HIGH COURT OF TELANGANA
Bench: HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

Date of Decision: 22.01.2024

CIVIL REVISION PETITION No. 3413 OF 2023

Kadavath Srikanth …PETITIONER

Versus

Kadavath Ashwitha @ Jadav Preethilekha …RESPONDENT

Legislation:

Article 227 of the Constitution of India
Section 13(B) of the Hindu Marriage Act, 1956
Section 2(2) of the Hindu Marriage Act, 1956

Subject: Civil revision petition challenging the order of the Senior Civil Judge, Kamareddy, in a mutual consent divorce case involving parties from the Lambada (Scheduled Tribe) community, examining the applicability of the Hindu Marriage Act, 1956 to Scheduled Tribes.

Headnotes:

Civil Revision Petition – Challenging order of Senior Civil Judge in mutual consent divorce petition under Section 13(B) of the Hindu Marriage Act, 1956 – Petition returned for want of jurisdiction – Petitioner and respondent, belonging to Lambada Scheduled Tribe, contending their marriage was solemnized as per Hindu customs. [Paras 1-4]

Applicability of Hindu Marriage Act to Scheduled Tribes – Examination of Section 2(2) of the Act – Non-applicability to members of any Scheduled Tribe unless directed by Central Government notification – Article 366 of Constitution defining Scheduled Tribes – Consideration of whether Hindu customs followed by Scheduled Tribe members bring them under the Act's purview. [Paras 11, 12, 20, 23]

Judicial Precedents – Reference to Supreme Court and High Court judgments on applicability of Hindu Marriage Act to Scheduled Tribes following Hindu customs – Emphasis on parties being substantially Hinduised. [Paras 14, 16, 17, 26]

Decision – Civil Revision Petition allowed – Impugned order set aside – Trial Court directed to number the petition and decide in accordance with the law considering the material on record – No general opinion expressed on applicability of Section 2(2) of the Act to Scheduled Tribes; to be decided based on facts and circumstances of each case. [Paras 27-30]

Referred Cases:

- Labishwar Manjhi v. Pran Manjhi(2000) 8 Supreme Court Cases 587
- Dr. Surajhmani Stell Kujjur v. Durga Charan Hansdah(2001) 3 SCC 13
- Satprakash Meena v. Alka Meena2021 Supreme (Del) 389
- B. Swapna v. B. Gnaneswar2023 (3) ALD 73
- Rupa Debbarma v. Tapash Debbarma MAT. APP 6 of 2018

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

CIVIL REVISION PETITION No.3413 of 2023

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed against the order dated 22.08.2023 passed by the Senior Civil Judge at Kamareddy, in CFR No.630 of 2023, whereby the petition filed by the petitioner under Section 13(B) of the Hindu Marriage Act, 1956 (for short, 'the Act'), for decree of Divorce by Mutual Consent by dissolving the marriage dated 23.05.2019 of the petitioner and respondent, was returned for want of jurisdiction.

2. The brief facts leading to the filing of the present Civil Revision Petition are that the petitioner and the respondent are husband and wife and they belong to Lambada Caste (Scheduled Tribe Community). Their marriage was solemnized on 23.05.2019, as per the rights and customs prevailed in Hindu Community. The respondent lived with the petitioner for a period of one year and thereafter, disputes arose between them, therefore, the respondent left the society of the petitioner on 21.06.2020. The elders and well wishers of the petitioner and the respondent tried to reconcile the issues between the parties so that they can lead a happy conjugal life, but,

in vain. Thus, both the petitioner and the respondent decided to dissolve their marriage mutually and have taken a customary divorce on 22.06.2023 in the presence of the elders of both parties, by entering into an agreement.

3. As per the said agreement dated 22.06.2023, the petitioner agreed to pay an amount of Rs.9,00,000/- as full and final settlement towards permanent alimony to the respondent. Accordingly, the petitioner gave an amount of Rs.2,00,000/- on 22.06.2023 and Rs.4,00,000/- on 27.06.2023. The balance amount of Rs.3,00,000/- was agreed to be given to the respondent after dissolution of their marriage. As per the said agreement, gold and silver, household and kitchen articles were also returned to the respondent. Similarly, the respondent had also given 25 grams of gold to the petitioner.

4. The petitioner and the respondent have jointly filed a petition under Section 13 (B) of the Act, for dissolution of their marriage solemnized on 23.05.2019 *vide* CFR No.630 of 2023 and the trial Court returned the said petition for want of jurisdiction in terms of Section 2(2) of the Act *vide* the impugned order dated 22.08.2023. Hence, the present Civil Revision Petition.

5. This Court, on 23.11.2023, appointed Sri Kowturu Pavan Kumar, Advocate, as Amicus Curiae, to assist this Court.

6. Heard Sri T. Srunjan Kumar Reddy, the learned counsel for the petitioner as well as Sri Kowturu Pavan Kumar, learned Amicus Curiae.

7. The learned counsel for the petitioner would submit that both the petitioner and the respondent belong to Lambada Caste (Scheduled Tribe Community), and their marriage was solemnized as per the customs and traditions of Hindu Community including the custom of “saptapadi” etc. He further contended that the petitioner and the respondent jointly filed the petition under Section 13(B) of the Act specifically contending that they are

following Hindu traditions and customs. Thus, the trial Court ought not to have returned the petition, on the ground that it was not maintainable as per Section 2(2) of the Act. Therefore, he prayed to set aside the impugned order.

8. In support of the said contentions, the learned counsel for the petitioner relied upon the judgments in ***Labishwar Manjhi v. Pran Manjhi***[1]***, Dr. Surajhmani Stell Kujjur v. Durga Charan Hansdah***[2]***, Satprakash Meena v. Alka Meena***[3]***.***

9. Sri Kowturu Pavan Kumar, the learned Amicus Curiae, has referred to the judgment of this Court in ***B. Swapna v. B. Gnaneswar***[4] and the judgment of the Tripura High Court in ***Rupa Debbarma v. Tapash Debbarma***[5] apart from the judgments relied upon by the learned counsel for the petitioner***.***

10. Though the learned Amicus Curiae referred to some more judgments, this Court is of the view that there is no necessity to refer to all those judgments.

11. It is relevant to refer to Section 2(2) of the Act, which reads as under:

"2. Application of Act.- (1) xxxx
(a) xxx xxx (b) xxx xxx
(c) xxx xxx
Explanation.- xxx xxx
(a) xxx xxx (b) xxx xxx
(c) xxx xxx

(2) Notwithstanding anything contained in sub- section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs."

12. A plain reading of Section 2(2) of the Act, shows the nonapplicability of the Act to the members of any Scheduled Tribe unless the Central Government, by notification in the official Gazette, otherwise directs. Article

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[1] (2000) 8 Supreme Court Cases 587
[2] (2001) 3 SCC 13
[3] 2021 Supreme (Del) 389
[4] 2023 (3) ALD 73
[5] MAT. APP 6 of 2018

366 of the Constitution defines the expression and meaning of the word Scheduled Tribe which says, "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed Article 342 to be Scheduled Tribes for the purpose of the Constitution which is to be further read with Constitution (Scheduled Tribes) Order, 1950.

13. Now, it is appropriate to refer to the judgments relied upon by the learned counsel for the petitioner as well as Amicus Curiae.

14. In ***Labishwar Manjhi v. Pran Manjhi,*** the Hon'ble Supreme Court has observed that when evidence disclose that parties belonging to Santhal Tribe were following customs of Hindus and not of Santhals, provision of Hindu Succession Act would apply to inheritance of property. It has also been observed as under:

> *"The finding of the words is that they are following the customs of the Hindus and not of the Santhals. In view of such a clear finding, it is not possible to hold that Sub-section (2) of Section 2 of Hindu Succession Act excludes the present parties from the application of the said Act. Sub-section (2) only excludes members of any Schedule Tribes, admittedly as per finding recorded in the present case though the parties originally belong to the Santhal Scheduled Tribe they are Hindus and they are following the Hindu traditions. Hence, we have no hesitation to hold that Subsection (2) will not apply to exclude the parties from application of Hindu Succession Act."*

15. Though the issue in the above case pertains to validity of gift deed executed by a person belonging to Santhal Scheduled Tribe, the observations made by the Hon'ble Supreme Court with regard to applicability of Section 2(2) of the Act are relevant to the facts of the present case.

16. In ***Dr. Surajhmani Stell Kujjur v. Durga Charan Hansdah,*** the Hon'ble Supreme Court held as under:

> *"The appellant filed a complaint in the Court of Chief Metropolitan Magistrate, New Delhi, stating therein that her marriage was solemnized*

with the respondent in Delhi "according to Hindu rites and customs. Alleging that the respondent had solemnized another marriage with the Accused No.2, the complainant pleaded that the accused husband not having obtained any divorce, his action was in contravention of Section 494 IPC. It was conceded by the appellant that the parties are tribals and are governed by their tribal custom and usage. The complaint was dismissed by the trial court holding, "there is no mention of any such custom in the complaint nor there is evidence of such custom. In the absence of pleadings and evidence reference to Book alone is not sufficient". The High Court held that in the absence of notification in terms of Section 2 (2) of the Hindu Marriage Act no case for prosecution for the offence of bigamy was made out against the respondent because the alleged second marriage cannot be termed to be void either under the Act or any alleged custom having the force of law."

17. In ***Satprakash Meena v. Alka Meena,*** the High Court of Delhi held as under:

"47. The word `Hindu' is not defined in any of the statutes. It is in view of the fact that there is no definition of Hindu, that the Supreme Court has held in Labishwar Manjhi (supra) that if members of Tribes are Hinduised, the provisions of the HMA, 1955 would be applicable. The manner in which the marriage has been conducted in the present case and the customs being followed by the parties show that as in the case of Hindus, the marriage is conducted in front of the fire. The Hindu customary marriage involves the ceremony of Saptapadi which has also been performed in the present case. The various other ceremonies, as is clear from the marriage invitation are also as per Hindu customs. If members of a tribe voluntarily choose to follow Hindu customs, traditions and rites they cannot be kept out of the purview of the provisions of the HMA, 1955. Codified statutes and laws provide for various protections to parties against any unregulated practices from being adopted. In this day and age, relegating parties to customary Courts when they themselves admit that they are following Hindu customs and traditions would be antithetical to the purpose behind enacting a statute like the HMA, 1955. The provisions of exclusion for example under Section 2(2) are meant to protect customary practices of recognized Tribes. However, if parties follow Hindu customs and rites, for the purpose of marriage, this Court is inclined to follow the judgment of the Supreme Court in Labishwar Manjhi (supra) to hold that the parties are Hinduised and hence the HMA, 1955 would be applicable. Moreover, nothing has been placed before the Court to show that the Meena community Tribe has a

specialized Court with proper procedures to deal with these issues. In these facts, if the Court has to choose between relegating parties to customary Courts which may or may not provide for proper procedures and safeguards as against codified statutes envisioning adequate safeguards and procedures, this Court is inclined to lean in favour of an interpretation in favour of the latter, especially in view of the binding precedent of the Supreme Court in Labishwar Manjhi (supra) which considered an identical exclusion under the HSA,1956."

18. In the above case, the learned counsel for the appellant/husband contended that both the appellant and the respondent belong to Meena community (Scheduled Tribe) and that once a Scheduled Tribe follows the customs and practices of the particular religion, they should be bound by the law that applies to the said religion. He also contended that if it is held that the Scheduled Tribe of Meena would not be governed by the Hindu Marriage Act,1955, it would lead to enormous difficulties for women as bigamy would be recognised and could even lead to desertion of women. He further contended that even if it is held that the respondent is entitled to take the argument that the parties are governed by the customary practices of the Meena tribe, the trial court could not have presumed the same and dismissed the petition, without proper trial.

19. It is relevant to mention that the facts of the above case are somewhat similar to the facts of the present case.

20. In ***B. Swapna v. B. Gnaneswar,*** this Court held as under:

"9. A plain reading of Section 2(2) of the Act shows the nonapplicability of the Act to the members of any Scheduled Tribe unless the Central Government, by notification in the official Gazette, otherwise directs. Article 366 of the Constitution defines the expression and meaning of the word Scheduled Tribe which says, "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed Article 342 to be Scheduled

Tribes for the purpose of the Constitution which is to be further read with Constitution (Scheduled Tribes) Order, 1950.

….

11. In the instant case, undisputedly, the petitioner and the respondent belong to Yerukala community, which has been specified as the Schedule Tribe in the erstwhile State of Andhra Pradesh under the Constitution (Schedule Tribes) Order, 1950, is entitled to the rights and privileges of tribes under the Constitution of India. Though, as per the contention of the respondent, the marriage was solemnized as per Hindu rites and customs, as the parties belong to the Scheduled Tribe, otherwise profess Hinduism, but their marriage being out of purview of the Act, in the light of Section 2 (2) of the Act, are thus governed only by their customs and usage. Therefore, the divorce petition filed by the petitioner is clearly barred under the provisions of Section 2(2) of the Act."

21. In ***Rupa Debbarma v. Tapash Debbarma,*** a Division Bench of Tripura High Court held as under:

"[30] Clause 25 of the Article 366 of the constitution on the other hand defines the expression "scheduled tribe" and Article 342 lays the manner in which Tribe may be notified. This has been done by the Constitution (Scheduled tribe) Order, 1950 and by the Constitution (Scheduled tribe) Order 1956. Sub-section 2 of Section 2 of the said Act has the imminent effect of the statutory exclusion that the person belonging to such notified tribe will in the matter of marriage, continue to be governed by their customary laws, which are akin to the personal law and hitherto applied to them, and not by any provision of the said Act, unless the central government by the notification otherwise directs. There is no dispute at the bar that no such notification has been issued by the central government. Anom Apong (supra) is quite distinguishable. As Adi tribe was not notified when two man and woman married as per Hindu rites and customs which was prevalent at the time of their marriage in their community. But when the dissolution of marriage was sought by a suit instituted under Hindu Marriage Act the question that had been raised whether Sub-section 2 of Section 2 of the Hindu Marriage Act would create a bar in applying the Hindu Marriage Act. The objection has been negatived on the ground that since the marriage was solemnized as per Hindu customs and rites when the said tribe was not notified under Article 342 of the Constitution. The Hindu marriage act would apply for dissolution of marriage.

But the same principle would not apply if the tribes are notified under Article 342 of the Constitution.

..

32] So far the question of conversion is concerned, simply because the marriage has been performed following the Hindu customs and rites, it cannot be stated that parties intending marriage had been converted to Hinduism. Conversion is a conscious abandonment of the customs of the community or the religion and adoption of the religion which someone intends to be converted to. None of the appellant and the respondent did not claim to have converted to Hinduism by abandoning their customs. Thus, there had been no conversion and by considering "conversion", the Hindu Marriage Act cannot be applied. This court however, will affirm the finding in respect of cruelty as returned by the Addl. District Judge. However, the desertion has not been proved on preponderance of probabilities in as much as, the appellant has clearly stated that she had intention to restitute the marriage. But this finding will have no effect in the suit as the suit itself is not maintainable having barred by Section 2(2) of the Hindu Marriage Act, 1955."

22. The judgments of the Hon'ble Supreme Court in ***Labishwar Manjhi v. Pran Manjhi*** and ***Satprakash Meena v. Alka Meena*** squarely apply to the facts of the present case. However, the facts of the remaining cases referred to by the learned Amicus Curiae and the facts of the present case are completely different, as there was challenge by one of the parties to the proceedings on the applicability of Hindu Marriage Act and Hindu Succession Act on the ground that they belong to Scheduled Tribe Community and therefore, they are not governed by the Hindu Marriage Act and Hindu Succession Act, and thus, the said judgments have no application to the present case.

23. In ***Chittapuli v. Union Government***[6]***,*** the High Court of Andhra Pradesh held as under:

[6] MANU/AP/0705/2020

"13. The provisions of Section 2(2) of the Act would have to be interpreted to mean that any member of a notified tribe can refuse to participate in any proceeding under the Act of 1955 on the ground that he/she is a member of a notified tribe and is following tribal customs and is not bound by or following Hindu customs. However, the same cannot bar a member of a notified schedule tribe who is hinduised from invoking the provisions of the Act of 1955, especially when the spouse is a non tribal Hindu.

14. Accordingly, the petitioner would be entitled to move an application for dissolution of marriage, under the Hindu Marriage Act, 1955, before the appropriate Civil/ Family Court having jurisdiction."

24. A perusal of the record discloses that both the petitioner and the respondent belong to Lambada Caste (Scheduled Tribe Community) and their marriage was solemnized as per the customs and traditions of Hindu community. However, the petition filed by them under Section 13(B) of the Act was returned on the ground that it was not maintainable in view of bar under Section 2(2) of the Act.

25. There is no challenge to the contentions of the petitioner and the respondent that they have been following the Hindu traditions and customs. In fact, in the petition filed under Section 13(B) of the Act, the petitioner and the respondents specifically contended that their marriage was solemnized as per the rights and customs of Hindu Community. Further, the material filed by the petitioner i.e., wedding card and photographs shows that the marriage of the petitioner and the respondent was solemnized as per the Hindu Customs.

26. The Hon'ble Supreme Court in ***Labishwar Manjhi v. Pran Manjhi,*** the Delhi High Court in ***Satprakash Meena v. Alka Meena,*** and the High Court of Andhra Pradesh in ***Chittapuli v. Union Government,*** have held that the provisions of exclusion under Section 2(2) of the Act are meant to protect customary practices of recognized Tribes. However, if the parties are

following Hindu traditions, customs and that they are substantially Hinduised, they cannot be relegated to customary Courts, that too, when they themselves admit that they are following Hindu rites, customs and traditions.

27. In the light of the aforesaid discussion and the legal position, this Court is of the considered view that the trial Court ought not to have returned the petition filed by the petitioner and the respondent under Section 13(B) of the Act, on the ground of want of jurisdiction under Section 2(2) of the Act.

28. Therefore, the Civil Revision Petition is allowed and the impugned order dated 22.08.2023 is set aside and the trial Court is directed to number the petition and decide the same in accordance with law, duly taking into consideration the material available on record.

29. This Court would like to place on record the assistance rendered by Sri Kowturu Pavan Kumar, Amicus Curiae.

30. However, it is made clear that this Court has not expressed a general opinion on the applicability of Section 2(2) of the Act to the O.Ps. filed by the persons belonging to Scheduled Tribe Community. The Court concerned shall deal with the said issue in accordance with law as per the facts and circumstances of each case and decide the same, duly taking into consideration the material placed on record in support/proof of their contention that they are following Hindu customs, traditions and that they are substantially Hinduised.

31. Pending miscellaneous applications, if any, shall stand closed.

There shall be no order as to costs.