

PANJAB AND HARYANA HIGH COURT

Gurcharan Kaur

Vs

Ram Chand

First Appeal from Order 51-M of 1975

(S.C. Mital, J.)

01.02.1979

JUDGMENT

S.C. Mital, J.

1. This appeal is directed against the judgment of the learned Additional District Judge, Faridkot, dismissing the petition filed under sections 11 and 25 of the Hindu Marriage Act by Gurcharan Kaur against her husband Ram Chand. In her petition, Gurcharan Kaur averred that her marriage with Ram Chand took place in the month of Maghar in the year 1972 at village Lophon. Thereafter, they lived as husband and wife but no issue was born. It was after the marriage that she came to know that Ram Chand had two wives, namely. Nachhitar Kaur and Bhagwan Kaur living at the time of the marriage in question. As such, her marriage with Ram Chand be declared a nullity. Under section 26 of the Act, Rs. 20,000/- were claimed as alimony.

2. In his written statement, Ram Chand opposed the petition and took up the plea that the marriage was not solemnized according to customary rites and the fact that he had two wives living was known to Gurcharan Kaur before the marriage.

3. The pleadings of the parties gave rise to the following issues :-

1. Whether the marriage between the parties was solemnised according to customary rites of the parties ? If not, its effect ? O.P.P.
2. Whether the petitioner is entitled to a decree for nullity of marriage as prayed ? O.P.P.
3. To what amount, if any, is the petitioner entitled as alimony ? O.P.P.
4. Relief.

The learned counsel for Gurcharan Kaur first assailed the finding of the learned Additional District Judge on Issue No. 1. The contention raised was that the learned Additional District Judge approached the case entirely from a wrong angle and thus arrived at an erroneous conclusion against Gurcharan Kaur to the effect that no marriage at all took place between the

parties. Support to the contention was sought from the pleadings of the parties themselves. In Paragraph No. 1 of the petition, Gurcharan Kaur averred :-

"That a marriage was solemnised between the parties after the commencement of the Hindu Marriage Act in the month of Maghar in the year 1972 at village Lupon. An affidavit to that effect is filed herewith."

Ram Chand in his written statement made an admission in the following way :-

"That para No. 1 of the petition is correct although marriage took place but it was not solemnised according to customary rites ceremonies of parties, Amar Singh, Udha Singh are witness to this effect."

Reference was then made to Paragraph No. 3 of the petition and written statement. Paragraph 3 of the petition reads :-

"That after the marriage the parties lived as husband and wife at village Mitwani and cohabited together as husband and wife at that village. No issue was born out of this wedlock."

In paragraph 3 of the written statement, Ram Chand stated :-

"That para No. 3 of petition is correct."

4. Learned counsel for Gurcharan Kaur rightly urged that Ram Chand having clearly admitted the factum of marriage, the learned Additional District Judge gravely erred in holding that no marriage in fact took place. The only question to be decided under Issue No. 1 was whether the marriage between the parties was solemnised according to the customary rites of the parties. To prove this issue, Gurcharan Kaur examined A.W. 2 Mukhtiar Singh, Sarpanch of village Lupon who testified that the marriage of the parties took place in his presence. Anand Karaj ceremony was performed and four *lawans* were taken. With respect to the performance of the marriage, nothing could be brought out in his cross-examination to discredit this witness. The next important witness relied on by Gurcharan Kaur was A.W. 4 Babu Singh Granthi who testified about the Anand Karaj ceremony. He also deposed that four *lawans* were taken. The learned Additional District Judge erred in disbelieving this witness on the ground that he did not identify the respondent notwithstanding that the witness clearly stated, "the petitioner was married to the respondent Ram Chand 2-1/2 years back at Lupon". For appreciating the evidence of this witness, the admitted fact that Gurcharan Kaur married Ram Chand is not to be lost sight of. The controversy between the parties was with regard to its performance in accordance with the customary rites. Besides, the cross-examination of Babu Singh indicates that in the maintenance proceedings also, he appeared as a witness and stated that he performed the marriage of the parties but in that statement, the factum of the *lawans* was mentioned, but not their number. The omission of the number of *lawans* in the previous statement of the witness is hardly of any consequence. Then comes the sworn testimony of Gurcharan Kaur herself as A.W. 5 to the effect that her marriage was performed with Ram Chand according to Anand Karaj. Her father Arjan Singh appeared as A.W. 3 and testified to her marriage with Ram Chand. He stoutly denied the suggestion in the cross-examination that no marriage was performed between the parties. The

learned Additional District Judge was in error in disbelieving Gurcharan Kaur because she omitted to give the details of the ceremonies, including the *lawans*. Similarly, there was error in disbelieving her father Arjan Singh. Mukhtiar Singh Sarpanch A.W. 2 and Babu Singh Granthi A.W. 4 having deposed that Anand Karaj ceremony was performed and four *lawans* were taken by the parties. It was not expected of each and every witness to repeat the same fact.

5. Ram Chand is his solitary witness who appeared in his defence and stated that Arjan Singh father of Gurcharan Kaur once met him in the bus of which he (Ram Chand) was the driver. On enquiry made by Arjan Singh he was told that Ram Chand had two wives but no child. Arjan Singh explained that he had a young daughter with a defective arm and if Ram Chand was willing to give her some land, he would consult his daughter. Some days later, Arjan Singh came to his house where his two wives were present and asked them if they had any objection for the third marriage of Ram Chand with Gurcharan Kaur. The two wives expressed their willingness. Thereafter, Arjan Singh suggested that he should give three killas of land to the petitioner and that he would not perform any ceremony of marriage as Ram Chand was aged 50 years. Ram Chand should come secretly to his house at night and take away Gurcharan Kaur. In pursuance of this agreement, Ram Chand gifted three killas of land to Gurcharan Kaur and one night he went and brought Gurcharan Kaur with him and she lived with him for about 2-1/2 months. Thereafter, Gurcharan Kaur went away because of the disparity in their ages. Lastly, Ram Chand testified that no Anand Karaj ceremony was performed and in fact no marriage took place. In view of the admissions made by Ram Chand in his written statement, no value should have been attached to this worthless after thought. That being so, the contention of the learned counsel for Gurcharan Kaur that the Additional District Judge made a wrong approach to the decision of Issue No. 1, cannot be said to be without merit. Accordingly, I reverse the decision and find that Gurcharan Kaur married Ram Chand in accordance with their customary rites.

6. So far as Issue No. 2 is concerned, the fact that two wives, namely, Nachhitar Kaur and Bhagwan Kaur of Ram Chand were living at the time of his marriage with Gurcharan Kaur is an admitted fact. It matters little whether Gurcharan Kaur acquired knowledge of this fact before or after her marriage with Ram Chand. The provision of section 5(i) read with section 11 of the Act is that a marriage shall be null and void and may be so declared by a decree of nullity if either party has a spouse living at the time of the marriage. It deserves mention now that Ram Chand died during the pendency of this appeal. His two widows, namely, Nachhitar Kaur and Bhagwan Kaur were impleaded as his legal representatives. Learned counsel for Gurcharan Kaur relied on Bench decision of this Court in *Smt. Tulsan Devi s. Smt. Krishni Devi*¹, laying down that a petition under section 11 was maintainable even on the death of one of the spouses. On the other hand, Mr. Pawan Kumar Bansal, counsel for the above-named widows pointed out that the ruling was of no avail to Gurcharan Kaur because of the amendment of section 11 made by Act 68 of 1976. The amended section reads :-

"Any marriage solemnised after the commencement of this Act shall be null and void and may on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 8."

The underlined words "against the other party" were inserted by the Amending Act 68 of 1976. In order to further show that in consequence of the amendment, petition under section 11 could

only be filed during the life time of the spouse, reference was made to the statement of object and reasons, clause (v) whereof reads :-

"This clause seeks to amend section 11 relating to void marriages so as to make it clear that the petition may be presented only during the life time of the spouse."

That being so, I find that the decision of the learned Additional District Judge on Issue No. 2 cannot be reversed by this Court. Hence, no decree of nullity can be passed in favour of Gurcharan Kaur.

7. As regards the claim of alimony under section 25 of the Act, the plain reading of the section envisages a situation arising after the dissolution of marriage. It was clearly held in *Durga Das v. Smt. Tara Rani*², cited by learned counsel for Gurcharan Kaur that an alimony application under section 25(1) of the Hindu Marriage Act can be made after grant of a divorce decree. In view of the decision on Issue No. 2, Issue No. 3 cannot be decided in favour of Gurcharan Kaur.

8. In the result, the appeal fails and the same is hereby dismissed. No order as to costs.

Appeal dismissed.

Cases Referred.

1(1973)75 P.L.R. 346

2(1969)71 P.L.R. 923