



2024 INSC 355

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

TRANSFER PETITION (C) NO(S). 2043/2023

DOLLY RANI

PETITIONER(s)

VERSUS

MANISH KUMAR CHANCHAL

RESPONDENT(s)

O R D E R

The present transfer petition is filed under Section 25 of the Code of Civil Procedure, 1908 (for short, "CPC") by the petitioner-wife seeking the following reliefs:

- a. "To transfer the divorce petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 bearing Matrimonial Case No. 82/2023 titled "Manish Kumar v/s Doly Singh" pending before the Court of Principal Judge, Family Court, Muzaffarpur, Bihar to the Court of Principal Judge, Family Court, Ranchi Jharkhand; and
- b. Pass such other and further orders and/ or directions as is deemed just and proper by this Hon'ble Court in the facts and circumstances of the case."

During the pendency of this petition the parties have decided to resolve that dispute by filing a joint application under Article 142 of the Constitution of India seeking certain reliefs as referred to later.

Briefly stated, the facts of the case are that the petitioner and the respondent are trained commercial pilots. The parties

were engaged to be married on 07.03.2021. The petitioner and respondent claimed to have 'solemnized' their marriage on 07.07.2021. They obtained a "marriage certificate" from Vadik Jankalyan Samiti (Regd.). Based on this certificate, they obtained a "Certificate of Registration of Marriage" under the Uttar Pradesh Marriage Registration Rules, 2017. The respective families of the parties fixed the date for performing the marriage ceremony as per Hindu rites and customs on 25.10.2022. Meanwhile, the petitioner and respondent lived separately but nevertheless, differences ignited between them. According to the petitioner, there was demand for dowry made by respondent's family.

On 17.11.2022, the petitioner filed an FIR under Sections 498A, 420, 506, 509, 34 of the Indian Penal Code, 1860 (for short, "IPC") and Sections 3,4 of the Dowry Prohibition Act, 1961 (for short, "DP Act") against the respondent and his family members alleging harassment.

Thereafter on 13.03.2023, the respondent approached the Court of Principal Judge, Family Court, Muzaffarpur, Bihar by filing a petition for divorce under Section 13(1)(ia) of the Act in Matrimonial Case No.82/2023. Being aggrieved by this fact as the petitioner-wife is currently residing in Ranchi, Jharkhand with her parents, she filed the present transfer

petition seeking to transfer the divorce petition under Section 13(1) (ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") bearing Matrimonial Case No. 82/2023 titled "Manish Kumar v/s Doly Singh" pending before the Court of Principal Judge, Family Court, Muzaffarpur, Bihar to the Court of Principal Judge, Family Court, Ranchi Jharkhand.

Learned counsel for the petitioner submitted that the respondent has filed a Matrimonial Case No.82/2023 under Section 13(1) (ia) of the Act seeking a decree of divorce as against the petitioner herein whereas there being no marriage between the parties in the eyes of the law, the respondent could not have sought for by the said decree.

Learned counsel for the respondent also submitted that indeed there was no marriage in accordance with Section 7 of the Act inasmuch as the requisites of a valid Hindu marriage insofar as ceremonies are concerned, were not complied with but having no other recourse, the respondent was constrained to file M.C. No.82/2023 as the "marriage" between the parties was registered before the Registrar of Marriages.

Learned counsel for the respective parties further submitted that during the pendency of this transfer petition, the parties have discussed the matter and they have agreed to file a joint application under Article 142 of the Constitution

of India seeking the following prayers:

“(i) Grant a decree of declaration that the marriage dated 07.07.2021 between the parties is not valid in the eye of law by exercising its jurisdiction under Article 142 of the Constitution of India.

(ii) Consequently, grant a decree of declaration that the certificate dated 07.07.2021 issued by under the Uttar Pradesh Registration Rule, 2017, and certificate dated 07.07.2021 issued by the Vadik Jankalyan Samiti (Regd.) are null and void.

(iii) Take on record the terms and conditions of settlement as stated in paragraph 5 of this application.

(iv) Pass any other order/direction that this Court may deem fit and necessary in the facts and circumstances of the case.”

They submitted that since there was no valid marriage in the eye of the law, the parties seek a declaration to the effect that the so-called marriage dated 07.07.2021 was not valid in the law and therefore, a declaration may be granted to that effect. Consequently, the Certificate dated 07.07.2021 issued under the Uttar Pradesh Registration Rules, 2017 and another certificate dated 07.07.2021 issued by the Vadik Jankalyan Samiti (Regd.) are also null and void and would pale into insignificance in view of there being no valid Hindu marriage and, therefore, the same may also be declared null and void.

They submitted that the joint application filed by the parties herein may be taken on record and the prayers sought by them may be granted.

The parties are present before the Court. They have been identified by their respective counsel. When queried by this Court, they indeed stated that there was no "marriage" solemnized by them inasmuch as no customs, rites and rituals performed. However, due to certain exigencies and pressures, they were constrained to obtain the certificate dated 07.07.2021 from Vadik Jankalyan Samiti (Regd.) and on the basis of that certificate they sought registration under the Uttar Pradesh Registration Rule, 2017 and a "Certificate of Marriage" was issued by the Registrar of Marriages on 07.07.2021. That when there was no Hindu marriage which took place between them, the issuance of the said certificate is of no consequence. They further stated in unison that this court may allow the prayers sought for by them and declare that no marriage took place between the parties and thereby permit them to lead their independent lives.

They further stated that the joint application has been filed under Article 142 of the Constitution of India on their own free volition without there being any coercion or undue influence from any side and that they would abide by the terms and conditions of the joint application and hence, this Court may grant the reliefs to them.

In the above backdrop, we have taken on record the joint

application filed by the parties under Article 142 of the Constitution of India and we have perused the same. In the said joint application, the petitioner has sought for quashing of Maintenance Case No.326/2023 filed by her and the Criminal Case instituted vide FIR No.463/2022 before Police Station-Sukhdev Nagar, Ranchi and the proceedings thereunder against the respondent and his parents herein which may also be quashed.

We have perused the other terms and conditions mentioned in the joint application. We find the same to be lawful and we do not find any legal impediment in accepting the terms and conditions of the joint application. But before granting the reliefs sought for by the parties we wish to make certain observations.

Section 7 of the Act 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."

Section 7 of the Act speaks about ceremonies of a Hindu marriage. Sub-section (1) uses the word "solemnised". The word "solemnised" means to perform the marriage with ceremonies in proper form. Unless and until the marriage is performed with appropriate ceremonies and in due form, it cannot be said to be

"solemnised". Further, sub-section (2) of Section 7 states that where such rites and ceremonies include the *saptapadi*, i.e., 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. Therefore, requisite ceremonies for the solemnisation of the Hindu marriage must be in accordance with the applicable customs or usage and where *saptapadi* has been adopted, the marriage becomes complete and binding when the seventh step is taken. Where a Hindu marriage is not performed in accordance with the applicable rites or ceremonies such as *saptapadi* when included, the marriage will not be construed as a Hindu marriage. In other words, for a valid marriage under the Act, the requisite ceremonies have to be performed and there must be proof of performance of the said ceremony when an issue/controversy arise. Unless the parties have undergone such ceremony, there would be no Hindu marriage according to Section 7 of the Act and a mere issuance of a certificate by an entity in the absence of the requisite ceremonies having been performed, would neither confirm any marital status to the parties nor establish a marriage under Hindu law.

A perusal of the marriage certificate produced in the instant case along with the application filed under Article 142

of the Constitution of India states that the 'marriage' between the parties has been solemnised according to Hindu Vedic rites and customs. The certificate issued by Vadik Jankalyan Samiti (Regd.) in the absence of any indication as to the rites and customs that were performed and as to whether the requirements under Section 7 of the Act was complied with would not be a certificate evidencing a Hindu marriage in accordance with Section 7 of the Act. In the absence of any ceremony being performed such a certificate could not have been issued. It is on the basis of the said certificate that the Marriage Registration Officer has issued under the Uttar Pradesh Marriage Registration Rule, 2017 a certificate stating that the parties had presented before the office on 07.07.2021 and had declared that their marriage was solemnised on the said date at Vadik Jankalyan Samiti (Regd.), Ghaziabad and on the basis of the said certificate issued by the said entity, the Marriage Registration Officer registered the marriage which is under Section 8 of the Act.

Section 8 of the Act reads as under:

"8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

VERDICTUM.IN

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."

Under Section 8 of the Act, it is open for two Hindus married under the provisions of the Act to have their marriage registered provided they fulfil the conditions laid down therein regarding performance of requisite ceremonies. It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8. The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnised by way of requisite ceremonies. The advantage of registration is that it facilitates proof of factum of marriage in a disputed case.

But if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage. We find that the registration of Hindu marriages under the said provision is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with Section 7 of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said provision. Although the parties may have complied with the requisite conditions for a valid Hindu marriage as per Section 5 of the Act in the absence of there being a "Hindu marriage" in accordance with Section 7 of the Act, i.e., solemnization of such a marriage, there would be no Hindu marriage in the eye of law. In the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. The registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of

marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all.

We further observe that a Hindu marriage is a sacrament and has a sacred character. In the context of *saptapadi* in a Hindu marriage, according to *Rig Veda*, after completing the seventh step (*saptapadi*) the bridegroom says to his bride, "*With seven steps we have become friends (sakha). May I attain to friendship with thee; may I not be separated from thy friendship*". A wife is considered to be half of oneself (*ardhangini*) but to be accepted with an identity of her own and to be a co-equal partner in the marriage. There is nothing like a "better-half" in a marriage but the spouses are equal halves in a marriage. In Hindu Law, as already noted, marriage is a sacrament or a *samskara*. It is the foundation for a new family.

With the passage of centuries and the enactment of the Act, monogamy is the only legally approved form of relationship between a husband and a wife. The Act has categorically discarded polyandry and polygamy and all other such types of relationships. The intent of the Parliament is also that there should be only one form of marriage having varied rites and customs and rituals. Thus, when the Act came into force on 18.05.1955, it has amended and codified the law relating to

marriage among Hindus. The Act encompasses not only Hindus as such but *Lingayats, Brahmos, Aryasamajists, Buddhists, Jains and Sikhs* also who can enter into a valid Hindu marriage coming within the expansive connotation of the word Hindu.

Section 4 of the Act is important and it gives an overriding effect to the Act and it repeals all existing laws whether in the shape of enactments, custom or usage inconsistent with the Act. Of course, the said Section also saves anything otherwise expressly provided under the Act. For immediate reference, Section 4 of the Act is extracted as under:

"4. Overriding effect of the Act.- Save as otherwise expressly provided in this Act,-
(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
(b) any other law in force immediately before the commencement of this Act shall cease to have effect insofar as it is inconsistent with any of the provisions contained in this Act."

In effect a union of two persons under the provisions of the Act, by way of a Hindu marriage gives them the status and character of being a husband and wife in society. The said status is of significance inasmuch as a man and a woman cannot be treated as a husband and a wife unless a marriage is performed or celebrated with proper and due ceremonies and in the prescribed form. In the absence of any solemnisation of a

marriage as per the provisions of the Act, a man and a woman cannot acquire the status of being a husband and a wife to each other. In the above context, we deprecate the practice of young men and women seeking to acquire the status of being a husband and a wife to each other and therefore purportedly being married, in the absence of a valid marriage ceremony under the provisions of the Act such as in the instant case where the marriage between the parties was to take place later.

No doubt, under the Special Marriage Act, 1954, a man and a woman can acquire the status of being a husband and a wife as per the provisions of the said Act. The Special Marriage Act, 1954 is not restricted to Hindus. Any man and woman irrespective of their race, caste or creed can acquire the status of being a husband and a wife under the provisions of the Special Marriage Act, 1954 but under the provisions of the Act (Hindu Marriage Act, 1955), there should not only be compliance of the conditions as prescribed under Section 5 of the said Act but also the couple must solemnise a marriage in accordance with Section 7 of the Act. In the absence of there being any such marriage in accordance with Section 7 of the Act, a certificate issued in that regard by any entity is of no legal consequence. Further, any registration of a marriage which has not at all taken place under Section 8 of the Act and as per the rules made

by the State Government would not be evidence of a Hindu marriage and also does not confer the status of a husband and a wife to a couple.

In recent years, we have come across several instances where for "practical purposes", a man and a woman with the intention of solemnisation of their marriage at a future date seek to register their marriage under Section 8 of the Act on the basis of a document which may have been issued as proof of 'solemnisation of their marriage' such as in the instant case. As we have already noted, any such registration of a marriage before the Registrar of Marriages and a certificate being issued thereafter would not confirm that the parties have 'solemnised' a Hindu marriage. We note that parents of young couples agree for registration of a marriage in order to apply for Visa for emigration to foreign countries where either of the parties may be working "in order to save time" and pending formalising a marriage ceremony. Such practices have to be deprecated. What would be the consequence, if no such marriage is solemnised at all at a future date? What would be the status of the parties then? Are they husband and wife in law and do they acquire such status in society?

As already noted, a Hindu marriage is a *samskara* and a sacrament which has to be accorded its status as an institution

of great value in Indian society. Children born out of a valid Hindu marriage are legitimate and therefore they have full rights in law. This is not an occasion for us to discuss about the vulnerability of illegitimate children born outside wedlock who yearn for status equal to legitimate children in society. Therefore, we urge young men and women to think deeply about the institution of marriage even before they enter upon it and as to how sacred the said institution is, in Indian society. A marriage is not an event for 'song and dance' and 'wining and dining' or an occasion to demand and exchange dowry and gifts by undue pressure leading to possible initiation of criminal proceedings thereafter. A marriage is not a commercial transaction. It is a solemn foundational event celebrated so as to establish a relationship between a man and a woman who acquire the status of a husband and wife for an evolving family in future which is a basic unit of Indian society. A Hindu marriage facilitates procreation, consolidates the unit of family and solidifies the spirit of fraternity within various communities. After all, a marriage is sacred for it provides a lifelong, dignity-affirming, equal, consensual and healthy union of two individuals. It is considered to be an event that confers salvation upon the individual especially when the rites and

ceremonies are conducted¹. The customary ceremonies, with all its attendant geographical and cultural variations is said to purify and transform the spiritual being of an individual.

The Hindu Marriage Act, 1955 solemnly acknowledges both the material and spiritual aspects of this event in the married couple's lives. Besides providing a mechanism for registration of marriages in order to confer the status of a married couple and acknowledge rights *in personam* and rights *in rem*, a special place is given to rites and ceremonies in the Act. It follows that the critical conditions for the solemnizing of a Hindu marriage should be assiduously, strictly and religiously followed. This is for the reason that the genesis of a sacred process cannot be a trivial affair. The sincere conduct of and participation in the customary rites and ceremonies under Section 7 of the Hindu Marriage Act, 1955 ought to be ensured by all married couples and priests who preside over the ceremony.

The promises made to each by the parties to a Hindu marriage and the oath taken by them to remain friends forever lay the foundation for a life-long commitment between the spouses which should be realized by them. If such commitment to each other is

¹HARMAN, WILLIAM. "THE HINDU MARRIAGE AS SOTERIOLOGICAL EVENT." *International Journal of Sociology of the Family*, vol. 17, no.2, 1987, pp.169-82.

adhered to by the couple, then there would be far fewer cases of breakdown of marriages leading to divorce or separation.

But in the instant case, the above parameters have not been followed by the parties herein. In the circumstances, we declare that the 'marriage' dated 07.07.2021 between the parties is not a 'Hindu marriage' having regard to the provisions of Section 7 of the Act. Consequently, the certificate issued by the Vadik Jankalyan Samiti (Regd.) dated 07.07.2021 is declared null and void. In view of the above the Certificate issued under the Uttar Pradesh Registration Rules, 2017 dated 07.07.2021 is also declared null and void.

In view of the aforesaid declaration, it is further declared that the petitioner and the respondent were not married in accordance with the provisions of the Act and therefore, they have never acquired the status of husband and wife.

Consequently, the three cases filed by the parties against each other stand quashed, namely,-

"(a) The divorce petition Matrimonial Case No.82/2023 filed by the respondent/Manish Chanchal, which is pending before the Family Court at Muzaffarpur, Bihar;

(b) The Maintenance Case No.326/2023 filed by petitioner/Doly Rani at Ranchi, Jharkhand;

(c) The criminal case FIR No.463/2022 initiated at PS Sukhdev Nagar, Ranchi by the petitioner/Doly Rani and proceedings thereunder, against the respondent/Manish Chanchal and his parents."

VERDICTUM.IN

In view of the above, the application filed under Article 142 of the Constitution is allowed.

Consequently, the Transfer Petition stands disposed.

Pending application(s), if any, shall stand disposed of.

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[B.V. NAGARATHNA]

. ,J
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
APRIL 19, 2024.