

Messrs Everest  
Woollen Mills  
v.  
The State of  
Punjab  
and another

Dua, J.

It is well to remember that there is no equity in a taxing statute, which the Courts are empowered to enforce, and also, that revenue is the very life-blood of a democratic welfare State of our pattern. The question of ensuring fair distribution of the burden of taxation is the patriotic privilege and sacred duty of the elected representatives of the nation, who are entrusted with this solemn obligation to be discharged faithfully, and conscientiously and who are answerable to the people for their acts of commission and omission. The Courts cannot intrude into this sphere except to enforce the constitutional mandates and to keep every one, including the State itself, within the bounds of law.

For the foregoing reasons, this petition fails and is hereby dismissed, but without costs.

Capoor, J.

S. B. CAPOOR, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before S. K. Kapur, J.

SURJIT KUMAR,—Appellant

versus

RAJ KUMARI,—Respondent

F.A.Q. (M) 108-D of 1963

1965

December, 1st.

*Hindu Marriage Act (XXV of 1955)—S. 12(1)(c)—Consent obtained by fraud—Pre-nuptial unchastity of the girl not disclosed by her relations—No enquiry made by the husband about her chastity—Whether amounts to obtaining his consent by fraud—Pre-nuptial unchastity of the girl—Whether per se a ground for annulment of marriage.*

*Held*, that if no enquiry is made by the husband, it is not the duty of the girl or her relations to inform him of her pre-nuptial unchastity. Merely representing that the girl is good or good-natured and will suit the husband without disclosing her past unchastity when no inquiry is made about this matter does not amount to obtaining his consent by fraud. As a general rule pre-nuptial unchastity of a girl *per se* is no ground for the annulment of marriage even if unknown to the husband and not disclosed to him. The consent will be said to have been obtained by fraud and will be a ground for the annulment of marriage not only if the consent is obtained by practising a fraud at the time of solemnisation of marriage but even if it was so obtained at an earlier stage.

*First Appeal from the order of the Court of Shri Des Raj Dhameja, Additional District Judge, Delhi, dated the 3rd day of May, 1963, dismissing the petition.*

SHRI FRANK ANTHONY AND O. P. SONI, ADVOCATES, for the Petitioner.

A. R. WHIG, ADVOCATE, for the Respondent.

## ORDER

KAPUR, J.—The present appeal arises out of a petition for annulment of marriage under section 12(1)(c) of the Hindu Marriage Act, 1955, by Surjit Kumar, petitioner, the husband of Raj Kumari, respondent.

Kapur, J.

The appellant's case is that at the time of betrothal it was represented to him that the girl was virgin, but after marriage it was discovered that that was not correct and, in fact, on an earlier occasion, she had become pregnant and aborted. The appellant claims that his consent was, in the circumstances, obtained by fraud. Upon the pleadings of the parties, the following two issues were framed—

- (1) Whether the consent of the petitioner to the marriage was obtained by fraud ?
- (2) Relief.

The learned Additional District Judge, by his judgment, dated 3rd May, 1963, decided that (a) the respondent was guilty of lapses in the matter of chastity before marriage to the petitioner, and (b) since neither the respondent nor her relations, who negotiated the marriage, were duty bound to disclose the unchastity of the respondent, it could not be said that any fraud had been committed on the petitioner in obtaining his consent.

In support of the plea by the appellant that the consent to marriage was obtained by fraud, reliance has been placed on his own evidence as P.W. 5 and on the evidence of Hans Raj P.W. 1 and Gokal Singh, P.W. 2. The appellant deposed that at the time of betrothal on 6th/7th October, 1960, Nanak Chand, Bhola Nath and another person came from the respondent's house and talked to the appellant and his mother about the marriage. He also said that Bhola Nath stated that the character of the respondent was good. It is relevant to mention that the illegitimate relations alleged were with Bhola Nath, who is the husband of the respondent's father's sister, and the respondent had been brought up in Bhola Nath's family ever since the death of her mother when she was only three or four years old. Hans Raj, P.W. 1 is the brother-in-law of the appellant. He spoke about Bhola Nath and another person having come to the appellant's

Surjit Kumar  
v.  
Raj Kumari  
—  
Kapur, J.

house for negotiating the marriage. He further said, "those persons also stated that the girl was gold and would suit them". Gokal Singh, P.W. 2 is also a close relation of the appellant. He also deposed about a representation having been made by Bhola Nath and his companion that the girl was good-natured. In support of the allegation about the unchastity of the girl, reliance is placed on letters exhibits 'PB', 'PC' and 'PD' written in the respondent's hand. These letters have been discussed in detail in the judgment under appeal and it is not necessary to discuss them over again. That is more so, because, in my opinion, even if she is held to be unchaste, as alleged by the appellant, it provides no ground, in the circumstances of this case, to grant the appeal. What emerges from the evidence of the aforesaid three witnesses, namely, the appellant P.W. 5, Hans Raj, P.W. 1 and Gokal Singh, P.W. 2, is that they generally represented that the girl was good. The grievance of the appellant mainly is that they ought to have disclosed that the girl had an unchaste career, particularly because Bhola Nath knew about it. Relying on *Shinhomal Jaldas v. Manager Encumbered Estates, Sind* (1), *Mt. Umrao Begum v. Sheikh Rahmat Ilahi* (2), and *Thangachi Nachial v. Ahmed Hussain Malumjar* (3), it is said that fraud in section 12 of the said Act should not be limited to its definition in section 17 of the Contract Act and it cannot be proved to the very hilt by direct evidence, but should be inferred from the various circumstances. For the purposes of this case, I am prepared to assume that fraud in section 12(1)(c) of the Hindu Marriage Act is not to be so limited. The heart of the problem required to be dealt with in this case is whether a general observation by the relations of the girl at the time of engagement to the effect that the girl was good amounts to obtaining consent of the husband by force or fraud within the meaning of section 12(1)(c) of the said Act. I do not think that, without any enquiry being made from the witnesses, it was, in any sense, obligatory on their part to disclose to the appellant or his relations about the old unchastity of the girl, even if it was known to them. A perusal of section 12(1)(d) would show that the marriage may be annulled only if at the time of the marriage the girl was pregnant by some person other

- 
- (1) A.I.R. 1914 Sind 28.  
(2) A.I.R. 1939 Lahore 439.  
(3) A.I.R. 1957 Mad. 194.

than the husband. That sheds a considerable light on the intention of the Legislature. It shows that past unchastity is not made a ground for annulment of marriage. Past illicit relations of a girl with some man may *per se* not be a factor taken into consideration by all persons agreeing to enter into a marriage tie. This is not a circumstance, which, in all cases, would result in breakage of the marriage negotiations. Can then it be said that the relations were under any obligation to disclose about the girl's past unchastity? I think, the answer must be 'no'. Merely keeping quiet about such past history would not, therefore, lead to a conclusion that the consent to marriage had been obtained by fraud. Relations of the girl cannot, without any enquiry in this behalf, be expected to speak about every event in the girl's past life. Of course, if an enquiry had been made of them and they had given a wrong or an evasive reply, things may have been different. But that is not the appellant's case. In my opinion, speaking generally that the girl was good and gold or was good-natured does not entitle a husband to ask for annulment of marriage on the ground that if the relations had said that she had been unchaste, he would not have agreed to the marriage. In 'Rattigan on Divorce' (second edition), page 308, it is said—

Surjit Kumar  
v.  
Raj Kumari  

---

Kapur, J.

"Generally speaking, concealment or deception by one of the parties in respect to traits or defects of character, habits, temper, reputation, bodily health, and the like, is not sufficient ground for avoiding a marriage. The parties must take the burden of informing themselves by acquaintance and satisfactory enquiry before entering into a contract of the first importance to themselves and to society in general.

Concealment of a loathsome and incurable venereal disease from the other party is generally recognized as a fraud sufficient to warrant annulment, especially where the existence of the disease is discovered by the other party before the marriage is consummated and the parties immediately separate.

As a general rule prenuptial unchastity of the wife though unknown to the husband at the time of the marriage is not a ground for a decree of nullity.

Surjit Kumar  
v.  
Raj Kumari  

---

Kapur, J.

Nor is expressed misrepresentation by a woman as to her chastity of itself ground for avoidance of the marriage, though, of course, it may be taken into consideration together with other circumstances indicative of fraud.

Chastity, it is said, is a mere personal quality, and its non-existence at the time of the marriage does not amount to absence of an essential condition of the marriage relation. Moreover, it is declared, prenuptial unchastity does not necessarily prevent the woman from becoming a faithful wife or from performing her part in the bearing of offspring, and to consider misrepresentation in regard thereto a ground for decreeing nullity of marriage would be inconsistent with reason and sound policy.

A *fortiori*, a man cannot complain of his wife's prenuptial unchastity where he was aware of it at the time of the marriage. In England the rule seems to be that the concealment by the wife of her pregnancy by another man at the time of the marriage is not ground for decreeing nullity of the marriage at the suit of the husband."

It is said that the conditions in England are different and that rule ought not to be applied in India. I am afraid I do not agree. Conditions in that country may be different, but, for the reasons given by me above, I think the same rule ought to apply in this country so far as the past unchastity goes. If a husband attaches that value to the past unchastity of his would-be wife, what is there to stop him from making enquiries on his own or from the girl's relations at the time of the negotiation of marriage? It is only then that he should be able to show that though the relations of the girl were aware of her past unchastity, they misled him.

On behalf of the respondent, it is argued that the appeal discloses no cause of action and ought to be dismissed on that ground. Reliance is placed for this view on a decision of Pandit, J. in *Harbhajan Singh v. Shrimati Brij Balab* (4) where, relying on *Anath Nath De v. Sm. Lajjabati Devi* (5), Pandit, J. held that consent obtained

(4) 1964 P.L.R., 204.

(5) A.I.R., 1959 Cal. 778.

by fraud at the stage when the parties consented to solemnise the marriage cannot vitiate the marriage and it is only the consent, vitiated due to fraud, obtained at the time of solemnisation of the marriage, that is recognised for its annulment under section 12 of the Hindu Marriage Act. No doubt, marriage is not a mere civil contract, but on the plain reading of section 12(1)(c) it appears to me that if fraud is practised in obtaining consent even at the earlier stage, the marriage would take place in pursuance of that consent and, therefore, such a fraud at this stage may vitiate the marriage. It is not, however, necessary to carry the matter any further, because I am not in agreement with the arguments on behalf of the appellant that the marriage can be annulled in the circumstances of this case.

A challenge was also thrown on behalf of the respondent on the findings of unchastity arrived at by the trial Court. It is also not necessary to record a finding thereon in view of my decision on the other question.

It is then suggested on behalf of the appellant that it stands established on the record that the respondent is living in adultery and, therefore, I should pass a decree for divorce. Admittedly, this point was never taken in the petition and, apart from the question whether the respondent can in the circumstances be said to be 'living in adultery', this point cannot be considered at this stage, because it would have been open to the other side to plead condonation if the point had been raised in the petition. Faced with this difficulty, Mr. Frank Anthony, learned counsel for the appellant, did not pursue the matter any further.

In the circumstances mentioned above, this appeal must fail and is dismissed, but the parties will bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

*Before Shamsheer Bahadur, J.*

M/S SUD & CO.,—Petitioner

*versus*

STATE OF PUNJAB AND ANOTHER,—Respondents

Civil Writ No. 2314 of 1964

*Punjab Passengers and Goods Taxation Act (XVI of 1952)—S. 3—Private Carrier—When liable to pay tax—Private carrier transporting petrol to his petrol pump at the cost of the company—*

Surjit Kumar

*v.*

Raj Kumari

Kapur, J.

1965

December, 2nd