

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.62 OF 2021

IN
M.J. PETITION NO.2860 OF 2017

a/w

INTERIM APPLICATION NO.3370 OF 2021

1. Monika Narendra Sharma]
]
]
]
]
]
]
] Appellant
 [Original Petitioner]

Vs.

Mukeshkumar Ramnath Bhagal]
]
]
]
]
]
]
]
] Respondent
 [Original Respondent]

.....

Mr. Firdause S. Irani a/w Mr. Bahraiz Irani a/w Afrin Dalal i/b Irani
& Co., for Appellant.

None for Respondent.

**CORAM : K.R. SHRIRAM AND
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 15th JUNE, 2022.

JUDGMENT: [Prithviraj K. Chavan, J.]:

1. Feeling aggrieved with and dissatisfied by the judgment and order dated 7th September, 2021 passed by the Family Court, Mumbai dismissing Petition No. A - 2860 of 2017 filed for annulment of marriage under section 12 (1) (c) of the Hindu Marriage Act, 1955, appellant-wife has filed this appeal.

2. Shorn of unnecessary details, facts germane for disposal of this appeal can be summarized as follows. The case has chequered history.

3. Appellant and respondent are *Hindus*. Appellant is qualified as a Master of Science from *Singhania University, Rajasthan*. She is gainfully employed as an officer in Union Bank of India, Mumbai. Appellant is unaware of respondent's age, educational qualification and employment details.

4. In the month of January-February, 2003, when appellant was aged about 14 to 15 years and prosecuting her studies in 10th standard, respondent had forcibly made physical contact with her and took obscene photographs. Respondent threatened her of dire consequences and also to her family members if she disclosed about the act of respondent and photographs. Respondent threatened her that if appellant utters even a single word about the incident to anyone, he would spoil her reputation by making obscene

photographs viral on social media and on internet. Appellant silently suffered the ordeal as she belongs to a very orthodox family from the State of *Haryana* where custom of *Khap Panchayat* prevails.

5. Appellant's father came to be transferred from *Bilaspur* to *Chhachharauli* and, thereafter, appellant was not in contact with respondent till 2006.

6. In 2007, when appellant was studying at *Yamuna Nagar*, respondent again started harassing her by stalking and reminding her of obscene photographs, *inter alia*, threatening her to make it viral and damage reputation of her family, if she does not submit to his demands.

7. Being afraid of respondent's notorious nature, appellant was forced to submit herself to his whims and fancies till the year 2008. After her graduation, appellant went back to her native place at *Narnaul* to pursue higher education.

8. In 2010, when appellant returned to *Yamuna Nagar*, respondent started threatening her to marry and stay with him, else, he would disfigure her by throwing acid. He again threatened to defame appellant and her family. It is contended that respondent was so emboldened that he started physically assaulting, insulting and abusing appellant in public and, on one such occasion, in the year 2011, when appellant was working as a teacher at a Coaching Centre, respondent slapped her in front of her colleagues only because she declined to go out with him. Acts of respondent to threaten and torment appellant with dire consequences to her and her family's life, continued unabated.

9. It is averred that in the month of November, 2011, appellant joined Punjab National Bank and was working as a Single Window Operator (Clerk) at its branch situated in Village *Dhanora*. She was staying in PG accommodation in the same village. Taking undue advantage of her loneliness, respondent kept pressurizing her to get married to him.

10. Appellant has further quoted an incident alleged to have occurred on 28th December, 2011 when respondent rang up her office number and asked her to come out of the branch. Upon her refusal, he threatened to create a scene inside the branch office and spoil her reputation. When appellant came out, respondent snatched her cell phone and forcibly took her in his car. On the way, he gave her some "*prasad*" to eat, which appellant later on realized that it was spiked with some drugs, as after consuming said "*prasad*", appellant became powerless and mute spectator to the events that unfolded thereafter. Appellant remembered that respondent picked up his friends on the way and later took her to a temple and clicked some photographs. Later, respondent and his friends made her sign some blank papers and only after she signed the blank papers, respondent dropped her at her office on the next day, i.e., on 29th December, 2011 at about 10'0 clock. Before leaving appellant at her office, respondent threatened her not to reveal about the incident to anyone, else, they would cause serious harm to her and her family.

11. In the month of March, 2012, appellant was selected by Union Bank of India and was asked to join *Goregaon* West branch in Mumbai in April, 2012. Appellant came to Mumbai on 5th April, 2012 and took temporary accommodation at her aunt's house in

Andheri for a month or so. Having gained information of appellant's appointment in Mumbai, respondent followed her and took up a residence in the same locality. Respondent approached appellant's office at Nariman Point and forced her to come out of the office by insisting upon her to live with him in Mumbai. He took her to Gateway of India. Appellant, however, refused all the proposals of respondent which infuriated him. He again threatened her to make viral her obscene photographs and also with dire consequences.

12. Respondent left Mumbai on 15th April, 2012 after threatening her that if she refuses to accept his proposal to reside in Mumbai with him, he would kill her parents in *Haryana*. Due to such threats by respondent, appellant called upon her parents to Mumbai who were initially reluctant, however, her parents came to Mumbai on 28th April, 2012. Appellant could not gather courage to apprise her parents about threats and ugly deeds of respondent. Due to their responsibilities back in *Haryana*, her parents could not stay in Mumbai. Appellant had to request her parents to take an independent house in Mumbai for her stay. Accordingly, a flat was finalized on lease in *Goregaon*. A lease agreement came to be executed on 2nd May, 2012. Thereafter, her parents left for *Haryana* in the first week of May, 2012.

13. Having learnt about their return to *Haryana*, respondent came to Mumbai and again started repeating the same things. Appellant thereafter created an excuse that since her aunt was not keeping well, she was required to be with her and, therefore, she would keep her rented flat locked, as owner of the flat had strictly instructed her that nobody will reside in the rented flat during her absence.

However, respondent left only after extorting Rs.10,000/- from appellant. Similarly, he extorted Rs.10,000/- from her on 19th June, 2012.

14. In order to ensure safety of her family at all costs, she was undergoing the ordeal as she had no way out. Appellant feared that respondent and his accomplices had the ability to put their threats into reality.

15. Appellant thereafter gives details of similar incidents that occurred during her stay in Mumbai, especially when her sister visited her for 20 days from 20th June, 2012 to 10th July, 2012. On one occasion, respondent had demanded keys of her flat when her sister left for her native place. Appellant gave him keys, but made up a story that she was staying with her aunt who was undergoing chemotherapy, *inter alia*, informing respondent that if owner of the house found that he is staying alone in the flat, then she would be forced to quit the premises. Respondent thereupon abused appellant and agreed to leave Mumbai only after she paid Rs.5,000/- for his ticket.

16. In the first week of August, 2012, one night, respondent surfaced drunk at her rented house. However, appellant immediately booked her tickets for her native on the very next day and informed respondent that she had to reach *Haryana* to attend "*Rakshabandhan*" and family functions. Respondent forced her to buy tickets for him also and he too accompanied her to *Haryana*.

17. Appellant further contends that during September, 2012, respondent's family started pressurizing appellant to perform registered marriage and started blackmailing her of social stigma and disgrace that can befall on her family if respondent starts revealing the indecent lifestyle of appellant in the society. Appellant tried her best to convince the family members of respondent, especially his parents, sister Sudesh, brother Ajay and sister-in-law about her sufferings at the hands of respondent and of the trauma and tyranny that respondent heaped upon her for about last 14 years. However, they did not pay any heed, and, instead, forced her to perform a registered marriage with respondent.

18. Sometime in the month of March, 2013, her parents and relatives came to Mumbai for shopping as her sister's wedding was to be solemnized. During that period, respondent kept calling and abusing appellant, for, she had invited her family members to reside in Mumbai. Appellant had given her debit card to respondent which was being misused by him. However, appellant did not mind as it was a negligible price that she was paying for being left alone. In the last week of March, 2013, respondent again started keeping watch on her movements and had also physically abused her during the first week of April, 2013. Respondent thereafter stayed with her in April, 2013. During second week of May, 2013, appellant's brothers stayed with her in Mumbai till 20th June, 2013.

19. According to appellant, in September, 2013, her parents again came to Mumbai. They went to *Shirdi* on a pilgrimage for two days. Appellant was alone at home as her housemaid had also absented herself. By taking undue advantage of the said situation, respondent

physically abused her in an unnatural manner. As such, appellant was in complete mental and physical trauma due to frequent instances of physical, mental and psychological abuse by respondent. Her parents had no knowledge of any such atrocities on her. Appellant thereafter cancelled the debit card in the month of November 2013 which was being used by respondent. Such cancellation infuriated respondent who called and asked her to send monies as respondent wanted to make preparation for their wedding and insisted upon a registered marriage. Appellant, however, did not pay any heed to his demands. At one point of time, appellant had lost all her strength to tolerate respondent and even contemplated to commit suicide rather than living in such hellish condition created by the respondent, however, spiritual guidance stopped her from taking any step.

20. On 3rd December, 2013, respondent came to appellant's office and snatched her mobile phone as well as her debit card. In order to avoid fracas in her office, appellant went out of her office where respondent followed and threatened her to immediately accompany him to his native place *Bilaspur*, or else, he would kill and/or disfigure her. Appellant called her parents and informed them for the first time about respondent and his crimes.

21. Appellant's parents lodged a telephonic complaint from *Haryana* on 3rd December, 2013 with *Goregaon* Police Station. When respondent came to know about the same, he returned her mobile and debit card. He, however, threatened appellant not to proceed with any complaint as he was not afraid of going to jail. However, when he would be free, he would actually hurt her and her family members.

22. Appellant contends that *Goregaon* Police Station was not keen to register an F.I.R in the matter at that time. In order to counterblast appellant's complaint with *Goregaon* Police Station, respondent took advice from his family and friends and schemed to misuse law in order to harass and subdue appellant by filing an application for restitution of conjugal rights in the Court of Civil Judge at *Bilaspur* on 17th January, 2014 under section 9 of the Hindu Marriage Act. Appellant was shocked, as for the first time, she came to know that respondent claimed to be her alleged husband.

23. It is further averred that till March, 2014, respondent kept silent. Realizing appellant had not pursued her complaint, he again started harassing her in the similar manner. Apart from him, his lawyer, friends and family members also started threatening her to accept respondent as her husband. Despite blocking several cell numbers, respondent and his family continued calling on her cell phone and office lines from unknown numbers and continued threatening and torturing her mentally.

24. On 10th July, 2014, respondent called appellant on landline number of her Union Bank of India Office and threatened her that if she does not stay with him, he would destroy her life by throwing acid on her face so that no one else would ever marry her. He again threatened to make viral her obscene photographs on social media.

25. Appellant, therefore, filed a complaint vide her Advocate's letter dated 11th July, 2014 with *Goregaon* Police Station. A crime bearing No.254 of 2014 came to be registered against respondent under section 376, 366, 354, 506 (2) of the Indian Penal Code and

under section 4 of the Protection of Children from Sexual Offences Act, 2012 on 12th July, 2014.

26. Appellant had filed her say in the application bearing No.2 of 2014 filed by respondent before Additional Civil Judge at *Bilaspur* for restitution of conjugal rights. Respondent was arrested on 23rd December, 2014 by *Bilaspur* Police in the aforesaid crime, however, he was enlarged on bail in the first week of February, 2015. Respondent, however, again started threatening appellant to withdraw her complaint.

27. According to appellant, she hails from rural background where womenfolk and their voices are stifled from birth as the slightest rumour can taint them for rest of their lives. Honour killings, rape and all kinds of crimes against women are a daily feature and families advise their daughters and womenfolk to silently face oppression. F.I.R's are rarely filed in cases of crimes against women, unless, there is a press coverage or political support where, *Khap Panchayat's* rule and their diktat goes unquestioned, and whoever agitates, are either ex-communicated or liquidated.

28. Respondent took advantage of such state of affairs and ruined her life. Only because appellant got transferred to Mumbai during April, 2012, she was able to fight for justice from December, 2013 till date. She further contends that respondent took complete advantage of her shy, timid and introverted nature and kept her terrorized ever since she was 14 years old and the ordeal that appellant has had undergone since December, 2011 to December, 2013 has left a lasting impact upon her mind and soul to such an extent that she would

have either ended her life or would have been liquidated by respondent.

29. Appellant contends that she was never married nor there was any marriage conducted between her and respondent. Certificate and other documents relied upon by respondent in Petition No. A -2172 of 2016, originally filed as Application bearing No.2 of 2014 before Additional Civil Judge at *Bilaspur* on 17th January, 2014 are fabricated documents prepared by respondent to serve his criminal agenda of committing crimes upon appellant as above. Respondent entered into a criminal conspiracy with his friends in order to fulfill his criminal desire of criminally enslaving appellant for the rest of her life. Respondent had fabricated a certificate which he claims to be an alleged marriage certificate and also an affidavit which had been obtained by using criminal force/fraud. Even, alleged signatures of appellant were obtained through fraud, coercion and criminal pressure. It is contended that appellant came to know about fabricated and fraudulent documents of her alleged marriage with respondent for the first time when respondent filed an application under section 9 of the Hindu Marriage Act, as he kept those documents and certificates suppressed.

30. Appellant, therefore, prays for annulment of her alleged marriage dated 29th December, 2011 stated to have been performed/ took place at *Rishi Markandeshwar Dhan Smiti* by a decree of annulment, *inter alia*, seeking some other reliefs. As such, it is the contention of appellant that on the basis of such false, forged and fabricated documents, respondent has ruined her life and she has been entrapped, tricked and entangled by him in order to continue

enslaving her and to prevent her from settling in her life.

31. Respondent appeared before the Family Court, however, he failed to file written statement and, therefore, petition proceeded against him without written statement.

32. We heard Mr. Firdause Irani, Counsel appearing for appellant for a considerable period. At the outset, Mr. Irani would argue that impugned order is *ex facie* illegal, contrary to the provisions of law and is unsupported by the evidence on record. He would argue that impugned order is based on incorrect appreciation of law and facts, inasmuch as, the Court below erred in appreciating a fact that appellant was under huge criminal force and has been suffering for more than 18 long years of her ordeal wherein respondent had wielded money, muscle and political power against her. He would argue that the learned Judge failed in considering the forged, fabricated documents and marriage certificate relied upon by respondent in his petition under section 9 of the Act. Counsel has invited our attention to a fact that despite service, respondent did not appear before the Family Court, and, therefore, evidence adduced by appellant remained uncontroverted. Counsel emphasized on a fact that appellant had been sexually exploited by respondent ever since she was 14 years old and continued exploiting her physically, mentally and economically by sheer use of criminal force and threats.

33. According to Mr. Irani, learned Judge erred in technically deducing the calculation of limitation to file annulment proceedings by wrongly observing that since appellant first came to know about force in 2014 and then F.I.R came to be filed in 2015 and as such,

suit that came to be filed in the year 2017 was barred by limitation. Counsel would, therefore, argue that impugned judgment and order rendered by the learned Judge of the Family Court needs interference in appeal. Counsel would further submit that matter needs to be remanded for passing necessary orders, in accordance with law.

34. A short affidavit in lieu of her examination-in-chief had been tendered by appellant before the Family Court which is not in full consonance with what has been averred in the petition, in the sense, it does not exhibit, in detail particulars, various instances alleged to have occurred from the year 2003 when appellant alleged to have been sexually exploited by respondent till 2013. Be that as it may.

35. Appellant has sought two fold reliefs viz;

(a) Alleged marriage dated 29th December, 2011 alleged to have been solemnized at *Rishi Markandeshwar Dhan Smiti* with respondent be annulled by a decree of nullity on the ground of fraud, force, and,

(b) Marriage certificate dated 29th December, 2011 issued by *Rishi Markandeshwar Dhan Smiti* and alleged affidavits be declared as false and forged documents; being non est, null and void *ab initio*.

36. Indubitably, petition under section 9 of the Act preferred by respondent on 17th July, 2014 for restitution of conjugal rights in the Court of Additional Civil Judge, *Bilaspur*, which ultimately came to be transferred to Family Court, Mumbai, came to be dismissed

(Petition No. A - 2172 of 2016) for want of prosecution by the Family Court on 23rd January, 2018.

37. Before evaluating the evidence on record, one must understand that a Hindu marriage under the Act must be solemnized in accordance with the customary rites and ceremonies of at least one of the parties thereto and must fulfill the conditions prescribed for the same. A marriage between Hindus must be either a civil marriage or a sacramental marriage and the requisite of a sacramental marriage, apart from other conditions, was that it must be solemnized in accordance with such customary rites and ceremonies of either party thereto as are essential for such marriage. Of course, there must be consensus of the parties to the solemnisation of the marriage. This element of consent was present even in the concept of a Hindu marriage being entirely a sacrament and a gift because it was an indispensable part of the ceremony that the gift should be accepted.

38. Section 12 (1) (c) rules that a marriage shall be voidable and may be annulled by a decree of nullity on the ground that the consent of the petitioner, (or of the guardian in marriage) was obtained by force or fraud. A Hindu marriage under the Act, is not entirely or necessarily a sacrament (*sanskara*) but union of one man with one woman to the exclusion of others, satisfied by solemnisation of the customary rites and ceremonies of either party essential for a marriage, as it directly exists, creates a relation and a status not imposed or defined by contract but by law. There must be no incapacity in the parties to marry one another by reason of prohibited relationship or *sapinda* relationship. A 'Hindu marriage' does not

refer to *Hinduism* as a religion but it relates to all persons who are *Hindus* in the wide connotation of the expression. Appellant herein, has come up with a specific contention that not only fraud but force had been exercised by respondent in obtaining her consent for the marriage *qua* the manner and mode in which the alleged marriage is said to have been solemnized.

39. Having said that, it would be expedient to scan evidence of appellant in the form of an affidavit. Appellant and respondent knew each other since the year 2000. Appellant states in her affidavit that in the year 2003 when she was 14 or 15 years of age and prosecuting her studies in 10th standard, respondent had forcibly made physical contact with her and took obscene photographs. At that time, she was residing with her parents at *Bilaspur*. Respondent was residing in the neighbourhood. Respondent threatened appellant of dire consequences and also to her family members if she discloses about the said act and the photographs to anyone. Respondent had also threatened to spoil her reputation by making obscene photographs viral on social media and on internet. Appellant had silently suffered the ordeal as she belongs to a very orthodox family from the State of *Haryana* where custom of *Khap Panchayat* prevails. Thereafter in the year 2007, when appellant was studying at *Yamunanagar* after her father's transfer from *Bilaspur* to *Chhachharauli*, respondent again started harassing her by stalking and reminding her of obscene photographs, *inter alia*, threatening her to make it viral and would damage reputation of her family, if she does not submit to his demands.

40. If it is presumed that appellant was molested or sexually exploited when she was in 10th standard and was 14 to 15 years of age, by 2007 she must have attained 18 years, however, neither she had disclosed alleged acts of respondent to her parents, siblings nor to any of the family members. Apprehension of appellant that she was afraid of notorious nature of respondent who had forced her to submit herself to his whims and fancies sounds incredible. For a moment, apprehension of appellant at that age is presumed to be justified, looking to her tender age, she could have definitely confided with her mother about it.

41. It appears that appellant had succumbed to the alleged torture and harassment at the hands of respondent from the year 2007 to 2010 at *Yamunanagar*. Even after her return to *Yamunanagar*, she states that respondent started threatening her to marry and stay with him, else, he would disfigure her by throwing acid. He started threatening appellant in the similar manner, so much so, that he was so emboldened that he started physically assaulting, insulting her in public. On one occasion in the year 2011 when appellant was working as a teacher in a Coaching Centre, respondent slapped her in front of her colleagues only because she declined to go out with him. Even then, quite surprisingly appellant had neither complained either to her parents or to the Police which sounds incredible.

42. Respondent had continued exerting criminal pressure upon appellant to get married with him when she was working as a Clerk in Punjab National Bank at its branch situated in village *Dhanora* and residing in PG accommodation in the month of November, 2011. Thereafter, in the month of December, 2011, respondent rang up

appellant's office number and asked her to come out of the branch, when she refused, he threatened her to create a scene inside the branch office and spoil her reputation. When appellant came out, respondent snatched her cell phone and forcibly took her in his car. On the way, he gave her some "*prasad*" to eat which, according to appellant, she later realized that it was spiked with some drugs, as after consuming the same, she became powerless and mute spectator to the events that unfolded thereafter. According to appellant, respondent along with some of his friends took her to a temple and clicked some photographs. Thereafter, her signatures were obtained on some blank papers. Thereafter, she was dropped at her office on the following day, i.e, on 29th December, 2011 at 10'0' clock. Before leaving appellant at her office, respondent threatened her not to reveal about the incident to anyone, else, they would cause serious harm to her and her family.

43. We are afraid, we cannot believe such evidence of appellant as it is difficult to accept the same to be a truthful version of the incident. It is so because as to how she readily accepted "*prasad*" and ate it despite having been forcibly taken away by respondent? Appellant was literally abducted and again brought back to the office on the following day but neither any of her colleagues or friends have come forward to depose in her favour nor there appears to be any report lodged by her with Police. Strangely, appellant remained silent and passive despite undergoing such a trauma. It is unfathomable as to why she did not disclose the said incident to her friends or colleagues who could have definitely taken some effective steps by approaching the Police or at least to the superior officers. Such behaviour of appellant is quite strange and cannot be said to be

a natural conduct of a woman who is not only major but qualified as a Master in Science from *Singhania* University and serving independently in a city like Mumbai. No sane man will believe and accept her statement.

44. Next, while serving with Union Bank of India in the month of March, 2012 at *Goregaon* West Branch in Mumbai, it is stated that she took a temporary accommodation in her aunt's house at *Andheri* for a month. Having learnt about her appointment in Mumbai, respondent followed her and took up a residence in the same locality. He even approached her office at *Nariman Point* and forced her to come out of the office by insisting upon her to live with him in Mumbai. Upon her refusal, he extended similar threats of making her obscene photographs viral and spoiling her life as well as causing damage to her life and limb. This time also, appellant silently suffered without disclosing conduct of respondent to anyone. Could she not disclose it with her parents when they had been to Mumbai on 28th April, 2012?

45. Appellant further states that whenever she used to be alone, respondent would abuse her physically in unnatural manner and would always extort money from her by unlawfully using her debit card. He had extorted Rs.1,40,000/- during the period from May, 2012 to December, 2012. However, she could gather courage thereafter and cancelled her debit card. Finally, she informed her parents regarding the acts, threats and torture by respondent and thereafter her parents lodged a telephonic report against him with *Goregaon* Police Station on 3rd December, 2013. Upon realizing that a report came to be lodged against him, respondent filed an

application bearing No.2 of 2014 before the Additional Sessions Judge, *Bilaspur* on 17th January, 2014 for restitution of conjugal rights by relying upon a forged marriage certificate and fabricated documents. It is pertinent to note that there is no whisper in her petition as regards forged and fabricated documents being relied upon by respondent in his suit for restitution of conjugal rights or, that her marriage was solemnized under fraud or force. One does not know whether in her reply or written statement in the suit of respondent for restitution of conjugal rights, any such plea was raised? In her affidavit, she further deposed that respondent, his friends and family continued threatening her and, therefore, she lodged a report with *Goregaon* Police Station on 11th July, 2014 vide C.R. No.254 of 2014 under section 376 (N), 366, 354 (K), 506 (2) of the Indian Penal Code and under section 4 of the POCSO Act.

46. It is crystal clear from the evidence of appellant that except her bare words, there is absolutely no corroboration from any corner either in the form of evidence of her parents, brothers, sisters or employees of Union Bank of India. There is even no evidence as regards alleged extortion of substantial amount by misusing her debit card which could have been easily available being electronic evidence. Even there is no evidence of medical examination of appellant who alleged to have been ravished, sexually exploited and subjected to unnatural intercourse by respondent. Overall evidence of appellant is improbable, unbelievable and unacceptable. No sane man would believe and accept her testimony as it is nothing but *ipsedixitism*. It is quite apparent from the evidence that it is a case of inflicted insight, meaning thereby, unsolicited revelation of aspects of one's character, usually as a result of a deceitful experiment that has

psychological dimensions, and especially where this results in emotional trauma.

47. Learned Judge of the Family Court has, therefore, rightly refused to place reliance upon the sole testimony of appellant which suffers from several shortcomings and is insufficient to construe that there was any force or fraud alleged to have been played upon her by respondent who had forcibly obtained her signature and photographs. There are no photographs on record. Certain photostat copies of affidavits annexed with memo of appeal cannot be considered in evidence for want of originals.

48. Now, turning to the legal aspects *qua* section 12 (1) (c) of the Act. Section 12 of the Act contemplates that any marriage solemnized, 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)******

*(b)******

(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)******

(2) Notwithstanding anything contained in sub-section (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*

*(b)*****"*

49. Learned Counsel for appellant emphasized on the words, "force" and "fraud" appearing in section 12 (1) (c) of the Act. Said words must be interpreted in such circumstances or conditions as to show want of real consent to the marriage. "Fraud" within the meaning of section 12 (1) (c) is such which procures the appearance without the reality of consent and thereby becomes an act fitted to deceive. The word "fraud" employed in this section does not speak of fraud in any general way, nor does it mean every misrepresentation or concealment, which may be fraudulent, but fraud as to the nature of ceremony or as to the material fact or circumstances concerning respondent. Another meaning which can be attributed to word "fraud" is "deceit", meaning thereby, where consent to the marriage has been obtained by deceit or deception, it is liable to be annulled under section 12 (1) (c) of the Act.

50. Sub-section (2) of Section 12 of the Act contemplates that notwithstanding anything contained in sub-section-1, no petition for annulling the marriage on the ground specified in clause (c) of sub-section (1) shall be entertained if the petition is presented more than one year after the force has ceased to operate or, as the case may be, the fraud had been discovered. Thus, presentation of petition for annulling the marriage as void under section 12 (1) (c) must be

within one year from the date after the force has ceased to operate or, the date the fraud had been discovered. *Sine qua non* for valid presentation of the petition is, therefore, presentation of petition within one year from discovery of fraud or the force which had ceased to operate. This provision is imperative and prohibitory in nature.

51. Law on this point is no more *res integra* and has been dealt with in several decisions of this Court as well as other High Courts. It would be advantageous to refer to a decision of *Chattisgarh* High Court in case of **Renu Singh Vs. Brijendra Singh**¹. Relevant passage from the judgment is extracted below:

"15. Sub-section (2) of Section 12 of the HM Act, 1955 states that notwithstanding anything contained in sub-section (1), no petition for annulling a marriage on the ground specified in clause (c) of sub-section (1) shall be entertained if 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. Thus, presentation of petition for annulling a marriage as void under Section 12 (1) (c) must be within one year from the date after the force had ceased to operate or, the date the fraud had been discovered. Therefore, presentation of petition within one year from discovery of fraud or the force had ceased to operate is a sine qua non for valid presentation of petition for annulment of marriage under Section 12 (1) (c) of the HM Act, 1955. If the petition is presented after more than one year from that date, the bar would operate and suit would be statutorily barred and as such the provision is imperative and prohibitory in nature.

16. Even otherwise, the issue raised herein is no longer res integra and stands concluded by a judgment rendered by the M.P. High Court. In this regard, reference may be to a Division Bench decision of the M.P. High Court in Nandkishore (supra) in which the M.P. High Court has held that a

1 LQ/CHAT/HC/2017/103

petition for annulment of a marriage shall not be entertained if the conditions laid down in various sub- clauses of Section (2) of the HM Act, 1955 are not satisfied, and observed as under in paragraph 11:

-

"11. Heading of this sub-section (2) would indicate that a petition for annulment of a marriage shall not be entertained if the conditions laid down in its various sub-clauses are not satisfied. It is, therefore, incumbent on a petitioner to plead and for a Court to find that the petitioner has strictly fulfilled the requirements of those sub-clauses. In order to succeed under clause (d) of Section 12(1) of the Act, the petitioner must not only show the existence of pregnancy at the time of marriage, but should also prove that he was ignorant of that fact at the time of marriage, that the proceedings were instituted within a period of one year fixed by the statute and that he did not have marital intercourse with the wife subsequent to the time when he had grounds for reasonably inferring the cause on which he is seeking annulment. In the instant case, the marriage took place on 2-5-1975. The petition was filed on 14-6-1976. The summer vacation that year commenced from 10-5-1975. The Courts did function on 3-5-1975. Obviously the petition was presented beyond the period of one year fixed by the statute. Again, it is in the evidence of the appellant and his witnesses that he had practically become certain of the alleged pregnancy of the respondent soon on her arrival to the appellant's house. The respondent has specifically pleaded that after the marriage she had marital intercourse with the appellant and with his full consent. She also deposed so in the witness-box. In spite of this, the appellant did not amend the petition to deny any cohabitation with the respondent. The respondent was put no question in cross-examination to challenge that part of her testimony. It can, therefore, be safely held that marital intercourse had taken place with the appellant's consent since discovery of the alleged pregnancy. That being so, the appellant has utterly failed to prove compliance of conditions incorporated in

Section 12(2)(b) (ii) and (iii) of the Act. His petition must fail on this count also."

We are in respectful agreement with the view taken by *Chattisgarh* High Court.

52. Turning back to the facts of the case at hand, as already discussed hereinabove, on her own saying, appellant had first discovered force also on 28th December, 2011 when she was abducted by respondent from her office and took her in his car along with his friends by offering some '*prasad*' spiked with some drugs which she ate and, thereafter, she was taken to a temple where some photographs were clicked and her signatures were obtained on some blank papers. Those papers, as it reflects from her evidence were later converted into fabricated and forged documents in the form of marriage certificate and affidavits.

53. Fraud had been discovered *qua* nature of ceremony and also force to accompany with respondent when she was offered some '*prasad*' spiked with drugs on 29th December, 2011 when she was dropped at her office. We have given various instances and analysed appellant's case earlier from her petition and evidence only to expose the unbelievable story of appellant. Even for a moment, we do not go into the truthfulness and veracity of appellant's version as regards its correctness, we fail to understand as to why she did not do anything and remained silent till 2017, i.e, almost for a period of six years. If overall conduct of appellant *vis-a-vis* chronology of the events unfolded on record are juxtaposed, it is quite difficult to construe that there was any impediment or obstruction for her to approach the Court within one year after she discovered fraud *qua*

nature of ceremony and also in respect of material facts and circumstances in the nature of obtaining forged and fabricated marriage certificate and affidavits by respondent. Only inference which would flow from the attending circumstances is that appellant had acquiesced in the marriage.

54. Evidence on record is not sufficient enough to infer that the alleged marriage of appellant with respondent was an outcome of practicing fraud or force as contended in the petition. The alleged fraud or force had indeed ceased to operate, the moment appellant came to know that she was deceitfully taken to a temple by offering '*prasad*' spiked with some drugs and her signatures were obtained on some blank papers. Having discovered the said fact on 29th December, 2011, petition could have been presented within one year thereafter. Nothing prevented her from doing so and, therefore, bar under sub-section-2 of section 12 of the Act operates in the given facts and circumstances.

55. Corollary of the aforesaid discussion is that Hindu Marriage Petition is hopelessly barred by limitation as rightly held by Family Court, Bandra. Appeal is devoid of merits. No interference is warranted in the impugned judgment and order. Appeal, therefore, stands dismissed. No costs.

56. Consequently, Interim Application stands disposed.

[PRITHVIRAJ K. CHAVAN, J.]

[K.R. SHRIRAM, J.]