



2026:CGHC:36584-DB



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AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****FA(MAT) No. 95 of 2024**

Smt. Pushpa Manikpuri (Sharma) W/o Shri Narendra Sharma D/o Shri Ramdas Manikpuri Aged About 38 Years R/o Behind Khaira Bada, Muktidham Chowk, P.S. Sarkanda, District : Bilaspur, Chhattisgarh

... Appellant (s)**versus**

Narendra Sharma S/o Shri D.L. Sharma Aged About 54 Years R/o Behind City Dispensary, Gandhi Chowk, Bilaspur, P.S. City Kotwali, Teh. And Distt. Bilaspur, Chhattisgarh

... Respondent(s)

For Appellant : Mr. Lavkush Kumar Sahu, Advocate

For Respondent : Mr. Yogendra Pandey, Advocate

D.B. : Hon'ble Shri Justice Parth Prateem Sahu & Hon'ble Shri Justice Sachin Singh Rajput

Judgment on Board**17/08/2026****Per Parth Prateem Sahu, J.**

1. This appeal is directed against the judgment and decree dated 31.01.2024 passed by learned Second Additional Principal Judge, Family Court, Bilaspur in Civil Suit No.93-A/2019, whereby application filed by



respondent/applicant (husband) under Sections 11, 12 (1) of the Hindu Marriage Act, 1955 (for short, "*the Act of 1955*") against appellant/non-applicant (wife), seeking declaration of their marriage solemnized on 03.11.2015 to be null and void, has been allowed.

2. Facts necessary for disposal of the present appeal, in brief, are that the respondent/applicant (husband) instituted proceedings under Sections 11 and 12(1) of the Act of 1955, seeking a declaration that the marriage solemnized between the parties on 03.11.2015 was null and void. It was pleaded that the parties met at Bilaspur in the year 2015 and subsequently solemnized their marriage at Arya Samaj Mandir, Bilaspur, in accordance with Hindu rites and customs. It was further pleaded that, prior to her marriage with the applicant, she had been married to one Satish Das Manikpuri and that the said marriage was still subsisting. According to the applicant, non-applicant had instituted proceedings against Satish Das Manikpuri under Section 125 of the Code of Criminal Procedure, Section 9 of the Act of 1955, and Section 498-A of the Indian Penal Code before the competent courts at Bilaspur and Janjgir, respectively. It was alleged that non-applicant had concealed the factum of her previous marriage from the applicant and, thereafter, developed a relationship with him and married him at the Arya Samaj Mandir, Bilaspur. He further pleaded that non-applicant's former husband namely Satish Das Manikpuri, was alive and that no decree of divorce had been obtained by non-applicant dissolving her earlier marriage. It was also alleged that non-applicant/wife, on several occasions, humiliated and ridiculed the applicant in social gatherings, despite his having a respectable position in society. According to the applicant, marriage between the parties was solemnized under



circumstances involving deceit, fraud, fear and pressure, and, as the non-applicant's earlier marriage was subsisting on the date of the subsequent marriage, the marriage dated 03.11.2015 was in contravention of Section 5(i) of the Act of 1955 and was, therefore, liable to be declared null and void.

3. In her written statement, non-applicant/wife admitted that she was married to the applicant/husband; however, she denied the remaining averments made in the plaint. She specifically denied having been married to anyone other than the applicant prior to their marriage and stated that, after her marriage with the applicant, she resided with him and led a matrimonial life. It was further pleaded that the applicant/husband subjected her to physical and mental harassment by abusing and assaulting her and ultimately drove her out of the matrimonial home. According to non-applicant, she was thereby compelled to face financial hardship and difficulties in maintaining herself, which led her to institute proceedings seeking maintenance. She further asserted that she had never acted in any manner so as to cause humiliation or affect the dignity of the applicant. On these grounds, non-applicant prayed for dismissal of the application filed by the applicant.

4. On the basis of the pleadings made by the parties, learned Family Court framed following main issues for determination:

- "1. Whether the marriage between the applicant and the non-applicant was in contravention of Section 5 of the Hindu Marriage Act ?
2. Whether the marriage solemnized between the parties on 03.11.2015 is void ? "



5. Learned Family Court upon appreciation of the pleadings and oral as well as documentary evidence adduced by the parties, answered the aforesaid issues in affirmative and held that marriage between the parties was in contravention of Section 5 of the Act of 1955. Consequently, the application filed under Section 11, 12 (1) of the Act of 1955 was allowed by the impugned judgment and declared the marriage between the parties void, which is the subject matter of challenge by non-applicant/wife (appellant herein) in the present appeal.

6. Learned counsel for the appellant contended that the learned Family Court failed to properly appreciate the oral and documentary evidence available on record. It was submitted that the appellant/non-applicant had categorically denied having married Sonu Manikpuri or any other person. Learned Family Court further failed to properly appreciate the testimony of the witnesses on record, which clearly established that no marriage had been solemnized between the appellant/non-applicant and Satish Manikpuri. It was also contended that the learned Family Court failed to consider and apply the provisions of Sections 11 and 12(1) of the Hindu Marriage Act, 1955, in their proper perspective. Furthermore, the learned Family Court failed to duly consider the specific pleadings raised by the appellant/non-applicant in her written statement. Therefore, this appeal may be allowed and impugned judgment and decree be set aside.

7. Per contra, learned counsel appearing for the respondent/husband (applicant) submitted that the learned Family Court, upon proper appreciation of oral and documentary evidence available on record, has rightly recorded a finding that the appellant/wife had a subsisting earlier



marriage with Satish Das Manikpuri at the time of her marriage with the respondent on 03.11.2015. It was contended that the appellant had deliberately concealed the factum of her previous marriage from the respondent and that the proceedings instituted by her against Satish Das Manikpuri under Sections 125 of the Code of Criminal Procedure, Section 9 of the Hindu Marriage Act, 1955 and Section 498-A of the Indian Penal Code materially corroborate the respondent's case regarding the existence of her earlier matrimonial relationship. It was further submitted that the mere denial by the appellant of her previous marriage cannot, in the face of the evidence available on record, dislodge the findings recorded by the learned Family Court. Since the earlier marriage was subsisting on the date of the subsequent marriage, the marriage solemnized between the parties on 03.11.2015 was in contravention of Section 5(i) of the Act of 1955 and, consequently, was void under Section 11 thereof. Learned counsel submitted that the learned Family Court has rightly appreciated the evidence and correctly applied the relevant statutory provisions. The impugned judgment and decree, being based upon proper appreciation of the evidence and neither suffering from any perversity nor any error of law, does not warrant interference in the present appeal and the appeal deserves to be dismissed.

8. We have heard learned counsel for the parties and perused the record of the case as well as the impugned judgment and decree.
9. The principal question which arises for consideration in the present appeal is whether the learned Family Court was justified in holding that the marriage solemnized between the parties on 03.11.2015 was in



contravention of Section 5(i) of the Hindu Marriage Act, 1955 and, consequently, was null and void under Section 11 and voidable under Section 12 of the Act.

10. Section 5 of the Act of 1955 stipulates the essential conditions subject to which a Hindu marriage may be solemnized. Section 11 of the Act provides for marriages which are void ab initio, whereas Section 12 deals with marriages which are voidable and liable to be annulled by a decree of nullity passed by the competent Court. In view of the controversy involved in the present case, the provisions contained in Section 5 (i) of the Act of 1955 are directly relevant and, therefore, the same are reproduced hereinbelow:

“5. Conditions for a Hindu marriage.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

x	x	x	
	x	x	x

11. The legal position is settled that where a party seeks a declaration that a subsequent marriage is void on account of a subsisting earlier marriage, the factum and validity of the earlier marriage must first be established. It is not sufficient merely to show that the parties had been living together or had described themselves as husband and wife.

12. The burden in the present case initially lay upon the respondent/husband (applicant) because the appellant (non-applicant) expressly denied the alleged earlier marriage. The question, therefore, is



whether the evidence on record, taken as a whole, establishes not merely the existence of an association between the appellant and Satish Das Manikpuri but a legally valid marriage which continued to subsist on 03.11.2015.

13. The applicant/husband, in his examination-in-chief by way of affidavit under Order 18 Rule 4 of the Code of Civil Procedure, deposed that his marriage with the non-applicant was solemnized at Arya Samaj Mandir, Bilaspur on 03.11.2015. He deposed that he and the non-applicant had met at Bilaspur in the year 2015 and that, prior to her marriage with him, non-applicant had been married to one Sonu Manikpuri and Satish Das Manikpuri. According to his testimony, non-applicant had instituted proceedings against Satish Das Manikpuri under Section 125 of the Code of Criminal Procedure and Section 9 of the Hindu Marriage Act, 1955 at Bilaspur, and had also lodged a case against him under Section 498-A of the Indian Penal Code before the competent Court at Janjgir. He further deposed that non-applicant had concealed the factum of her previous matrimonial relationship from him and, thereafter, developed a relationship with him and solemnized the marriage at Arya Samaj Mandir, Bilaspur. He stated that non-applicant's former husband namely Satish Das Manikpuri was still alive and that she had not obtained any decree of divorce dissolving her earlier marriage. He further alleged that, despite his respectable social standing, non-applicant humiliated him on various social occasions.

14. Non-applicant/wife, in her examination-in-chief by way of affidavit under Order 18 Rule 4 of the Code of Civil Procedure, deposed that she had never been married to any person other than the applicant prior to their



marriage. She further stated that, after her marriage with the applicant, she resided with him and led a matrimonial life. She further deposed that, for about one month after the marriage, applicant maintained marital relationship with her, but thereafter, on account of his dissatisfaction and in the context of issues relating to inter-caste marriage and dowry, he started consuming alcohol and subjected her to abuse, physical assault and harassment. According to her, applicant ultimately abandoned her and drove her away from the matrimonial home. She also stated that she had never acted in any manner that would cause humiliation or affect the dignity of the respondent.

15. In support of his application, applicant/husband placed on record copy of the order dated 16.12.2011 passed by the Family Court, Bilaspur in Civil Suit No.213-A/2010, marked as Ex.P-2. By the said order, application preferred by the non-applicant/wife against one Satish Das Manikpuri under Section 9 of the Act of 1955, seeking restitution of conjugal rights, came to be dismissed. While dismissing the said application, learned Family Court recorded, inter alia, the finding that -“The evidence presented clearly establishes that the applicant therein (Smt. Pushpa Manikpuri) was previously married to Sonu Manikpuri; her divorce from Sonu Manikpuri is not proved, therefore, the application submitted by the applicant (Pushpa Manikpuri) for restitution of conjugal rights against the non-applicant Satish Das Manikpuri, cannot be granted.”

16. The applicant/husband also placed on record, as Ex.P-19, copy of the order dated 30.06.2010 passed by the learned Family Court, Bilaspur in Miscellaneous Criminal Case No.12/2010 whereby the application preferred by applicant therein/wife (Pushpa Manikpuri) under Section 125



of the Code of Criminal Procedure against Satish Manikpuri, seeking maintenance, was dismissed. In the said proceedings, non-applicant Satish Manikpuri had taken a specific stand that applicant (Pushpa Manikpuri) therein was already married to one Sonu and, therefore, she could not be treated as his legally wedded wife, as her earlier marriage with Sonu had not been dissolved by a decree of divorce. In that proceeding, upon consideration of the evidence and material available on record, learned Family Court observed that applicant therein (Pushpa Manikpuri) had not established that her marriage with her former husband Sonu, had been legally dissolved. Consequently, the learned Family Court held that applicant (Pushpa Manikpuri) had failed to prove that she was the legally wedded wife of Satish Manikpuri and, therefore, was not entitled to claim maintenance from him under Section 125 of the Code of Criminal Procedure. Accordingly, the application was dismissed.

17. In these proceedings also, appellant/non-applicant (wife) denied the suggestion that she had earlier been married to Sonu Manikpuri; however, document placed on record by respondent/applicant (husband) which is collectively exhibited as Ex. P-44 reveal that in the proceeding filed by her under Section 125 Cr.P.C., she stated that her marriage with Sonu Manikpuri had been solemnized and that the said marriage was subsequently dissolved by way of customary divorce.

18. It is evident from the provisions of the Hindu Marriage Act, 1955 that, the existence and validity of such custom must be specifically pleaded and duly established by cogent and reliable evidence. In the present case, the appellant/wife (non-applicant) has neither pleaded nor stated in her evidence that the marriage between her and Sonu Manikpuri had been



dissolved in accordance with any prevailing custom of divorce recognized in their community or society or some order from Court. Further, no witness has been examined by the appellant/wife (non-applicant) to establish the existence of any such customary practice, much less to prove that the alleged customary divorce was actually acted upon between her and Sonu Manikpuri. In absence of any specific pleading regarding customary divorce and, more importantly, in the absence of cogent and convincing evidence establishing either the existence of such a custom or the factum of dissolution of the aforesaid marriage in accordance with such custom, the plea of customary divorce cannot be accepted merely on the basis of an assertion. Consequently, unless the appellant/wife (non-applicant) establishes by reliable and concrete evidence that the subsisting marriage between her and Sonu Manikpuri was legally dissolved in accordance with a recognized and proved custom, the marital status between them would continue to subsist. Therefore, for the purpose of determining the validity of the subsequent marriage, the earlier marriage between appellant/wife (non-applicant) and Sonu Manikpuri is to be treated as subsisting in absence of proof of its valid dissolution.

19. For marriage, neither husband nor wife should have any previous husband or wife alive. If a marriage is performed in violation of this, then according to Section 11 of the Hindu Marriage Act, it is void and voidable under Section 12. In this case, it has been established that the non-applicant was married to Sonu Manikpuri before her marriage with the applicant. It has also been established that no evidence of divorce from Sonu Manikpuri has come to light. Therefore, at the time of marriage



between the applicant and non-applicant, non-applicant's previous marriage was subsisting, making this marriage void and voidable.

20. Hon'ble Supreme Court in case of **Lily Thomas Vs. Union of India** reported in **(2000) 6 SCC 224** has observed thus:

“18. Thus, Section 5(i) read with Section 11 indicates that any marriage with a person whose previous marriage was subsisting on the date of marriage, would be void ab initio.

19. The voidness of the marriage is further indicated in Section 17 of the Act in which the punishment for bigamy is also provided. This section lays down as under:

“17. Punishment of bigamy.—Any marriage between two Hindus solemnised after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Penal Code, 1860 shall apply accordingly.”

20. The first part of this section declares that a marriage between two Hindus which is solemnised after the commencement of this Act, would be void if on the date of such marriage either party had a husband or wife living. It has already been pointed out above that one of the essential requisites for a valid Hindu marriage, as set out in Section 5(i), is that either party should not have a spouse living on the date of marriage. Section 11 which has been quoted above indicates that such a marriage will be void. This is repeated in Section 17. The latter part of this section makes Sections 494 and 495 of the Penal Code, 1860 applicable to such marriages by reference.

x x x
 x x x



23. We have already seen above that under the Hindu Marriage Act, one of the essential ingredients of a valid Hindu marriage is that neither party should have a spouse living at the time of marriage. If the marriage takes place in spite of the fact that a party to that marriage had a spouse living, such marriage would be void under Section 11 of the Hindu Marriage Act. Such a marriage is also described as void under Section 17 of the Hindu Marriage Act under which an offence of bigamy has been created. This offence has been created by reference. By providing in Section 17 that provisions of Sections 494 and 495 would be applicable to such a marriage, the legislature has bodily lifted the provisions of Sections 494 and 495 IPC and placed them in Section 17 of the Hindu Marriage Act. This is a well-known legislative device. The important words used in Section 494 are “marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife”. These words indicate that before an offence under Section 494 can be said to have been constituted, the second marriage should be shown to be void in a case where such a marriage would be void by reason of its taking place in the lifetime of such husband or wife. The words “husband or wife” are also important in the sense that they indicate the personal law applicable to them which would continue to be applicable to them so long as the marriage subsists and they remain “husband and wife”.

21. Hon'ble Supreme Court in case of **A. Subash Babu v. State of A.P.**, reported in **(2011) 7 SCC 616**, observed as under :

“24. Though Section 11 of the Hindu Marriage Act provides that any marriage solemnised, if it contravenes the conditions specified in clause (i) of Section 5 of the



said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast an obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent court, the woman with whom second marriage is solemnised continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband.”

22. Recently, Hon'ble Supreme Court in case of **Sukhdev Singh vs. Sukhbir Kaur** reported in MANU/SC/0193/2025, observed thus :

“11. If Section 5 is read in conjunction with Section 11, the following categories of marriages are void:

- a. If one or both the parties to the marriage have a spouse living at the time of marriage;
- b. The parties to the marriage are within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two and
- c. The parties are sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

12. A marriage is void when either of the parties to the marriage has a spouse living, and the marriage with the



spouse is subsisting. If any of the spouses of the marriage had an earlier marriage dissolved by a decree of divorce before their marriage, Clause (a) above will not apply. As far as Clause (b) regarding prohibited relationships is concerned, the degrees of prohibited relationships have been specified in Clause (g) of Section 3. Regarding the third category of sapinda relationship, Clause (f) of Section 3 defines what is a sapinda relationship.

13. Section 11 provides for the grant of a declaration of a marriage as null and void. The marriages covered by the categories (a), (b) or (c) mentioned above become void at the inception. Therefore, such marriages are void ab initio. Such marriage does not exist at all in the eyes of the law."

23. In this case, to answer the principal question "*as to whether on the date of marriage i.e. 03.11.2015 appellant/non-applicant had a spouse living and whether her earlier marriage with Sonu Manikpuri had been legally dissolved prior to the solemnization of her marriage with the respondent/applicant*", the material available on record, particularly Ex.P-2, Ex.P-19 and Ex.P-44, assumes considerable significance. The proceedings instituted by the appellant/non-applicant herself against Satish Das Manikpuri, as well as the statements and findings recorded therein, establish that she had represented herself as having been previously married to Sonu Manikpuri and that the said marriage had allegedly been dissolved by customary divorce. However, in the present proceedings, the appellant/non-applicant has not placed any cogent and reliable evidence on record to establish either the existence of a valid custom permitting dissolution of marriage by customary divorce or the



fact that her marriage with Sonu Manikpuri was actually dissolved in accordance with such custom. Earlier proceedings filed by the appellant against Satish Manikpuri under Section 125 of Cr.P.C. and Section 9 of the Hindu Marriage Act came to be dismissed observing that Smt. Pushpa Manikpuri was having living spouse. Those orders now attained finality.

24. In the case at hand, upon comprehensive appreciation of the oral and documentary evidence available on record, law laid down by Hon'ble Supreme Court, this Court is of the considered opinion that the appellant/non-applicant has failed to establish that her earlier marriage with Sonu Manikpuri had been validly dissolved prior to the solemnization of her marriage with the respondent/applicant on 03.11.2015. The plea of customary divorce, having neither been specifically pleaded nor established by cogent and reliable evidence, cannot be accepted. Consequently, the earlier marriage of the appellant/non-applicant with Sonu Manikpuri is held to have been subsisting on the date of her subsequent marriage with the respondent/applicant.

25. In such circumstances, the subsequent marriage solemnized between the appellant/non-applicant and the respondent/applicant on 03.11.2015 was in contravention of Section 5(i) of the Hindu Marriage Act, 1955 and, therefore, is null and void under Section 11 and voidable under Section 12 of the Act .

26. Accordingly, this Court finds that the learned Family Court has rightly arrived at the conclusion that the marriage solemnized between the



parties on 03.11.2015 was void. The findings recorded by the learned Family Court, insofar as they relate to the subsistence of the appellant/non-applicant's earlier marriage and the consequent violation of Section 5(i) of the Act of 1955, do not suffer from any perversity, illegality or material irregularity warranting interference in the present appeal.

27. Consequently, the present appeal, being devoid of merit, is hereby **dismissed**. The impugned judgment and decree passed in Civil Suit No. 93-A/2019, declaring the marriage solemnized between the parties on 03.11.2015 to be null and void, is hereby **affirmed**.

28. Let a decree be drawn accordingly.

29. Parties shall bear their own cost.

Sd/-
(**Parth Prateem Sahu**)
Judge

Sd/-
(**Sachin Singh Rajput**)
Judge