

IN THE COURT OF THE JUDGE, FAMILY COURT,  
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS (SB),  
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 329(A) of 2012

Lipsa Das, aged about 20 years,  
D/o- Bidyadhara Das,  
At-EA-5, Stage-V,  
Laxmisagar Brit Colony, P.S.-Laxmisagar  
Dist-Khurda ... Petitioner

... Versus...

Ashadeep Pattnaik, aged about 29 years,  
Son of Umesh Pattnaik,  
EA-11, Stage-V,  
Laxmisagar Brit Colony, P.S.-Laxmisagar,  
Bhubaneswar, Dist.-Khurda ... Respondent

Date of Argument: 13.08.2014

Date of Judgment : 26.08.2014

J U D G M E N T

The petitioner has filed this Civil Proceeding U/s-25(iii) of the Special Marriage Act, 1954(in short, the Act, 1954) to declare her marriage with the respondent Ashadeep Pattnaik as a nullity.

2. The case of the petitioner wife Lipsa Das is, inter alia, that her father is working in a private company. Her family is of good repute and affluent having vast landed property both at Bhubaneswar and her native village. The

mother of the respondent is working as Asst. Teacher in UGUP School, Pandara, Bhubaneswar. Knowing her family status the family of the respondent casts a cat's-eye on her family property and the respondent paltering her off that his father is a businessman of good repute and himself representing as a graduate Engineer is in search of a job in a multinational company developed intimacy being a neighbour. The respondent, in order to become more closure and to win her heart arranged notes books for her better academic. In the middle part of 2011, the respondent gave his marriage proposal to the petitioner behind the back of her family members and also suggested the petitioner to abscond from Bhubaneswar after marriage. The petitioner being shocked started keeping distance from the respondent. The respondent got annoyed from him and scared her giving threat to kidnap and murder her in as much as her family members. Apprehending danger the petitioner did not disclose it to her family members. On 27.01.2012 respondent informed the petitioner to meet him at Laxmisagar Chhak to sign on different papers lest her family members should face dire consequences. The petitioner out of fear met the respondent as suggested by him and there she was forced to sign in some papers for execution of marriage certificate and also she was forcibly taken to the marriage Officer where her marriage with the respondent was solemnized in presence of the relatives and friends of the respondent and after registration of marriage she had not stayed a single day in the house of the respondent, even their marriage was not consummated.

3. On 6.5.2012, the mother of the respondent came with the petitioner's marriage proposal with the respondent to the house of the petitioner but it was turned down by her parents. This caused annoyance to the mother of the respondent. Thereafter the respondent's family members started black-art for procuring the petitioner. Since the marriage certificate has been obtained by the respondent by practising coercion and fraud in as much against her

wish and will and consent, she has come up to declare her marriage with the respondent as a nullity.

4. The respondent entered contest the proceeding by filing his written statement denying the allegation made in the petition. It is contended by the respondent that he never represented himself as a graduate Engineer and searching for a job in a multinational company. It is further contended by the respondent that both of them became intimate while he and his family members are residing in a rented house near the house of the petitioner and during the period of free-mixing both of them earned mutual respect towards each other and they were in love and decided to go for marriage but the parents of the petitioner were opposing their marriage. As a matter of fact, the petitioner herself insisted for registration of marriage and accordingly both of them went to the Marriage Officer and requisite notices were signed by them. It is further contended that the petitioner deliberately suppressed the fact of signing of notice. It is further contended that by mutual consent of the parties the marriage was finally solemnized before the Marriage Officer on 27.01.2012 and both the parties signed the requisite papers for registration of marriage. Thus the respondent has disputed the allegation that any fraud or coercion was exercised by him on the petitioner by giving threat to kill her and her family members. It is also contended such statements are absolutely false and imaginary. It is also contended that it is ridiculous that the petitioner being educated person could not understand the contents of the marriage registration forms which she had signed. The petitioner was in safe custody of her parents. Had the respondent given such threat she would have reported it either to her parents or to the local police even could have disclosed the same before the marriage officer on the date of solemnization of the marriage. Therefore, the allegation of fraud, coercion and undue influence is absolutely false and figment of imagination and the same cannot be believed and accepted.

5. From the aforesaid evidence of the parties, the question that requires to be adjudicated is whether the consent of the petitioner was obtained by exercising fear and threat and therefore not a free consent so that the marriage between the parties be annulled?

6. The petitioner in order to prove her case she, herself has been examined as P.W. 1. She has also relied upon Ext. 1, the marriage certificate bearing No. 68/2012. The respondent in order to negate the claim of the petitioner he, himself has been examined as R.W.1. He has also relied upon Ext. A, the marriage photograph and Ext. B is Xerox copy of the notice issued by the Marriage Officer.

7. The annulment of marriage is sought on the ground of fraud u/s. 25 (iii) of the Act of 1954. The said section is analogous to section 12 (i) (c) of Hindu Marriage Act, 1955 (hereinafter be referred the Act of 1955). Therefore, for better appreciation of the dispute between the parties, I feel it profitable to cull for from reported cases under the Act, 1955 before dilating the evidence of the parties.

8. The word "fraud" as a ground for the annulment of the marriage is limited only to those cases where the consent of the petitioner at the time of solemnization of marriage was obtained by some sort of threat to her life or lives of her family members. The meaning to be given to the word "fraud" in this section 25(iii) of the Act, 1954, is different from the interpretation given to this word under the contract Act lest it should be impossible to prove the case in matrimonial proceedings. The word "fraud" has neither been defined in Hindu Marriage Act, 1955 nor in General clauses in 1897. It has no doubt been defined in the Indian Contract Act but it is to be seen whether the definition given to this word in that Act would be applicable while interpreting Section 12 of the Hindu Marriage Act. This question came up for consideration before a Division Bench of Delhi High Court in Rajinder Singh V Smt. Pamila AIR 1937 Cal 214 and the following was observed:-

*"The term 'fraud' used in clause (c) of section 12 cannot be given the same meaning as defined under section 17 of the Contract Act. The expression "fraud" used clause (c) does not speak of fraud in any general way or that every misrepresentation or*

*concealment is fraudulent. A marriage under the Hindu Law is not purely a contract. A reading of sections 5 & 7 makes it clear that a Hindu Marriage has both religious as well as secular aspects. Therefore, the marriage has to be treated both as sacrament and as a contract. It is a sacrament because certain customary rights and ceremonies as described in section 7 of the Act have to be performed for the completion of the marriage. It is a contract as section 5 deals with the capacity of the spouse to enter into an alliance of marriage. The word "force" and "fraud" that are contemplated in clause (c) of section 12(1) are as to material facts or circumstances concerning the respondent. If the consent of a party to the marriage is obtained by practising fraud as to any material fact or circumstance concerning the respondent the marriage can be annulled under clause(c). The word "fraud" used in this clause connotes deception or misrepresentation. What is misrepresentation or concealment of material fact depends upon the facts and circumstances of each case. The material fact is that vital and important which would induce or influence the mind of a party to give or withhold the consent to marry." (see also Anurag Anand V Sunita Anand, AIR 1997 Delhi 94 at PP 101-102).*

9. The word "force" as used under section 12(1)(c) may or may not contemplate criminal force. In the case of *Bajinder Bir Singh V Vinod*, AIR 1975 P&H P 42, It has been observed that it is not necessary the consent be obtained by practising fraud at the time of marriage. It is enough if it was obtained even at early stage. Similarly, the word "force" as used under section 12(1)(c) of the Act may or may not contemplate criminal force. Threat of physical violence or death will constitute "force". The force may be physical or moral and not as defined under section 349 I.P.C. The fact of that case is that some objectionable photographs of the girl were

taken by the respondent after intoxicating her. Under fear that the objectionable photographs would be made public, the respondent started blackmailing her. He also extended threat of kidnapping her younger sister. Under fear and threat she involuntarily and under pressure agreed to perform the marriage ceremonies at the mandir as well as before the Registrar of Marriage. Therefore in view of this statement of the appellant the court below erroneously presumed that since she appeared before the Registrar of Marriage and did not complaint to him about the threat, therefore, her marriage was performed with her consent. This presumption, it appears is based on the imagination of the Trial Court himself. Therefore, non disclosure of any force or threat to the marriage officer by no stretch of imagination it can be inferred, that her consent was voluntary (See Anju Sharma Smt. Vrs Suresh Kumar AIR 1998 Delhi 47 at P 49).

10. In Bai Appibai V Khimji Coverji, AIR 1936 Bomb 138 it has been held:-

*“Fraudulent misrepresentation or concealment does not affect the validity of a marriage to which the parties freely consented with knowledge of the nature and with clear and distinct intention of entering into the marriage unless any of the spouses induced to go through of marriage with other by threats or duress or in a state of intoxication or in an erroneous belief as to the nature of the ceremony and without real consent to the marriage. A marriage might also be invalid if the girl was abducted by force or fraud and married against her wish or that of her guardian. The test of validity is whether there was a real consent to the Marriage”.*

11. In the case of Smt. Kiran Bala Ashtana V Bhaire Prasad Shrivastava reported in AIR 1982 OLR 242, it is observed that:

*“If it is shown that the facts and circumstances about one of the parties were such that the other party could not have readily consented to marry the other and there was an element of*

*deception or misrepresentation in bringing about the marriage at the instance of a party, such as to amount to fraud, a Hindu Marriage could surely be annulled under section 12(1)(c) of Hindu Marriage Act notwithstanding its sacramental character” (See also Vandana J. Kasliwal V Jitendra N. Kasliwal AIR 2007 Bomp 115 at P/ 20).*

12. In Bindu Sharma V Ram Prakash Sharma, AIR 1997 All 429, a Division Bench of Allahabad High Court, while dealing with the scope of section 12(1)(c) of Hindu Marriage Act, 1955 held that fraud or misrepresentation as to material fact viz wife having much higher academic qualifications than husband, giving consent to the marriage on representation by husband that he was having attractive job which finally found to be incorrect are grounds of annulment of marriage. Similarly in Anurag Anand's case cited supra a learned single Judge of the Delhi High Court while dealing with annulment of marriage on the ground of fraud, held that misquoting monthly income and property status of husband can be called material facts and circumstances if ultimately found to be false, annulment of marriage is warranted.

13. Having quoted the legal principles on the material facts in issue in the present case, now let me parse the evidence of the parties to find out whether there is existence of any fraud in this case to annul the marriage solemnized between the parties on 23.08.2012 before the Marriage Officer, Khurda at Bhubaneswar vide Ext. 1.

14. The petitioner while being examined as P.W.1 has stated that the respondent being her neighbour they became acquainted with each other and respondent helped her in prosecuting her study by supplying note books obtaining from lectures of repute. She has further stated that the respondent had represented to have a good academic career and also he being a graduate Engineer is searching of a job in multinational company. She has further stated that she was shocked when the respondent gave his marriage proposal with her. She has further disposed that

when the respondent proposed for marriage and to abscond after marriage, she maintained distance from the respondent but the respondent gave threat to kill her and her family members. She was forced to go to the Marriage Officer and signed on some papers. Therefore her consent was obtained by putting her in fear.

15. The respondent while being examined as R.W. 1 stated that the petitioner was in safe custody of her parents. Therefore, she could have disclosed about the respondent's giving threat to kill her and his family members either to her parents or police and even to the Marriage Officer at the time of solemnization of marriage. From the evidence of P.W. 1, it is apparently established that she was all along under shadow of fear due to threat of the respondent. The respondent has given threat to kill her and his family members as well as to kidnap her, if she would not go along with him to the Marriage Officer for the registration of the marriage and before the Marriage Officer she was crowded with the kith and kin of the respondent. The petitioner was aged about 21 years at the time of marriage and was prosecuting her study. She has bright academic carrier than the respondent. She lost her balance of mind when she was surrounded with the kith and kin of the respondent. The threat of the respondent was not only at the time of marriage but also earlier to the marriage. Therefore, her consent could not be considered as free consent to the marriage.

16. Additionally, the respondent has disclosed to the petitioner that he being a Graduate Engineer having a good academic carrier and was in search of a job in Multinational Company. Besides, he has represented to the petitioner that his father is a businessman of repute having outside State business. The respondent has admitted that he is a matriculate and was working as a labourer in a Printing Press at the time of submission of Marriage Application. The certificates furnished by the petitioner though not exhibited but available on record show that she has bright academic carrier. Therefore, the facts represented to petitioner as delineated hereinbefore found erroneous.

17. Both the parties are Hindus. A Hindu marriage is a sacramental. The marriage is a union between a man and a woman and while accepting any person as a

husband or wife there are vital consideration which are definitely looked into before the parties or their parents to give their consent for the marriage proposal. These considerations may be age, educational qualifications, income, caste, marital status, family status coupled with financial status, religion or nationality of the other party. They may be termed as material facts and circumstances. This list may not be exhaustive, as between certain parties, some other factors may as well be material facts and circumstances of their case.

18. For a girl to give her consent to a marriage proposal unless it is love marriage, financial status of the other party is quite important factor. Why? It is because everyone wants to have a comfortable living. For that a level of monthly income and a level of property status of the other party are required. In addition to monthly income of the other party his property status is assuming considerable importance. One needs financial security in the time of need to fall back. This level of monthly income and property status would differ from case to case depending upon the status of the family of the girl. Further, if the girl is herself working then it also becomes her aspiration to marry a boy who is earning more than her. A girl would definitely prefers a boy in marriage whose parents have already sufficient landed property and thus she has not to curtail her monthly expenditure for acquiring emergent needs. She needs a minimum level of expenditure capacity in the house of her husband. She may not find the aforesaid:- The respondent though relied upon a decision under this present section of law vide case law *Tapan Ranjan Das Vrs. Jolly Das @ Moulik reported in I(1991) DMC 60 (Cal.)*, the facts and circumstances of that case being different, the principle of law settled in that case is not applicable to the fact and circumstances of the case in hand. Therefore, under no stretch of imagination it could be said that the consent of the petitioner was not duped with force, threat and coercion and therefore, it was not a free consent of her to the marriage and as such, the marriage between the parties might to be annulled. Hence, ordered;

ORDER

The petition filed by the petitioner succeeds. The marriage between the petitioner and the respondent dated 27.01.2012 vide Ext. 1 is hereby annulled. The Marriage Certificate vide Ext. 1 be cancelled after the expiry of the appeal period.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 26<sup>th</sup> day of August, 2014.

JUDGE, FAMILY COURT,  
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Lipsa Das

Witnesses examined for the respondent:

R.W. 1 Ashadeep Pattnaik

List of documents by petitioner:

Ext. 1 Certified copy of the marriage certificate.

List of documents by respondent:

Ext. A Joint photograph of petitioner and the respondent

Ext. B Xerox copy of Notice issued by the Marriage Officer before registration of marriage between the parties

JUDGE, FAMILY COURT,  
BHUBANESWAR.