

HIGH COURT OF PATNA

Bench: Justice P. B. Bajanthri and Justice Arun Kumar Jha

Date of Decision: November 10, 2023

Miscellaneous Appeal No.248 of 2020

Ravi Appellant/s

Versus

Bandana Kumari Respondent/s

Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma, Advocate
Mr. Anjani Kumar, Advocate
Mr. Ravi Roy, Advocate
Mr. Shreyash Goyal, Advocate
Mr. Abhay Nath, Advocate
Ms. Shweta Raj, Advocate

For the Respondent/s: Mr. Shashank Shekhar, Advocate

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Legislation:

Section 19(1) of the Family Courts Act, 1984

Section 12(1)(c), 5, 7 of the Hindu Marriage Act, 1955

Code of Civil Procedure

Sections 323, 341, 352, 387, 365, 498A of the Indian Penal Code (IPC):

Child Marriage Restraint (Amendment) Act, 1978

Subject: Annulment of Marriage under Forced Conditions and Consent
Obtained by Coercion

Headnotes:

Marriage Annulment – Forced Marriage – Nullity of Marriage: Appeal against Family Court’s dismissal of annulment petition – Petitioner’s claim of forced marriage at gunpoint, without consent or customary rituals – Family Court’s failure to frame issues and prepare a decree – Judgment set aside, marriage annulled. [Paras 2, 13-14, 38]

Evidence and Witnesses: Examination of witnesses and evidence by both parties – Contradictory statements and lack of corroborative evidence from the respondent – Petitioner’s evidence of coercion and lack of consent supported by witnesses and documentation – Appeal allowed on the basis of preponderance of evidence. [Paras 16-17, 21-24, 30-31, 33-37]

Family Courts Act, 1984 – Appeal Process: Interpretation of Section 19(1) – Appeals against judgments or orders of Family Courts treated as Miscellaneous Appeals, even in the absence of a prepared decree – Full Bench decision of High Court on the nature of appeals under Section 19. [Paras 7-8]

Hindu Marriage Act, 1955 – Section 12(1)(c): Consent Obtained by Force – Essentiality of free consent for a valid Hindu marriage – Applicability of Section 12(1)(c) in cases where consent is obtained by force or coercion – Petitioner’s marriage found voidable under this provision. [Paras 28-29, 38]

Decision: Family Court’s judgment in dismissing the annulment petition found flawed and biased – Non-consideration of relevant evidence and misinterpretation of facts – High Court sets aside the Family Court’s decision, allowing the appeal and annulling the marriage. [Paras 36-38]

Referred Cases:

- Sunita Kumari vs. Prem Kumar with Braj Kishore Singh vs. The State of Bihar & Anr.: 2009(3) PLJR 990
- Nedunuri Kameswaramma v. Sampati Subba Rao: AIR 1963 SC 884
- Saroja B.R. v. Addl. Principal Judge, Family Court, Bangalore and Anr.: 1988 SCC Online Karnataka 419
- Bhaskar Ganguly @ Vaskar Ganguly & Anr. Vs Sujit Kumar Gupta: 1995(2) PLJR 563
- Gian Chand and Brothers and Anr. Vs. Rattan Lal Alias Rattan Singh: 2013(2) SCC 606
- S. Nagalingam Vs. Sivagami: (2001) 7 SCC 487

Representing Advocates

For the Appellant/s: Mr. Jitendra Kishore Verma, Advocate; Mr. Anjani Kumar, Advocate; Mr. Ravi Roy, Advocate; Mr. Shreyash Goyal, Advocate; Mr. Abhay Nath, Advocate; Ms. Shweta Raj, Advocate.

For the Respondent/s: Mr. Shashank Shekhar, Advocate.

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA) Date : 10-11-2023

Learned counsel for the parties have been heard on the previous date of hearing.

02. The instant Miscellaneous Appeal has been filed by the petitioner/appellant under Section 19(1) of the Family Courts Act, 1984 against the judgment 27.01.2020 passed by the learned Principal Judge, Family Court, Lakhisarai in Matrimonial Case No. 51 of 2013 dismissing the petition of the petitioner filed for decree of nullity of marriage under Section 12(1)(c) of Hindu Marriage Act, 1955 read with Rule 6 of Hindu Marriage Rules, 1956.

03. The case of the petitioner/appellant as it appears from the record, is that the petitioner/appellant is a Constable in communication coy Section 'A'. On 30.06.2013, the petitioner along with his uncle had gone to Ashok Dham Temple in Lakhisarai for worship. When the petitioner and his uncle had been purchasing materials for worship at about 02:00 pm, three persons, namely, Rajesh Kumar, Deepak Kumar and Bipin Singh all of Village Chauki, P.O., Balgudar P.S. and District Lakhisarai along with six unknown persons who were armed with pistol and knives came and surrounded the petitioner and his uncle. These persons brought the respondent near the petitioner and threatening him with life at gun point and dagger forced him to put vermilion (*sindur*) to the forehead of the respondent. On resistance being shown by the petitioner, he was assaulted with slaps and fists. The uncle of the petitioner was also surrounded and threatened by the aforesaid persons. Finding no way out as being in custody of the above noted persons, the petitioner put *sindur* on the head of the respondent but without any religious or spiritual rites and rituals. After performance of the so called marriage, the petitioner and respondent were kept confined in a dark room in the house of the above named Bipin Singh. The uncle of the petitioner was also threatened and confined to the house of Bipin Singh. After sunset, the uncle of the petitioner was set free and he was asked to come with his family members along with ornaments and clothes for respondent as the marriage has been performed.

Thereafter, the uncle of the petitioner went to the Lakhisarai Police Station and informed the police about the incident at about 02:00 pm on 01.07.2013,

but the police did not register the case. On the same night, the petitioner somehow managed to come out of the house of the respondent who is the daughter of above named Bipin Singh and went to inform the police about the incident but again the police did not take any action. Thereafter, the petitioner reached his village. Since the petitioner was required to join his duty immediately, he went to his service place and after getting leave, he came to file this case. Meanwhile, the uncle of the petitioner has also filed a criminal case in the Court of learned C.J.M., Lakhisarai vide Complaint Case No. 431C/12 under Section 323, 341, 352, 387 and 365 IPC. Thus the petitioner submitted that the so called marriage is in contravention of religious and customary laws and is voidable as the petitioner was forced to put *sindur* on the head of the respondent under threat and coercion. The petitioner has not performed any religious function out of his free will and consent and prayed the learned Family Court to annul the so called marriage while passing a decree of nullity.

04. The respondent appeared and filed her written statement. In her written statement, the respondent submitted that she is the wife of the petitioner and their marriage has been solemnized on 30.06.2013 under Hindu customs and at the time of marriage, the father of the respondent gave the petitioner gift of gold, Rs. 10,00,000 (Ten Lacs) and other material. The respondent went to her matrimonial home and after passage of some time, the petitioner demanded a Maruti Car and tortured the respondent. The respondent denied all the averments made by the petitioner in his petition contending that respective allegations are false and fabricated. The respondent further submitted that she has filed a complaint case under Section 498 IPC vide Complaint Case No. 599C of 2015 which was pending in the Court of learned S.D.J.M., Lakhisarai.

05. On the basis of rival contentions, issues were required to be framed. The order sheet of the learned Family Court dated 19.02.2016 reveals after failure of conciliation, issues were framed, but it appears issues framed are not on record. Even the impugned judgment does not disclose the fact whether any issues were ever framed and what were those issues. If the issues were not framed, it was incumbent upon the learned Principal Judge Family Court to frame the issues even at later stage and then decide the Matrimonial Petition in the light of those issues. If the issues were framed, but were not taken into consideration by the learned Principal Judge Family Court, even in that situation, the findings recorded are in absence of any issues to which the evidence was recorded.

06. However, it seems, no issues were framed even though it has been so mentioned in the order sheet. The fact has not been disputed by the learned counsels appearing on behalf of the parties.

07. Further we have noticed that no decree has been prepared in this case as it appears from the learned trial court record as well as the submission made before us by the parties. Learned counsel appearing on behalf of the appellant submitted that Section 19(1) of the Family Courts Act stipulates that appeal can be filed against a judgment or an order of the Family Court. The learned counsel appearing on behalf of the appellant further submitted that the purpose behind the same as for being treated under the heading of Miscellaneous Appeal is to secure speedy settlement of justice relating to marriages and family affairs. Legislative intent is clear from the expression used in Section 19(1) of the Family Courts Act and the omission of word decree is deliberate and intentional. Further the learned counsel submitted that this issue is no longer *res integra* as a Full Bench of this Court in the case of **Sunita Kumari vs. Prem Kumar with Braj Kishore Singh vs. the State of Bihar & Anr.** reported in **2009(3) PLJR 990** has settled the issue. The learned counsel took us to Paragraph-15 of the aforesaid decision in support of his contention. Paragraph-15 reads as under:-

“15. In view of aforesaid discussions and findings, I hold that appeals under section 19 of the Family Courts Act 1984 can not be treated as appeals against a decree having been made in exercise of original civil jurisdiction. The provisions under section 19 of the Act have a wider ambit so as to cover all kinds of judgments and orders made appealable by the express provisions of that section and not only decrees as defined under Code of Civil Procedure. These appeals and similar other pending appeals, therefore, have to be treated as Miscellaneous Appeals and not First Appeals.”

08. In view of the clear enunciation of provision of law by the Full Bench of this Court, even in absence of decree, a judgment of the Family Court can be challenged in an appeal before this Court and the said appeal is to be treated as Miscellaneous Appeal.

09. At the same time, learned counsel appearing on behalf of the appellant submitted that non-framing of issues in the instant case is not of any material significance since the parties were always clear on the point of dispute and they adduced their evidence to that effect only. The

appellant/petitioner before the Family Court laid his evidence in support of his contention, whereas the same was refuted by the respondent. Therefore, it cannot be said that absence of issue is fatal to the case or that has vitiated the trial resulting in a mistrial. Learned counsel for the appellant relied on the decision of the Hon'ble Apex Court in the case of ***Nedunuri Kameswamma v. Sampati Subba Rao*** reported in ***AIR 1963 SC 884***. The learned counsel submitted that the appellant has assailed the judgment of the learned Family Court on a number of grounds and though the fact of non-framing of issues favours the appellant, still the appellant did not press for remanding the matter to the learned Family Court for framing of the issues and deciding it afresh for the simple reason that this Court can proceed in the matter, and if it so wishes, it may formulate its points for determination and dispose of the appeal finally in light of the evidence before it *vis a vis* the points formulated by it. The learned counsel further relied on the decision of the High Court of Karnataka in the case of ***Saroja B.R. v. Addl. Principal Judge, Family Court, Bangalore and Anr.*** reported in ***1988 SCC Online Karnataka 419*** wherein, the learned Single Judge held that it is not obligatory for the Family Court to frame issues. The learned counsel further relied on a decision of this Court, (Ranchi Bench) in the case of ***Bhaskar Ganguly @ VaskarGanguly & Anr. Vs Sujit Kumar Gupta*** reported in ***1995(2) PLJR 563*** submitting that issues are framed for coming to a right decision for the controversy between the parties with a view to pinpoint the real and substantial points of difference and also on the point that rules of procedure are tools forged to achieve justice and not hurdles to obstruct the pathways of justice.

10. However, the contention of the learned counsel for the appellant was resisted by the learned counsel appearing on behalf of the respondent who submitted that the learned Family Court ought to have framed issues and only then it should have decided the matter.

11. Since the non-framing of issues is a point of importance in the present case, we are inclined to discuss this point at the outset. The decision of the Hon'ble Supreme Court cited (supra), it is not a case that no issues at all were framed by the learned trial court, but it appears that no issue was framed on certain point and another issue which was framed was not elaborate. There is no similarity with the facts of the present case, since in the case before us, apparently the learned Family Court did not frame any issues at all and still it went to decide the case, however, the parties adduced their evidence for and against the contention raised in their pleadings. So, it

can be presumed that the parties were knowing about the facts in issue and accordingly laid their evidence. Moreover, the Matrimonial Suit was filed way back in year 2013 and more than a decade has elapsed since then. So, it would be harsh on the parties, if they are relegated to the trials and tribulations of the Family

Court again after passage of so much time. So, we feel that this Court could proceed to dispose of this appeal on consideration of evidence after formulating the points of determination and as envisaged in Section 17 of the Family Courts Act as it provides that judgment of the Family Court shall contain a concise statement of the case, point of determination, the decision there on and the reasons for such decisions.

12. The aforesaid discussion takes care of the two infirmities, namely, non-preparation of decree and non-framing of issues before the learned Family Court.

13. Based on the pleadings of the parties the following points are formulated for determination of the present appeal:-

(i) Whether the marriage of the appellant Ravi Kant was solemnized with respondent Bandana Kumari without his consent and under duress, threat and coercion?

(ii) Whether the marriage of the appellant and the respondent was solemnized in contravention of religious and customary rites and rituals?

(iii) Whether the marriage of the appellant and respondent is liable to be annulled on the aforesaid grounds?

14. Altogether four witnesses have been examined on behalf of the appellant/petitioner, whereas three witnesses were examined on behalf of the respondent. P.W.1, Chandra Mauleshwar Prasad Singh is the father of the appellant/petitioner. P.W.2, Ravi Kant is the appellant/petitioner of this case. P.W. 3, Satyendra Kumar Singh is the uncle of the petitioner. P.W.4 Sanjay Kumar is the maternal uncle of the petitioner. Certain documents have been exhibited on behalf of the petitioner/appellant which are as follows:-

15. Ext-I- A photo copy of letter no.1571489/Ravikant Dated 31.07.13 to District Sainik Board Lakhisarai, Ext-II-A photocopy of Letter No. 1571489/Ravikant dated 23.07.13, Ext-III-A photocopy of letter no. 15714892A/DSR/Civ dated 25.07.13 to District Commissioner Lakhisarai, Ext-IV-A photocopy of application of Ravi Kant on 11.07.13 to command officer 28 Infantry Division Signal appellant Regiment, Ext-V-FIR Lakhisarai

P.S. Case No. 20/14 and Exhibit-VI-Complaint petition filed the Satyendra Singh vide 431C/13.

16. Now, P.W. 2 and P.W. 3 are the persons who are directly involved in this case. In his examination-in-chief P.W.2 has stated that in June 2013, he was posted at Jammu and Kashmir where he was in the job of Army. On 30 June 2013, he went to Ashok Dham Temple for worshipping Lord Shiva along with his uncle Satyendra Kumar Singh. While purchasing goods for worship, they were surrounded by Rajesh Kumar, Deepak Kumar, Bipin Singh and others, and on the point of knife and pistol, they took control of the petitioner and his uncle and took them to some other place where respondent was brought and the petitioner was asked to put vermillion (*sindur*) on her forehead. When the petitioner refused, he was assaulted with slaps and fists and threatened with life. The P.W. 2 has further stated that his uncle was kept confined separately on gunpoint. Thereafter, without any rites and rituals and against the will of the witness, he was forced to put vermillion (*sindur*) on the forehead of the respondent. Thereafter, the witness and respondent were put up in a dark room which was locked and on pretext of going to toilet, the witness fled away on his motorcycle which was kept outside. The witness further stated that he went to the Lakhisarai Police Station and gave a written report, but it was not paid any heed to by the police as it was in collusion with the father of the respondent. Thereafter, the witness came to his house. The witness has further deposed that since he had to join his job as his leave period is about to end, he went to join his job and when further leave was granted to him, he came back and filed the present case. The witness further deposed that as no FIR was lodged by the police even after receipt of information, the uncle of the witness filed a Complaint Case bearing No. 431C/12 at Lakhisarai Court against the above named persons. The witness has also deposed that after sunset, his uncle was let out saying that the marriage between the petitioner and respondent has been solemnized and with instruction to his other family members to bring clothes and ornaments for the respondent. Even the uncle of the petitioner went to lodge the case with the police station after he was freed from the captivity, but police did not register any case. The witness has further deposed that putting of vermillion (*sindur*) forcibly is against the religious traditions and practice and is against the law, since the aforesaid marriage was solemnized against his will and without his consent forcibly and the same was solemnized giving threat of life to the witness. Since the marriage was solemnized forcibly, no other member from his family was

having any knowledge about the marriage. The witness has further deposed that the respondent never went to his house and none of the family members of the petitioner had ever seen the respondent anywhere except in the Court. After the so-called marriage, the witness never saw the respondent except in the Court. In fact, the witness never saw the respondent even prior to the so-called marriage and he does not know her or even the village from which she belongs to. The witness denied the claim of the respondent that she went to her matrimonial home after marriage and also denied spending of Rs. 10,00,000/- in marriage by her family and further denied that marriage was solemnized according to Hindu rites and rituals. The witness has also denied the demand of dowry. The witness also denied the claim of the respondent that the witness has filed this case for grabbing 10,00,000/- given as gift to him and the witness claimed that it is wrong to say that gold and other things worth Rs. 10,00,000/- were given in the marriage.

17. Almost similar to the fact is the evidence of the P.W. 3 who is also an eye-witness along with the appellant who deposed with P.W. 2. P.W.1 and P.W. 4 are not eye-witnesses, but they are witnesses to the subsequent events and they supported the case of the appellant/petitioner and corroborated the evidence of the other witnesses. However, in their evidence, both of them deposed that the claim of the respondent that she went to her matrimonial home after marriage and Rs. 10,00,000/- was spent on the marriage. These witnesses have denied that P.W.1 demanded dowry and when the same was not given, this false case was instituted.

18. Now, when P.W. 1 was cross-examined at length except for denial of suggestions regarding solemnization of marriage, demand of dowry and nothing of significance came out. Similar to the fact is the cross-examination of P.W. 1, P.W. 3 and P.W. 4 and the respondent has not been able to cull out anything from cross-examination except putting certain suggestions to them in her favour.

19. R.W. 1 Bambam Singh is the independent witness,
R.W. 2 Bandana Kumari, is the respondent herself herein and
R.W. 3 Chotelal Pandit is the independent witness.

20. Certain documents have also been filed on behalf of the respondent which are as under:-

- (i) Certified copy of FIR bearing Kashichak PS Case No. 52/17, dated-04.07.17.
- (ii) The certified copy of final form/report of Kashichak (Shahpur O.P.) P.S. Case No. 52/17.

21. Respondent witness No. 1 Bambam Singh in his examination-in-chief deposed that he knows Bandana Kumari whose marriage was solemnized on 30.06.2013 with Ravi Kant according to Hindu Rites and rituals. The witness further deposed that he was present in the marriage. 10 to 15 persons from the side of bridegroom were stated to have attended the marriage at about 02:00 p.m. The rituals of marriage were performed in Ashok Dham temple and *saptapadi* was performed at 10-11 pm in the night. One Chotelal Pandit was the pandit from the side of the bride. The marriage ceremony ended at around 1 am in the night. After marriage, Bandana Kumari went to her matrimonial home and stayed there for about 3-4 days. Thereafter, Bandana Kumari was sent to her parental home accompanied with the uncle of Ravi Kant. They did not take Bandana Kumari there as the demand of dowry of Rs. 10,00,000/- from her in-laws was not fulfilled. In his cross-examination, the witness deposed that he is agnate of Bandana Kumari. The witness further deposed in his cross-examination that he was not present from either of the sides at the time of marriage. There were 10 to 15 persons from the side of Bandana Kumari at Ashok Dham and he recognized only uncle Satyendra Kumar from the bridegroom's side. The witness has further deposed that there was a female present at the time when the vermilion (*sindur*) was being put, but he could not tell the name of that female. The witness also deposed that receipt was taken for solemnization of marriage from both sides, but he did not see them taking the receipts. The witness denied all the suggestions given on behalf of the petitioner's side.

22. R.W. 2 Bandana Kumari is the respondent herself. In her examination-in-chief, she has deposed that her marriage was solemnized on 30.06.2013 with Ravi Kant under Hindu rites and rituals and after seven steps round the sacred fire at Ashok Dham temple, the marriage was solemnized with the consent of Ravi Kant following all religious practices by one Chotelal Pandit. In the marriage, apart from her husband Ravi Kant, his uncle Satyendra Kumar Singh and 15-20 persons also attended as members of *Baraat*. After marriage, she was sent to her matrimonial home by her father giving a number of gifts to the groom like gold-chain, ring, household

articles, clothes and the witness was also given 8 *bhar* of gold ornaments and 20 *bhar* of silver ornaments and clothes, etc. Total 10,00,000/- was spent on the marriage. The witness went to her matrimonial home and spent 2-3 days with her husband, there she came to know that her in-laws were unhappy as they did not get the sufficient dowry and they started putting pressure on the husband of the witness and also on the uncle of the petitioner for sending the witness to her parental home. Thereafter, Satyendra Kumar Singh took the witness to her parental home under pressure from his brothers and mother of Ravi Kant. When the witness was not taken back despite repeated request by her father and brother, the witness filed a complaint case bearing Complaint Case No. 593C of 2015 before the Court of learned C.J.M, Lakhisarai for torture related to dowry against the petitioner, his parents and other family members.

23. In her cross-examination, the witness denied the allegation that her marriage was forcibly solemnized and he did not go to her matrimonial home. However, she deposed that rites and rituals of the marriage were performed at her house, but the ceremony of putting vermilion (*sindur*) took place at Ashok Dham. The witness did not mention that when she returned from her matrimonial home, she stated that it was in the year 2013, but she did not remember the exact date and month. The witness denied the suggestion that her marriage was forcibly solemnized with the petitioner Ravi Kant.

24. R.W. 3, Chotelal Pandey is the Pandit who claims to have solemnized the marriage. In his examination-in-chief, this witness has deposed that he knows Bandana Kumari and her brother informed the witness that her marriage was to be solemnized with Ravikant, Resident of Village Ravra, P.S. Kashichak, District Nawada. The witness further deposed that he went to the house of Vipin Kumar in the evening for solemnization of marriage. By that time, *Baraat* ceremony had already over. After coming of *Baraat*, all rituals were performed in the house of Bipin Singh. The witness further deposed that marriage was solemnized in Ashok Dham temple. At the time of marriage, persons from both sides were present in the house as well as in *Pandaal*. The witness further deposed that the marriage ceremony lasted till 10-11 pm. Photography was also done and he is present in the photos. At the instance of this witness Exhibit-A to A5 were exhibited with objection from the petitioner's side. The witness further deposed that next day of the marriage he saw both sides taking leave of each other in a cordial atmosphere and *vidaai* of the girl also took place. The witness further

deposed that the marriage was solemnized with the consent of bride and bridegroom and denied the suggestion that marriage was solemnized forcibly. In the cross-examination, the witness deposed that he does not know how many rituals are performed in the marriage. The witness further deposed that he also does not know how many *vedas* are recited in the marriage. The witness further deposed in his cross-examination that he did not bring out the photographs from any laboratory and further deposed that in marriage no date is prohibited. The witness further deposed that he could not tell how many *baraatis* were there and denied the suggestion that he did not solemnize the marriage of Ravi Kant and Bandana Kumari and was deposing falsely. The witness further denied that the photographs were forged and he has wrongly identified it. The witness further denied the suggestion that the contention about marriage being solemnized at Ashok Dham was not correct as the respondent stated about her marriage being solemnized in her house.

25. Learned counsel for the appellant submitted that the learned lower court failed to appreciate that respondent has filed the Complaint Case No. 539C of 2015 under Section 498 IPC making absurd and baseless allegations after three years of filing of the present case for annulment of marriage. The learned trial court has also not considered the contradictory statements of the respondent in her written statement wherein she has stated that her marriage was solemnized at her house, whereas in her deposition she has stated that her marriage was solemnized in Ashok Dham temple. The learned counsel further submitted that photograph produced is not admissible in evidence and rather they prove that family members of the appellant were not present at the time of marriage. The photographer was not examined and the photographs were not proved. The learned counsel further submitted that the case of respondent was completely demolished by the evidence of R.W. 3 who is Pandit and who claimed to have performed the marriage. This witness was not even knowing about the performance of *saptapadi* and Section 7 of the Hindu Marriage Act, 1955 provides that no marriage is complete unless seven steps around sacred fire customs is completed. Since the appellant was forced to put *sindur* on the head of the respondent being threatened with dire consequences and he has not performed any religious function out of his free will and consent, the case of the appellant is covered under Section 12(1)(c) of the Hindu Marriage Act. Learned counsel further submitted that the approach of the learned family court shows bias and wrong averment has been made while deciding the

case. The discussion of Paragraph 37 and 38 of cross examination of P.W. 2, the petitioner himself, is complete misappreciation of the evidence. From these two paragraphs it nowhere comes out that the marriage was solemnized with volition of the appellant. The learned court below failed to decide the crucial issue that whether the marriage was solemnized with the consent of the petitioner and whether it was under force and coercion or whether it was a marriage duly performed with the free consent of the appellant. The learned Family Court also failed to consider the documents issued by the army officials in support of the case of the appellant and the impugned judgment suffers from non- consideration and discarding of relevant exhibits i.e., Exhibit I,II, III and IV which clearly prove the case of the petitioner/appellant. The learned Family Court further failed to consider that no documentary evidence was brought on the record nor the photographs were examined nor the receipt of Ashok Dham temple was filed. The learned Family Cour also did not take into consideration the fact that even the father of the appellant was not present at the time of marriage. Thus, the learned Family Court has perversely and arbitrarily dismissed the Matrimonial Case without appreciating the facts and circumstances and material available on record.

26. Learned counsel further submitted that the real question involved in this appeal is as to whether the consent of the appellant was free or whether it was obtained by force. The oral, documentary and circumstantial evidence have to be appreciated in order to reach a definite conclusion as to free consent of the appellant and once the circumstances and material indicated that consent was not free or the marriage was performed against the will of the respondent, the Matrimonial Case ought to have been allowed. The learned counsel further submitted that learned trial court overlooked certain glaring circumstances. Admittedly, the parents of the appellant are alive, but both of them were not present while their son was being married and as the per the respondent, it was a case of normal arranged marriage. The respondent depose that R.W. 2 in her evidence in Paragraph No. 3 of examination-in-chief has stated that marriage was performed under guardianship of Satyendra Kumar Singh, the uncle of the appellant. On the other hand, the learned court below has recorded in Paragraph 17 of its judgment that Satyendra Kumar Singh was not present at the time of marriage. Thus, even the guardian under whose guardianship the marriage was being allegedly performed was absent. It is also obvious that R.W. 3, the priest, namely Chotelal Pandit who solemnized the marriage

has no knowledge of '*saptapadi*' and the learned court below went on to observe that by not performing the rituals of '*saptapadi*' it does not mean that the marriage was not performed. This finding is completely in teeth of the provisions of Section 7 of the Hindu Marriage Act and even the Hon'ble Apex Court in its decision reported in **2001(7) SCC 487** from Paragraph No. 12-16 has held that a tradition in Hindu form of marriage will not be a valid marriage in absence of performance of '*saptapadi*' and '*datta homa*'. Further there is no direct evidence that any one of the named relatives of the appellant attended the marriage and there is only vague allegations of 15 to 20 persons from the appellant's side without naming any of the specific relatives. Learned counsel further submitted that written statement submitted by the respondent denying forcible marriage asserting legal and valid marriage is very cryptic, vague and evasive. No specific case regarding details of valid performance of marriage has been pleaded and as such the same also amounts to evasive denial and therefore, deemed admission and the learned counsel has placed his reliance on the decision of the Hon'ble Apex Court reported in **2013(2) SCC 606 Paragraph No. 23 to 25**. All the circumstances would lead only to the conclusion that marriage was not performed under normal circumstances as alleged by the respondent. Rather the circumstances indicate that marriage was performed under unusual circumstances and the consent of the appellant for marriage was not a free consent rather it was obtained by force and against his will. Once, the allegation has been made that the marriage was not performed according to the Hindu rights and rituals and without performance of *saptapadi* and by use of force, onus has shifted to the respondent side to prove that the marriage was duly performed under normal circumstances by observing all rituals and that the marriage was legal and valid, but the respondent failed to prove this aspect and thus failed to discharge her onus. The learned counsel further submitted that the main reason which weighed the learned trial court for dismissing the Matrimonial case is delay of about 16 days in lodging the criminal case regarding the incident. However, the learned counsel submitted that the learned Family Court failed to realize that the appellant and his uncle just after the incident tried to lodge the case before the Lakhisarai Police Station which was not accepted and on this point, there is clear cut pleading in the Matrimonial case which was not denied specifically and the denial is evasive and thus amount to deemed admission under Order 8, Rules 3 to 5 CPC. The same thing was deposed by P.W. 2 (In Para 8) and P.W. 3 (In Para 6). The learned court below also

did not take any decision regarding the fact that the appellant's leave was coming to an end after 04.07.2013 and as such he had to leave for Jammu and Kashmir to join his duty in the Indian Army and there also he reported the matter and prayed for legal action by letter dated 11.07.2013 to his Commandant. Thereafter, from the office of the Commandant, a letter was written to the headquarter regarding the incident on 23.07.2013. Thereafter, the Commanding Officer of the appellant wrote a letter to the District Commissioner, Lakhisarai on 25.07.2013 requesting him to instruct S.H.O., Lakhisarai Police Station to lodge a FIR and get the case investigated. Further another letter dated 31.07.2013 was again sent from the office of the Commandant to Jila Sainik Board, District-Lakhisarai to get the case investigated. Ultimately, a complaint case was lodged on 16.06.2013 by the uncle of the appellant bearing Complaint Case No. 431C of 2012 under Sections 323, 341, 352, 387 and 365 IPC in the Court of learned C.J.M., Lakhisarai. Thereafter, on the said complaint case, FIR was directed to be registered under Section 156(3) Cr.P.C. and thereafter, the investigation was undertaken. Thus in the circumstances, the delay of 16 days in filing of the complaint case clearly stands explained. Thus, the learned counsel submitted that the appeal is fit to be allowed, annulling the alleged marriage having been performed by force and at least without free consent of the appellant.

27. The learned counsel appearing on behalf of the respondent vehemently countered the submission made on behalf of the appellant. The learned counsel further submitted that the marriage of the appellant and respondent was solemnized on 30.06.2013 in Ashok Dham in accordance with Hindu Marriage rites and rituals. Learned counsel further submitted that non-performance of *saptapadi* has no relevance and hardly affects the present case in as much as the Hon'ble Apex Court in various occasions made it clear that if *saptapadi* is not performed and other ceremonies is performed by either of the parties, a valid marriage is said to have been solemnized. Though the appellant has been claiming that the marriage has been solemnized, however, the same is not corroborated by the conduct of his family members. They did not chose to lodge the matter to the local police or authorities, though, admittedly, the uncle of the appellant was released by the respondent and her family members in the course of the marriage. Learned counsel further submitted that the claim of the appellant that he escaped from the house and instead of reporting the matter to the police, left his village for the purpose of reporting to his duty seems highly unbelievable.

The Complaint Case bearing No. 431 of 2013 was filed by the uncle of the appellant only to create evidence. The delay of 16 days in lodging of this case has not been explained by any of the witnesses of the petitioner's side. Thus, the learned counsel submitted that there is no merit in the appeal and the same be dismissed.

28. Before considering the cases of rival parties, it will be advantageous to reproduce here the relevant provisions. The petitioner/appellant has filed the case for annulment of his marriage under Section 12(1)(c) of the Hindu Marriage Act, 1955. Section 12 of the Hindu Marriage Act provides provision for Voidable marriages, which read as under:-

“12. Voidable marriages.– (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:–

[(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or*

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in subsection (1), no petition for annulling a marriage–

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained

if–

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or (ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after

the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied— (i) that the petitioner was at the time

of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground].”

29. The petition has been filed for annulment of marriage on the ground of absence of consent of the petitioner/appellant, since it is the specific contention of the petitioner/appellant that his consent was obtained under force as he was threatened at gunpoint.

30. Now, coming back to the facts of the case, it is the contention of the petitioner that he was abducted along with his uncle and was forced to undergo the marriage ceremony under threat of life. Though, it has been claimed by the petitioner/appellant that he and his uncle approached the police station at Lakhisarai for lodging the complaint, the police did not register the complaint and, subsequently, on 16.07.2013, the uncle of the petitioner lodged the complaint case before the court of learned Judicial Magistrate. For not immediately lodging the complaint against the acts of respondent and his family member, the explanation has come from the petitioner/appellant that as he is an Army-man and was on leave, period of his leave was coming to an end and he was required to join his duties, so he could not stay at his home and went away to his work place. This contention is not entirely shorn of merit. The petitioner/appellant has brought on record a number of documents as Exhibits and these documents are letters and communications from the Officer of the petitioner to the concerned authorities about taking action on the complaint of the petitioner. Even Exhibit-(I) to Exhibit (IV)-A supports the contention of the petitioner and the documents are found from 11th July, 2013 to 31st July, 2013. So, it cannot be said that there was undue delay on part of the petitioner in reporting the

misdeed against him. At the same time, it cannot be said that story of the petitioner/appellant about leaving from his work place due to lack of leave is not believable. Further, Exhibit-VI is complaint petition filed by the uncle of the petitioner vide Case No. 431(C) and Exhibit-V is the FIR of Lakhisarai P.S. Case No. 20 of 2014, which has been registered on the basis of complaint.

31. On the other hand, the respondent has claimed anormal marriage with the petitioner but even from the facts and evidence brought on record on behalf of respondent, the marriage appears to be anything except normal. If it were a normal arrange marriage, naturally there would have been participation from both sides. Except for uncle of the petitioner, no names of any other blood relation or relatives of the petitioner has been brought on record by the respondent, who might have attended the marriage. The respondent has claimed that 15-20 people attended the marriage from the side of the petitioner/appellant but the names of these persons are conspicuous by their absence. We find merit in the submission of the learned counsel for the appellant/petitioner that other close relatives did not attend the marriage even as per version of the respondent and the same goes on to show that it was an unusual marriage, even if the contention of respondent is taken into account.

32. Once the petitioner put forward his claim about he was being forced into the marriage and marriage not being performed according to rites and rituals and, subsequently, criminal case has been registered against the respondent and others, the onus was on the respondent to rebut the contention of the petitioner by showing that the marriage was solemnized following all rites and rituals and it was a normal marriage. However, the evidence discussed herein above is not supportive of the case of the respondent. The respondent has utterly failed to rebut the contention that the petitioner/appellant was not forced into marriage. The respondent's side has prevaricated even regarding the place of marriage. At one point of time, it has been claimed that the marriage was solemnized at the house of the respondent whereas, on the other hand, it has come in the evidence of the witnesses that the marriage was solemnized in Ashok Dham temple. If the evidence of respondent is to be believed, then for solemnization of marriage in a temple, no receipts were brought on record, though it was admitted that such receipts were being issued. It is also not the case of respondent that the receipt was taken and the same got misplaced or lost.

On the other hand, it has all along being the case of the petitioner that he was coerced into the marriage at gunpoint and the forcible marriage is reflected from the communication made by the Officer of the petitioner with different authorities and all the petitioner's witnesses have supported the case of the petitioner at this point without any contradiction. Even the respondent has failed to elicit some response in her favour from the witnesses of the petitioner. Except for giving some bland suggestions, the respondent has not been able to cull out anything in her favour from the mouth of the witnesses of the petitioner.

33. It is admitted position of both sides that some ceremony was performed towards solemnization of marriage of the appellant/petitioner and respondent. But, whether it fulfilled the requirement of a valid marriage or not, it is to be seen.

34. Section 7 of the Hindu Marriage Act, 1955 reads as under:-

“7. Ceremonies for a Hindu marriage.– (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”

35. From bare perusal of the aforesaid provision, it is obvious that when such rites and ceremonies including *Saptapadi* the marriage becomes complete and binding, when seventh step is taken. Conversely, if '*saptapadi*' has not been completed, the marriage would not be considered to be complete and binding. Now, the respondent has claimed that all rituals were performed and '*saptapadi*' was complete. It is surprising that *Pandit* who performed the marriage ceremony has no knowledge about the essentials of the marriage and his deposition is not clear about the place of marriage. The photographs of the purported marriage cannot help the case of the respondent since it has not been properly exhibited and could not be considered admissible. Moreover, the photographs on their own could not reveal anything. It is not the case of the petitioner/appellant that no marriage was ever solemnized rather it is his contention that he was forced into marriage. Under the circumstances, even if the photographs are taken into consideration, it cannot be said that the marriage was being solemnized without any outer influence. It has all along the contention of the petitioner

that his marriage was under duress and the same was rebuttable contention for which the onus was on the respondent, but she failed to discharge this onus. On the other hand, the petitioner's case has been supported by witnesses who remained unimpeached during cross-examination.

36. The learned Family Court has adopted its own reasoning for disbelieving the case of the petitioner, but, in our opinion, the said view is flawed. The learned Family Court went on the premise that the petitioner did not immediately lodge the complaint either to the police or to the court and this gap makes the case of the petitioner disbelievable. As discussed herein before, the petitioner has explained the situation and there is no undue delay, even the petitioner took steps post marriage through his Officer in the Army Command. So, it cannot be said that the petitioner slept over the matter. Similarly, the learned Family Court has recorded that at the time of marriage, persons from both sides were present. But, where from the Family Court come to this conclusion is not forthcoming from the evidence of the respondent's side. When the learned Family Court expressed his opinion that photographs has not been examined, it was not open for the Family Court to rely on the same documents. Then, in absence of material to otherwise, the learned Family Court's finding that not performing the ritual of '*saptapadi*' does not mean that marriage was not performed, is devoid of any merit. Another aspect which has been taken into consideration by the learned Family Court is about respondent staying in her matrimonial home for a few days. But, where is the evidence to prove this contention? It remains only a statement in absence of any supportive evidence. If the respondent has resided in her matrimonial home after her marriage, there would have been corroborative evidence which is clearly lacking in the present case. Further, the learned Family Court relied on respondent lodging a case under Section 498(A) of IPC. But, dates and events makes it amply clear that the case was lodged by the respondent on 17.08.2015, i.e., after two years of the marriage. It does not appear to a co-incidence that the said case was lodged after the Matrimonial Case No. 51 of 2013 came into existence. So, the case under Section 498(A) IPC being a counterblast to the matrimonial case, cannot be denied.

37. We find merit in the contention of the learned counsel for the petitioner/appellant. The written statement of respondent is silent on a number of points and denials are evasive. Further, it has come in the evidence of the petitioner's side that the marriage did not commence, as

there was no cohabitation since the petitioner fled away in the night of his marriage. Even this fact has not been denied by the respondent, though a plea has been taken that she went to her matrimonial home after the marriage, but, as has been observed earlier that she failed to produce any corroborative evidence. Reliance could be placed on the decision of the Hon'ble Apex Court in the case of ***Gian Chand and Brothers and Anr. Vs. Rattan Lal Alias Rattan Singh***, reported in **2013(2) SCC 606** that if there is no specific denial and denial is totally evasive, respondent could not have been permitted to lead any evidence. Similarly, reliance of the learned counsel for the appellant/petitioner on the decision of the Hon'ble Apex Court in the case of ***S. Nagalingam Vs. Sivagami*** reported in **(2001) 7 SCC 487** is quite appropriate that a traditional Hindu form of marriage is not a valid marriage in absence of performance of 'saptapadi' and 'datta homa'.

38. In the light of discussions made so far and on the basis of evidence adduced by the parties, we come to the conclusion that the order of the learned Family Court is not sustainable and hence the Judgment dated 27.01.2020 passed in Matrimonial Case No. 51 of 2013 stands set aside. The marriage of the appellant-petitioner with respondent stands annulled.

39. Accordingly, the Misc. Appeal stands allowed.

40. Let decree be drawn accordingly.

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