

(1981) 01 KAR CK 0022
In the Karnataka High Court
Case No : WP. 502/81

Vatsala and Another

APPELLANT

Vs

Sub-registrar and Marriage Officer and Another

RESPONDENT

Date of Decision : 29-01-1981

Acts Referred:

Special Marriage Act, 1954 — Section 1

Citation : (1981) 1 KarLJ 294

Hon'ble Judges : G. N. Sabhahit, J

Judgement

This writ petition gives rise to a short but interesting point of law, namely, whether a foreigner can get married in India with a girl of Indian Nationality under the provisions of the Special Marriage Act, 1954 (hereinafter referred to as the Act), This is a matter of first impression so far as this court is concerned and the counsel were unable to present before me any precedent even of any other High Court in India on this aspect.

The brief facts germane for the decision of the point at issue briefly stated are:

The first petitioner Kumari Vatsala intends to marry the second petitioner Michael Caird, who is a citizen of United Kingdom, residing in Bangalore. He is aged about 30 years. The petitioners decided to solemnize their marriage under the Act and therefore gave a notice under S. 6 of the said Act of their intention to solemnize the marriage. Notice was given on 24-11-1980. The first respondent, namely, the Sub-Registrar and Marriage Officer, received the said notice. Thereafter the first respondent addressed a letter dated 24-12-1980 to the second respondent and sent a copy of the said letter to the second petitioner. A true copy of the said letter is produced at annexure "A" in the writ petition. By that letter the first respondent opined that the provisions of Act apply only to marriage between Indian Nationals and not between foreign nationals and Indian Nationals and therefore he solicited clarification from the second respondent, namely, the Chief Registrar of Births, Deaths and Marriages, whether the marriage in question could be solemnized under the Act as the bride groom is a

foreign national. The second respondent by his letter dated 26-12-1980 wrote to the first respondent that in view of S. 4(e) of the Act, both parties should be citizens of India and domiciled in the said territories and therefore the marriage could not be solemnized under the Act. A copy of that letter was forwarded by the first respondent to the present first petitioner for information. It is produced in the writ petition at annexure "B". Thus the writ petitioners were informed that their marriage could not be solemnized under the provisions of the Act, in the circumstances. It is against that communication refusing to solemnize and register the marriage under the provisions of the aforesaid Act that the present writ petition is directed.

It is prayed in the writ petition that this Court may issue a writ of mandamus directing the first respondent to solemnize the marriage of the petitioners in accordance with the provisions of Act.

The point, therefore that arises for my consideration in this writ petition is whether the marriage can be solemnized of an Indian Citizen with a foreign national in India under the provisions of the Special Marriage Act, 1954.

My attention was invited to the Act by the learned counsel for the writ petitioners. S. 1(2) reads as under:

"It extends to the whole of India except the State of Jammu and Kashmir and applies also to citizens of India domiciled in the territories to which this Act extends who are (in the State of Jammu and Kashmir)"

He further invited my attention to S. 4 of the Act which stipulates conditions relating to solemnization of Special Marriages. It reads:

"Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled....."

Thus, the learned counsel for the petitioners invited my attention to the fact that S. 4 enables a marriage registrar to solemnize the marriage between any two persons in India notwithstanding anything to the contrary contained in any other law for the time being in force, provided the conditions mentioned therein were satisfied.

He further argued that sub-sec. (2) of S. 1 of the Act, specifically states that the Act applies also to the citizens of India domiciled in the territories to which this Act extends (who are in the State of Jammu and Kashmir), making a distinction that in India it applies to all persons in the territories to which this Act applies, but in the State of Jammu and Kashmir it is applicable only to Indian citizens He further invited my attention to S. 4(e) of the Act which reads as under:

"Where the marriage is solemnized in the State of Jammu" and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends."

That also makes it clear that a special condition that both parties should be Indian citizens applies only where this Act is made applicable to territories of Jammu and Kashmir. Thus it can be gathered from sub-sec. (2) of S. 1 of the Act and S. 4 (main part) and 4(e) of the Act, that marriages could be solemnized in India between any two persons whether both of them are Indian Nationals or one of them is a foreign national or both of them are foreign nationals.

It is a settled principle of interpretation of Statutes that wherever an ambiguity exists with regard to the intention of the legislature the preamble and statement of objects and reasons to the Act affords a key to its interpretation. In the statement of objects and reasons to the present Act in question it is stated that "the Bill revises and seeks to replace the Special Marriage Act of 1872 so as to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess....". Thus, it makes it clear the object is to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign countries, which makes very clear that in India any two persons man and woman can take advantage of solemnizing the marriage under the provisions of the Act.

Further the joint committee which considered the bill, which is published in the Gazette of India Extraordinary, Part II-Section 2, on March 26, 1954 has inter alia observed:

"It is a matter of regret that whereas extra territorial jurisdiction of a British Act, where only one of the intending spouses need be a British subject, is not only recognised by an Indian Act, but all facilities for solemnization of marriages in this country under the foreign law are being provided On the other side the Special Marriage Bill is chary of enabling an Indian citizen to solemnize his or her marriage under an Indian statute with a non-citizen abroad If it is permissible under the Bill for an Indian citizen to marry a foreigner in this country, there is no sound reason why marriage between the same persons cannot be solemnized by our Marriage Officer in a foreign country....."

As a result of these observations Foreign Marriage Act (1969) is enacted to achieve the purpose. What is relevant in the above observation is that it clearly states that the bill provides for a marriage of an Indian with a foreign national. That is also clear, as pointed out above, in the objects and reasons. Thus, I am constrained to hold that it is the clear intention of the legislature as expressed in S. 4 of the Act that any two persons in India, where one of them or both of them are foreigners or both of them are Indians can enter into a form of marriage provided under the provisions of the Act.

It is no doubt an important question how far the validity of a marriage depends upon the law of the domicile of the parties *lex loci domicilii* (ii) and how far on the law of the place where the marriage is contracted (*lex loci contractus*) and the provisions of the Act makes it clear that the form of marriage under the Act

makes it a matter Lex loci.

In the result, therefore, the writ petition is allowed and the first respondent is hereby directed to solemnize the marriage between the writ petitioners under the provisions of the Act and register the same. Issue direction forthwith. Communication as per annexure "B" is hereby quashed. So also the direction of the second respondent to first respondent not to solemnize the marriage is hereby quashed.

The learned High Court Government Advocate is permitted to file memo of appearance within four weeks.