
(1939) 10 MAD CK 0008
In the Madras High Court

Tholpetti Koloor Kalappan Shetti's son Mondan Shetti	APPELLANT
Vs	
Ammani Nanchu Shetti's daughter Thimmi Avva and Another	RESPONDENT

Date of Decision : 13-10-1939

Acts Referred:

Citation : (1939) 50 LW 837 : (1939) 2 MLJ 882

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal arises out of a suit for maintenance. The appellant (the husband) raises the contention that his marriage with the

first plaintiff is invalid because the first plaintiff was pregnant at the time of her marriage; consequently her daughter the second plaintiff must be

deemed to be an illegitimate child.

2. The lower appellate Court has found as a fact that the first plaintiff was pregnant at the time of her marriage, that she was pregnant by the

defendant himself and that the marriage was none the less valid, the parties being Sudras. It seems to me not quite clear whether in fact the parties,

who belong to the caste known as Edanatan Shettis, are Sudras or Vaisyas, strictly speaking. But I am of opinion that this question has no bearing

on the point to be decided. The learned District Munsif propounded ""a rule, for which he quotes no authority, that one of the essential conditions of

a valid Hindu marriage is that the bride should be a virgin. The learned District Judge says that there is no objection under the Hindu law governing

Sudras to a pregnant woman marrying, quoting the well-known passage in Manu to the effect that when a man marries a woman who is pregnant,

the mala child of her womb belongs to the bridegroom and is called ""the son

received with the bride". The practice recognised in that passage is described by Mayne as now obsolete. Granting that it is no longer the practice - at any rate among the higher castes - for a pregnant woman to be married with the approval of the community and her offspring to be recognised as legitimate regardless of its paternity, it is going a long way to say that if a girl has been regularly married and it is subsequently found, that she was pregnant at the time of her marriage or was not a virgin, the marriage becomes void; and it is going still further to say that, when a man has married a girl with due formalities, he himself having had an irregular connection with that girl before marriage, he is entitled to repudiate the marriage on the ground of the lack of virginity of the bride. No authority has been quoted before me in support of the rule that a marriage by a Hindu with a girl who is not a virgin is void. It seems to me most undesirable to lay down such a rule unless it is supported by the most ample authority, for it would open the door to scandalous allegations brought by persons anxious to get rid of an unwanted wife. Still more undesirable is it to allow a husband, in defence to a suit for maintenance by a deserted wife and child, to adduce evidence that he made the bride pregnant before he married her and that therefore the marriage is void. I know of no rule of Hindu Law whereunder a marriage can be declared void merely on the ground that the bride was not a virgin at the time that she was married. I grant that the ordinary practice is for Hindus of the higher castes to marry virgins. But if a Hindu chooses to marry a girl who is not a virgin and whom he knows not to be a virgin, he cannot, in my opinion, use this fact as a ground for subsequently treating the marriage as null and void.

3. It is suggested that a statement in the cross-examination of the plaintiffs' second witness that a pregnant woman cannot be married, might be sufficient evidence of a special custom to that effect in the particular caste. There are grave objections to this contention. Firstly, the witness himself qualifies that statement by saying that such a marriage would be valid if the pregnancy was by the future husband. Secondly, it would take much more than the isolated statement of a single witness made in cross-examination to establish a valid custom as prevailing in the caste. Thirdly, even if it be the rule that a pregnant woman cannot be married, it does not by any means follow that a marriage celebrated in contravention of this rule

would be null and void, for the doctrine of factum valet might well be called in aid.

4. The appeal is dismissed with costs.