had visited Hyderabad for appearing in her B.A. examination from Osmania University.

(b) Subsequently, both of them met at Delhi in the first week of July, 1997 and March, 1998 and ultimately the Respondent tricked the Appellant into marrying her on 28.11.1999 at Arya Samaj Mandir, Rathkhana, Bikaner, Rajasthan as per Hindu rites and ceremonies. The Respondent also gave a written affidavit to the Arya Samaj Mandir that she was a Hindu, a spinster and was never married before.

(c) In January, 2000, the Respondent's father met the Appellant at Sona Rupa Restaurant in Nehru Place, New Delhi and it emerged during the conversation that the Respondent was a Muslim and her actual name was Sahar Wasif and her previous marriage had taken place according to Muslim Law with a Muslim-Wasif Khalil after her conversion to Islam and had two children out of the said wedlock, namely, daughter Heena (13 years) and son Shaz (11 years). The Appellant was totally shocked and devastated to hear all this. On 22.07.2000, an FIR being 690/2000 was registered against the Respondent and her brother under Sections 406, 419 and 420 of the Indian Penal Code (in short 'the Indian Penal Code') at the Kalkaji Police Station, New Delhi.

(d) The Appellant, thereafter, filed Suit No. 87 of 2000 in the Court of Addl. District Judge-I, Faridabad, under Sections 5 and 12 of the Hindu Marriage Act, 1955 (in short 'the Act') seeking dissolution of marriage solemnized on 28.11.1999 with the Respondent at Arya Samaj Mandir, Bikaner. Before the trial Court, the Appellant narrated as to how he was deceived and cheated by the Respondent and also claimed that the parties to the petition have been living separately from the date of marriage itself and have had no cohabitation and nor was there any consummation for which reason no issue was born out of the wedlock.

(e) The trial Court, by order dated 07.03.2006, declared the marriage between the parties to the petition a nullity and also ordered the Appellant to pay Rs. 2,000/- per month as permanent alimony to the Respondent towards her maintenance.

(f) Aggrieved by the said order, the Respondent preferred an appeal before the High Court of Punjab and Haryana whereby the learned Single Judge vide his order dated 01.09.2009 allowed the appeal of the Respondent and set aside the judgment and decree passed by the Trial Court. Aggrieved by the said order, the Appellant has preferred this appeal by way of special leave before this Court.

4. Heard Mr. Sanjay Parikh, Learned Counsel for the Appellant-husband and Mr. P.N. Misra, learned senior Counsel for the Respondent-wife.

5. It is the grievance of the Appellant that the Respondent by using emotional coercion, impersonation, misrepresentations, fraud and cheating tricked the

Appellant to marry her on 28.11.1999 at Arya Samaj Mandir, Rathkhana, Bikaner. It is also his claim that both of them married as per Hindu rites and ceremonies. The Respondent also gave a written affidavit to the Arya Samaj for the performance of the marriage and in that affidavit she claimed that she was a Hindu, a spinster and was not married before. It is also his claim that after marriage, during interaction with her father and relatives, he came to know that the Respondent's actual name was Sahar Wasif and that she had converted to Islam and was married to a muslim, she had 2 children out of her previous wedlock, namely, Heena (13 years) and Shaz (11 years). Though the Respondent has denied the claim of the Appellant, the Court of the first instance, namely, Additional Sessions Judge accepted the case of the Appellant and declared the marriage between the Appellant and the Respondent a nullity and directed the Appellant to pay a sum of Rs. 2,000/- per month as permanent alimony to the Respondent towards her maintenance. When the said order was challenged by the Respondent-wife, the High Court, by impugned judgment, allowed her appeal and dismissed the petition filed by the Appellant-husband.

6. Learned Counsel for the Appellant by drawing our attention to various factual details and the findings arrived at by the trial Court submitted that the High Court committed an error in dismissing the husband's petition to declare the marriage as nullity. He also relied on decisions of this Court in *Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another*, *M.M. Malhotra Vs. Union of India (UOI) and Others*, and *Gullipilli Sowria Raj Vs. Bandaru Pavani @ Gullipili Pavani*, : *Gullipilli Sowria Raj Vs. Bandaru Pavani @ Gullipili Pavani*, , in support of his claim. On the other hand, learned senior Counsel for the Respondent-wife by taking us through oral and documentary evidence led in before the Courts below submitted that there was no misrepresentation or cheating on the part of the Respondent and in fact the Appellant was aware of all the details and before marriage with the Appellant, the Respondent-wife had undergone Shudhikaran Ceremonies and she was deemed to have become a Hindu after such ceremonies. In other words, according to him, the Respondent was not barred from contracting marriage with a Hindu after performing Shudhikaran.

7. Chapter IV of the Hindu Marriage Act, 1955 (in short 'the Act') deals with nullity of marriage and divorce. Section 11 says that any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, or against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of Section 5 of the Act. Section 12 speaks about voidable marriages. According to this Section, 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, a) that the marriage has not been consummated owing to the impotence of the Respondent, or b) that the marriage is in contravention of the condition specified in Clause (ii) of Section 5; or c) that the consent of the Petitioner/guardian was obtained by force

or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the Respondent; or d) that the Respondent was at the time of the marriage pregnant by some person other than the Petitioner. Chapter II deals with Hindu marriages and Section 5 prescribes conditions for a Hindu marriage. The Section begins with saying that a marriage may be solemnized between any 'two Hindus' subject to fulfilling the conditions prescribed therein. It is clear that Hindu marriage if is to be solemnized u/s 5 then both the parties of such marriage must be Hindus.

8. Though the trial Court granted decree holding that the marriage between the Appellant and the Respondent is a nullity, the materials placed by the Respondent-wife in the form of oral and documentary evidence clearly show that there was no contravention of any of the provisions, more particularly, Section 5 of the Act. The Respondent was examined before the trial Court as RW1. In her lengthy statement, she explained all the details including the fact that how she converted to Islam to marry a muslim and after divorce, by performing Shudhikaran ceremonies, she became a full fledged Hindu and there is no bar in marrying Hindu as per Hindu rites and ceremonies. She also explained that the Appellant was aware of all these details and with full knowledge and consent, marriage of the Appellant and the Respondent was performed as per Hindu rites and ceremonies. Mr. P.N. Misra, took us through the entire evidence of RW1 in order to substantiate the above statement. In her evidence, she explained in detail that her marriage with Wasif Khalil was a love marriage wherein her parents had also consented. She further deposed that she converted to Muslim religion only at the time of marriage with Wasif Khalil which was solemnized in Mayur Vihar, Delhi in a Masjid. At the time of marriage, parents of both the parties to marriage were present. She also explained that at the time when she had obtained divorce from Wasif by his saying Talaq three times in March, 1995, her younger brother was present. She also admitted that she was not having any documentary evidence for the same. She further explained that after divorce with her Muslim husband, she had changed her name from Sahar Wasif to Bhavana which was her original name. Immediately after the said divorce, according to her, she had started using her original name Bhavana and she had undergone Shudhikaran ceremonies for conversion to Hinduism just after her divorce from her previous muslim husband.

9. In support of the stand taken by Respondent-wife as RW1, one K.V. Krishnayya, aged about 60 years, resident of Ram Nagar, Market Lane, Hyderabad was examined as RW2 by way of an affidavit. He explained that the Respondent-Bhavana came to his house in the company of his daughter K. Aparna in the month of April 1997. On one occasion, he explained that both Rajiv Gakhar and Bhavana came to his house and on making enquiries Bhavana disclosed that she is a born Hindu but she married to a Muslim and now she is a divorcee as she was divorced by her Muslim husband by saying Talaq three times in March, 1995 and since then she again returned to her previous religion (Hindu) after obtaining the Shudhikaran ceremonies by calling a Pandit and by

chanting Mantras. She also disclosed that she is having two children from her Muslim husband. RW2 also enquired and verified the details about the Appellant-Rajiv Gakhar. In other words, according to RW2, the Appellant was also aware of all the details about RW1 including her religion even before their marriage.

10. One Babu Lal, aged about 65 years, an Astrologer/Karamkandi, resident of Sector 8, Faridabad was examined as RW4. He explained the details about the Shudhikaran ceremonies that were performed to the Respondent. According to him, it was done about 7 years ago. He explained that Shudhikaran ceremonies were performed by him on the eve of Puranmasi preceding Holi. After recollection he mentioned that it was around March, 1997. He asserted that after performance of ceremonies, she is deemed to have become a Hindu. He also denied the suggestion that pursuant to marriage of Bhavana who was earlier a Hindu with a Muslim and having two children, she could not have returned to a Hindu fold. He also asserted that Shudhikaran of Bhavana and her two children were carried out simultaneously on the same date and time and her parents were also present on this occasion.

11. Another important witness examined on the side of the Respondent is her brother Vibhu Ranjan as RW6. He explained that Bhavna Gakhar is his real elder sister and they are Brahmins/Hindu by religion and the birth name of his sister was Bhavana Sharma. He also explained that his sister first married with a Muslim boy and subsequently after Talaq, thereby her marriage with Muslim came to an end permanently forever. He also elaborated and explained that in the month of March, 1997 on the eve of Holi festival the Shudhikaran ceremonies were performed in their house through Pandit Babu Lal (RW4). He further explained that Abhishek by gangajal was done apart from chanting of Mantras necessary for Shudhikaran. Thus, according to him, Bhavana returned to her original religion, i.e, Hindu and became eligible to enter into marriage with any Hindu male.

12. The analysis of the assertion of the Respondent as RW1 and the evidence of RW2, RW4 and RW6 clearly show that the Respondent-wife established that before the marriage with the Appellant she became a full-fledged Hindu by performing Shudhikaran ceremonies in the manner and being followed by Hindu custom and all these material facts were known to the Appellant at the time of the marriage. In view of these factual details, the decisions relied on by the Learned Counsel for the Appellant are not applicable to the case on hand.

13. Mr. Parikh heavily relied on Gullipilli Sowria Raj Vs. Bandaru Pavani @ Gullipili Pavani, . The question in that decision was whether a marriage entered into by a Hindu with a Christian is valid under the provisions of the Hindu Marriage Act, 1955. After finding that the Appellant-husband therein was a Roman Catholic Christian, the marriage solemnized in accordance with Hindu customs was a nullity and its registration u/s 8 of the Act could not and/or did not validate the same. In view of the said factual scenario, as rightly observed by the High Court, the ratio in Gullipilli (supra) is not applicable to the case on hand.

14. Inasmuch as the Respondent-wife established her claim that on the date of marriage with the Appellant she was a Hindu and the same is permissible u/s 5 of the Act, we agree with the conclusion arrived at by the High Court and reject the argument of the Counsel for the Appellant.

15. In view of the above discussion and conclusion, we find no merit in the appeal. Consequently, the same is dismissed.