

Before Ajay Kumar Mittal, J

SUNITA RANI,—Appellant/Petitioner

versus

PARVINDER KUMAR,—Respondent

F.A.O. No. 24-M of 2002

21st August, 2004

Hindu Marriage Act, 1955—Wife seeking annulment of marriage by making allegations of fraud and misrepresentation of facts against father of her husband—Husband failing to appear before trial Court—Wife leading ex parte evidence by examining herself and her father in order to establish her case—Trial Court brushing off their evidence holding that they are interested witnesses—Negotiations of marriage took place between father of wife and father of husband—No other person expected to come forward and support the allegations of wife—Statements of wife and her father made on oath could not have been disbelieved by trial Court merely by terming it to that of interested witnesses—Respondent's non-appearance and ignoring to defend the petition also lends a lot of credence to the allegations of wife—Appeal allowed and a decree of annulment of marriage in favour of wife passed.

Held, that it is the categorical case of the appellant that negotiations for the marriage initially took place between her father and the father of the respondent and, therefore, it was boy's father who convinced the girl's father that his son was a Graduate in Engineering and he is employed with a multinational company and his future was bright. On being assured by boy's father, it was he only who passed on these facts to his daughter and on being influenced by the same, she gave consent to the marriage. It may, thus, be noticed that it was either the girl's father or the girl herself who were influenced by the facts stated by boy's father. In these circumstances, it were only these two persons who could depose before the Court about these facts and no other person was expected to come forward and support the allegations of the appellant. Moreover, the corroborated evidence led by the appellant has gone un rebutted.

The statements of the appellant and her father made on oath could not have been disbelieved merely by terming it to be that of interested witness.

(Para 7)

Further held, that the respondent was aware of the filing of the petition by the appellant for annulment of marriage. This is not a case where the respondent had no knowledge of filing a petition against him seeking annulment of marriage with him. Had the allegations contained in the petition been totally baseless or untrue, the respondent could have come forward and controverted the same by filing a reply. The respondent's non-appearance and ignoring to defend the petition lends a lot of credence to the allegations of the appellant. It is the quality and not the quantity of evidence which is required to establish a particular fact. It has been brought in evidence produced by the appellant that the girl gave consent for marriage on the representation of the husband and his father that the husband was having an attractive job whereas in reality it was not true. This would amount to fraud or misrepresentation as to material fact which shall entitle the wife to claim annulment of marriage under Section 12 of the Act.

(Paras 8 & 9)

Gurdev Singh, Advocate, *for the appellant.*

JUDGMENT

AJAY KUMAR MITTAL, J.

(1) This appeal is directed against the judgment and decree dated 8th November, 2001 passed by the Additional District Judge, Rupnagar whereby the petition for annulment of marriage under section 12 of the Hindu Marriage Act, 1955 (for short "the Act") has been dismissed.

(2) The appellant filed a petition under section 12 of the Act for annulment of marriage by pleading that her marriage with the respondent was solemnised on 14th April, 2002 at Mohali by performing

Anand Karaj ceremony. It was pleaded that her consent for the marriage was obtained by misrepresentation of facts and by playing a fraud with her. The father of respondent before the marriage told the father of the appellant that his son, i.e. the respondent was a Graduate in Engineering and was working with a Multinational company and his future was very bright. It was also told that they owned a house at Chandigarh where the family would be ultimately shifted after the marriage and it was on these representations, the consent for marriage was given by the appellant. However, after marriage it came to be known to the appellant that neither the respondent is a Graduate in Engineering and employed with any Multi-national company nor his family owned any house at Chandigarh. Rather, after the marriage, the respondent and his family members started harassing the appellant for bringing less dowry and cash. Ultimately, the respondent and other members of his family turned out the appellant out of the matrimonial home on 5th July, 2000 and retained her jewellery, ornaments and other articles of dowry and on a complaint made by the appellant, a case F.I.R. No. 270 of 28th September, 2002 under Sections 498-A and 406 I.P.C. registered against the respondent and the members of her in-laws family.

(3) The respondent did not appear in trial Court and was proceeded *ex parte*. The appellant led her *ex parte* evidence. Her petition was, however, dismissed. This is how, she has preferred the present appeal.

(4) Before this Court as well, the respondent did not appear despite being served through publication in the Tribune.

(5) I have heard learned counsel for the appellant and have gone through the records. At the outset, it deserves to be noticed as to how the case set up by the appellant did not find favour with the trial Court and consequently resulted in dismissal of the appellant's petition. The observations of the trial court on the basis of which the petition was dismissed, are reproduced here in verbatim : —

“Except the bald statement of the petitioner and her father, who no doubt are interested witnesses, no independent

witness has been examined to show that any inducement was given on behalf of the respondent regarding his special qualification and specialised service, in order to get consent of the petitioner for the marriage. Be that as it may, the fact remains that the petitioner herself was not having any specialised qualification. Therefore, the question that the petitioner would not have married the respondent had the respondent been not Engineer and employed with Multinational company does not arise and the respondent, according to the own showing of the petitioner, is a Graduate, whereas the petitioner has not stated her qualification neither in the pleadings or at the time of evidence. Therefore, the petitioner is not expected to attach so much importance to the qualification and the earning capacity of the respondent, when she herself is a household woman and not specialised in any type of skill for getting employment. In the facts and circumstances of the case, it cannot be said that the representation, if any, as alleged by the petitioner would have been sufficient, to induce the petitioner to give her consent for the marriage. Even otherwise, the respondent admittedly was in Chandigarh and there is nothing on record to suggest that the petitioner by exercise of due care and caution could not have made enquiries regarding the qualification of the respondent and his specialised service.

In view of the above discussion, the petitioner failed to establish that she gave consent to her marriage with the respondent on account of the fraud played upon her by the respondent. The petition is accordingly dismissed with costs.”

(6) It is evident from the record that the appellant in order to establish her case herself appeared as her own witness and she also examined her father. From the observations noticed above, it is clear that the Additional District Judge has brushed off their evidence on the sole ground that they are the interested witnesses and are supposed to support the allegations contained in the petition. It is further observed by the trial Court that except the bald statements of these

two witnesses, no other independent witness has been examined. The Supreme Court in **State of Rajasthan versus Smt. Kalki and another(1)**, laid down the distinction between the 'interested' and 'related' witnesses. Relevant observations of the Supreme Court in paragraph 5A of the judgment are reproduced hereinbelow : —

“5A. As mentioned above the High Court has declined to rely on the evidence of P.W.1. on two grounds : (1) she was a “highly interested” witness because she “is the wife of the deceased” and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True it is she is the wife of the deceased but she cannot be called an ‘interested’ witness. She is related to the deceased. ‘Related’ is not equivalent to ‘interested’ witness. A witness may be called ‘interested’ only when he or she derives some benefit from the result of litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be ‘interested’. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.”

(7) The observations of the Additional District Judge, in my view, do not withstand the test of reality. It is the categorical case of the appellant that negotiations for the marriage initially took place between her father and the father of the respondent and, therefore, it was boy's father who convinced the girl's father that his son was a Graduate in Engineering and he is employed with a Multinational company and his future was bright. On being assured by boy's father, it was he only who passed on these facts to his daughter and on being influenced by the same, she gave consent to the marriage. It may thus be noticed that it was either the girl's father or the girl herself who were influenced by the facts stated by the boy's father. In these circumstances, it

(1) AIR 1981 S.C. 1390

were only these two persons who could depose before the Court about these facts and no other person was expected to come forward and support the allegations of the appellant. Moreover, the corroborated evidence led by the appellant has gone un rebutted. The statements of the appellant and her father made on oath could not have been disbelieved merely by terming it to be that of interested witness.

(8) The perusal of the judgment of the Court below shows that at one point of time, one Iqbal Singh, Advocate appeared before the Court and sought adjournment to file reply. This clearly shows that the respondent was aware of the filing of the petition by the appellant for annulment of marriage. This is not a case where the respondent had no knowledge of filing a petition against him seeking annulment of marriage with him. Had the allegations contained in the petition been totally baseless or untrue, the respondent could have come forward and controverted the same by filing a reply. The respondent's non-appearance and ignoring to defend the petition lends a lot of credence to the allegations of the appellant. It is the quality and not the quantity of evidence which is required to establish a particular fact. The appellant and her father have categorically supported the allegations contained in the petition by making their statements on oath in the Court.

(9) The father of the husband had represented to the father of the girl that the respondent is a Engineer Graduate and is employed in a Multinational company and further that they own a house in Chandigarh and further they shall shift there from the present residence. It has been brought in evidence produced by the appellant that the girl gave consent for marriage on the representation of the husband and his father that the husband was having an attractive job whereas in reality it was not true. This would amount to fraud or misrepresentation as to material fact which shall entitle the wife to claim annulment of marriage under Section 12 of the Act. A Single Judge of this Court in **Brijinder Bir Singh versus Mst. Viond alias Parminder (2)**, has held as under :—

“...Similarly the respondent did not possess the educational qualification mentioned in the advertisement and a

husband who is looking for a graduate as his wife would not have consented for the marriage if the misrepresentation had not been made. In the result, it must be held that the consent of the appellant was obtained by fraud on 1st November, 1986 when the formal engagement ceremony was held.

There is no manner of doubt that under S.12(1)(c) of the Act if the consent of the appellant was obtained by fraud as to the nature of the ceremony or as to the nature of the material fact or circumstance concerning the respondent, the marriage can be annulled. It is not necessary that consent is obtained by practicing fraud at the time of solemnization of the marriage. It is enough if it was obtained even at the earlier stage as in the present case...”

(10) A Division Bench of Allahabad High Court in **Smt. Bindu Sharma versus Ram Prakash Sharma and others (3)**, has observed as under :—

“...An educated girl has a life long aspiration and a cherished desire to marry with a suitable boy having a lucrative job providing the former a status in the society and financial security. No well educated girl would like to marry with an uneducated or with a lesser educated person wholly unable to meet out her financial requirements...”

(11) The offshoot of the above discussion is that the judgment and decree dated 8th November, 2001 of the trial Court are liable to be set aside and the same are hereby set aside. This appeal is accordingly allowed and a decree of annulment of marriage under Section 12 of the Act is passed in favour of the appellant and against the respondent. There shall be, however, no order as to costs.

R.N.R.