

**In the Court of Jyotsna Dadhwal, Principal Judge, Family
Court, Kangra at Dharamshala, Distt. Kangra (HP)**

H.M.P. No. : 185-D/III/2023.
CIS Registration No. : HMA/1001/2022.
Filing No. : 2917/2022.
CNR No. : HPKA010056382022
Date of Institution : 11-10-2022.
Date of decision : 20-07-2023.

Ms. Kiran Bala aged 28 years, daughter of Sh. Rajinder Kumar, resident of Village Mansimbal, Post Office Bhawarna, Tehsil Palampur, District Kangra, H.P, at present residing in the house of her Nani Jee Smt. Kaseri Devi of Village and Post Office Mandal, Tehsil/Police Station Dharamshala, District Kangra, H.P.

....Petitioner.

-Versus-

Sh. Swarit Malhotra son of Sh. Vinay Malhotra, resident of Ward No. 6, Dharamshala, District Kangra, H.P.

.....Respondent.

**Petition for dissolution of marriage by
a decree of divorce U/s 12 of the Hindu
Marriage Act, 1955.**

For petitioner : Sh. R.S Chaudhary, Advocate.
For respondent : Respondent already exparte.

J U D G M E N T:

This petition under Section 12 of the Hindu Marriage Act, 1955 for grant of decree for annulment of marriage alleged to be celebrated on 18.05.2022, which is outcome of fraud, cheating and misrepresentation. It is contended by the petitioner that on 18.05.2022, the marriage due to fraud was contacted as per Hindu rites and customs and the marriage was never consummated. In fact, the customs and rights have not been completed. The respondent came close to the petitioner to keep his marital relations with her with the excuse that earlier he was having marital relation with one lady Ms. Anu Singh. The respondent even hide the facts that said lady Anu

Singh was having closed roots and relations with the respondent. She never wanted to impart this relation with the respondent. The rites, customs, 'Lagan' were performed by the parents of petitioner. She and her parents came to know that respondent was absconding and for preparing for anticipatory bail as the aforesaid lady Anu Singh never want to part with the respondent whom she was living earlier. Further it is contended that petitioner and her parents then made up their mind not to send her with the respondent. It is contended further that at the time of filing the petition the respondent was in police custody. The aforesaid lady Anu Singh had committed suicide, who was mother of one or two children and the police had found the respondent responsible for her death. The police also informed the petitioner and her parents about the episode and alleged marriage with that lady. Therefore, the respondent was taken into custody. It is contended that in these circumstances, the petitioner was not ready to keep the marriage tie as well as the marriage has not been completed yet. It is prayed that the petition be allowed and the marriage between the parties be dissolved by a decree of divorce on the ground of annulment of marriage. The petition is supported with an affidavit.

2. The respondent was served in this case and after appearing in custody before this court, he did not appear on the next date of hearing. Hence, he was proceeded against exparte on 22.05.2023. Thereafter, the petitioner led exparte evidence.

3. To prove her case, the petitioner Smt. Kiran Bala has herself stepped into the witness box as PW-1 and has categorically testified by way of affidavit Ext.PW-1/A, deposing the fraud and misrepresentation done by the respondent on her for marrying her on 18.05.2022, which was detected and the respondent was arrested. She has sought annulment of

marriage and alleged that the ceremonies of marriage were not complete. PW-2 Sh. Rajinder Kumar, father of petitioner, has deposed by way of affidavit PW-2/A corroborating the PW-1 and contentions of the petitioner with regard to the fraud and misrepresentation made by the respondent for getting married to the petitioner. PW-3 Smt. Madhu Bala, who is mother of petitioner, has also categorically testified by way of affidavit Ext.PW-3/A thereby corroborating the version of petitioner. The respondent has not stepped into the witness box to prove his case, neither has cross-examined the petitioner. Therefore, the statement of the petitioner has to be accepted as gospel truth.

5. The exparte evidence led by the petitioner not only remained un-rebutted but also un-controverted and as such, in view of the unrebutted testimony of the petitioner, this court has no option except to accept the version of the petitioner wherein she has leveled allegations that she was treated with mental cruelty by exercising fraud and misrepresentation with regard to solemnization of marriage with the petitioner. To reach the conclusion, I have relied upon Smt. Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav, AIR 1988 Supreme Court 644, wherein in para No. 3, it is held as under:-

3. For appreciating the status of a Hindu woman marrying a Hindu male with a living spouse some of the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) have to be examined. Section 11 of the Act declares such a marriage as null and void in the following terms:-

11. Void marriages. - Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, (against the other party), be so

declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Clause (i) of S. 5 lays down, for a lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition, therefore, is null and void. It was urged on behalf of the appellant that a marriage should not be treated as void because such a marriage was earlier recognised in law and custom. A reference was made to S. 12 of the Act and it was said that in any event the marriage would be voidable. There is no merit in this contention. By reason of the overriding effect of the Act as mentioned in S. 4 no aid can be taken of the earlier Hindu Law or any custom of usage as a part of that Law inconsistent with any provision of the Act. So far as S.12 is concerned, it is confined to other categories of marriages and is not applicable to one solemnised in violation of S.5 (i) of the Act. Sub-section (2) of S. 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio, and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by S. 11 are void ipso jure, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such

a formal declaration from a Court in a proceeding specifically commenced for the purpose. The provisions of S. 16, which is quoted below, also throw light on this aspect:-

“16. Legitimacy of children of void and voidable marriages. - Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties of the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, if any case where, but for the passing of this Act, such child would

have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

Sub-section (1), by using the words underlined above clearly implies that a void marriage can be held to be so without a prior formal declaration by a court in a proceeding. While dealing with cases covered by S. 12, sub-section (2) refers to a decree of nullity as an essential condition and sub-section (3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by Ss. 11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child. The marriage of the appellant must, therefore, be treated as null and void from its very inception.

6. By applying the above ratio of Law, I am of the considered opinion that at the time of marriage the petitioner, the respondent was already married, therefore, it was a void marriage which has been solemnized in contravention with section 5 (I), 11, 12, 14, 16 of Hindu Marriage Act. Hence, I am of the considered view that it was a void marriage which falls within the definition of void marriage as defined in Section 11 of Hindu Marriage Act. Thus, the marriage ceremonies, if any, between the parties Kiran Bala and Swarit Malhotra is having no legal effect and hence, is void. The same is dissolved by way of annulment of marriage under section 12 Hindu Marriage Act. Accordingly, the petition is allowed and the marriage between the parties is dissolved by a decree of divorce on the ground of annulment. However, there is no order as to costs.

Decree sheet be drawn accordingly. File after due completion be
consigned to the record room.

Announced and signed in the open Court today i.e.
20th July, 2023.

(Jyotsna Suman Dhadwal)
Principal Judge, Family Court,
Kangra at Dharamshala, H.P.

A.K

List of witnesses

Sr.No.	Name of witness	Whether witness is of petitioner's or respondent's

PW-1	Smt. Kiran Bala	Petitioner herself.
PW-2	Sh. Rajinder Kumar	Petitioner's witness.
PW-3	Smt. Madhu Bala	Petitioner's witness.

List of Exhibits

Exts/Marks	Date of Exts	Description about exhibits.
Ext.PW-1/A	16.06.2023	Affidavit of Smt. Kiran Bala.
Ext.PW-2/A	16.06.2023	Affidavit of Sh Rajinder Kumar.
Ext.PW-3/A	16.06.2023	Affidavit of Smt. Madhu Bala.