

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.35 of 2016

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Neeraj Kumar Singh Son of late Sachidanand Singh, Resident of Mohalla- Lal Bag, P.S. Tilkamanjhi, Kotwali, District Bhagalpur. Permanent Resident of Village Dogachhi, Tarar, PS Sanhoula District Bhagalpur, at Present Posted as H.G.A. Claim Department, L.I.C. of India, Bhagalpur, Division office, Zero Mile, P.S Zero Mile, District Bhagalpur.

... ... Appellant

Versus

Tesu Kumari Wife of Neeraj Kumar Singh and Daughter of Sitaram Thakur Resident of Mohalla Lal Bag House of Shobha Devi Nurse P.S Tilkamanjhi Kotwali District- Bhagalpur, at Present Posted as H.G.A. Claim Department, L.I.C. of India, Bhagalpur, Division Office, Zero Mile, P.S Zero Mile, District Bhagalpur.

... ... Respondent

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Issue in consideration : is there infirmity in the judgment of the learned Principal Judge, Family Court passed in Matrimonial Case

Is the respondent entitled to get the relief for restitution of conjugal rights. Is there infirmity in the judgment of the learned Principal Judge, Family Court

The issue was hanging in balance due to dispute over marital status of the appellant and respondent as husband and wife. Once the respondent has been able to prove that the appellant is her husband, desertion is proved by the oral evidence of the appellant. If the appellant has refused to accept the respondent as his wife, naturally, there was no question of restitution of conjugal life as whole opposition of the appellant is only on this point that the respondent is not his wife .

Evidently, the appellant has deserted the respondent without any reasonable cause and in the light of discussion of the evidence of both sides, it was held that the respondent is entitled to get the relief for restitution of conjugal rights and there being no infirmity in the judgment of the learned Principal Judge, Family Court

Can it be held that the respondent is the legally married wife of the appellant and their marriage was solemnized on 09th of November, 2003.

The witnesses examined on behalf of the respondent have stated in clear terms that all the rites and rituals of Hindu marriage were performed; vermilion was applied and ‘Saptapadi’ also took place. Thus, it could not be said that the marriage was shorn of essentials in performance of the customary rites and rituals as prescribed under Section 7 of the Hindu marriage Act and apparently the marriage was not barred under Section 5 of the Hindu marriage Act.

Moreover, the oral evidence of the respondent is unwavering and uncontroverted on the point of marriage of the respondent with the appellant. The witnesses of the respondent are of

different hue and all of them could not be said to be interested witnesses. whichever witnesses appeared, they supported the case of the respondent about her marriage taking place with the appellant on 09.11.2003. Further, the appellant has not been able to challenge the veracity of the deposition of witnesses of respondent.

On the other hand, all the witnesses of the appellant are interested witnesses. All the time it is not that interested witnesses could not be relied but in the present case their evidence must be considered with certain circumspection since they are highly partisan witnesses being the brothers,

mother and wife of the appellant. Their denial is uniform. After perusal It was held that the marriage was solemnized between the appellant and the respondent on 09.11.2003 in accordance with Hindu rites and rituals

*The Hon'ble Supreme Court in the case of **Ranganath Parmeshwar Panditrao Mali and Anr. Vs. Eknath Gajanan Kulkarni and Anr.**, reported in (1996) 7 SCC 681 has held that if there is consistent evidence of relationship , a legal presumption arises that they were living together as husband and wife. Similarly to the effect is the observation of the Hon'ble Supreme Court in case of **Shiramabai W/o Pundalik. Bhave and Others Vs. Captain, Record Officer For O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State and Another**, reported in 2023 SCC OnLine SC 1026 at Paragraph Nos. 14 to 23. .[para-30]*

*The Hon'ble Supreme Court in case of **Ilavarasan Vs. Superintendent of Police and Ors**, reported in 2023 SCC On Line SC 1120 has observed the issue of pulls and pressure and different type of compulsions coming in way of open declaration of marriage.[para-29]*

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Versus

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... .. Respondent

Appearance :

For the Appellant	:	Mr. Abinash Kumar Singh, Advocate
For the Respondent	:	Mr. Ganpati Trivedi, Sr. Advocate
		Mr. Sanjeev Kumar Mishra, Advocate
		Mr. Ritik Shah, Advocate
		Mr. Madan Mohan, Advocate
		Mr. Pallavi Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date :10-05-2024

The instant Miscellaneous Appeal has been filed under Section 19(1) of the Family Courts Act, 1984 against judgment and decree dated 04.11.2015 and 21.11.2015, respectively, passed by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 81 of 2009.

Factual Aspects of the matter:-

02. The conspectus of case of the parties is that the respondent filed Matrimonial Case No. 81 of 2009 under



Section 9 of the Hindu Marriage Act, 1955 (for short 'HMA') against the appellant/opposite party seeking restitution of conjugal rights against the appellant directing him to discharge his marital obligations towards the respondent. For the sake of convenience, we will be using nomenclature as used in the present appeal for further reference. From the petition of the respondent before the learned Family Court, it appears that she had been living in Bhagalpur and working in LIC in one of its Branches at Bhagalpur. The appellant solemnized marriage with the respondent on 9th November, 2003 according to Hindu Rites and Customs at Bhagalpur. Both appellant and respondent used to work in LIC and they were posted at LIC Office, District-Sahebganj, Jharkhand in the year 2003 after joining the organization. Both of them were residing at Bhagalpur and they were accustomed to commute monthly by train together and also by motorcycle. The close association resulted in special affinity between them and it culminated in love. The appellant and respondent decided to solemnize marriage without any interference or intervention of their family members since they belonged to different castes and accordingly the marriage was solemnized at the residence of the petitioner/respondent in presence of close relatives including sister and brother-in-law



(Didi and Jija Ji) of the respondent as she has been residing in a rented house at Adampur, Bhagalpur. The marriage was solemnized by a Pandit, namely Pankaj Kumar Jha. The appellant and the respondent started leading their conjugal life peacefully for about 02 years but when the fact came to the knowledge of the parents of the appellant, they got enraged. They started pressurizing the appellant to solemnize marriage with another lady of same caste with handsome dowry. Tempted by the allurements of money and instigated by his mother, the appellant started demanding Rs. 10,00,000/- from the respondent and on non fulfillment of this demand, the appellant started maintaining some distance from the respondent and later on solemnized marriage with another woman after taking dowry. Coming to know about the second marriage of the appellant, the respondent went to the native place of the appellant but the respondent was abused and threatened by the family members of the appellant. Due to continuous demand of dowry, the respondent got instituted an FIR against the appellant and his mother for offence under Section 498A of IPC and Section 3/4 of the Dowry Prohibition Act. Subsequently, several litigation started due to adamant attitude of the appellant and his family members. The respondent continued her parleys with the



appellant and his mother directly or through other persons persuading them to allow the respondent to live with the appellant. The respondent submitted that the cause of action arose on 05.04.2006, when the appellant refused to lead conjugal life with the respondent after his second marriage and thereafter, the respondent filed the petition before the learned Family Court for restitution of conjugal rights. The respondent further submitted that marriage of the respondent with appellant was a valid marriage and she has got right of restitution of conjugal rights and she was ready to live with the appellant as his wife to lead married conjugal life. Thus, the respondent prayed for passing a decree for restitution of conjugal right against the appellant, directing him to discharge his marital obligation with the respondent petitioner.

03. The appellant joined the trial before the learned Family Court, Bhagalpur filing his written statement claiming that petition was not maintainable. The appellant denied the claim of his marriage with the respondent as mischievously false and baseless. The appellant submitted that the respondent-Tesu Kumari was posted at Sahebganj LIC Branch in the year 2003 and the appellant was also posted in the same service with same status and they were working in the same office and had friendly



relation as well as official relation. The appellant had no inkling about feelings being carried by the respondent towards the appellant. The respondent got a voluntary transfer from Sahebganj to Bhagalpur in March, 2005 whereas the appellant remained at Sahebganj till August, 2007 and was transferred to Bhagalpur in August, 2007. The appellant solemnized marriage with one Bibha Kumari on 23.11.2005. Thereafter, the respondent revealed her intention to marry with the appellant. The appellant was threatened by the respondent and the appellant filed *Sanha* No. 349 of 2006. The respondent also filed a *Sanha* No. 1467 of 2006 in which she made claim about her marriage but without disclosing any date, place and manner. She also procured a marriage certificate without disclosing the name of the temple which allegedly issued the certificate. The respondent gave a petition before the Senior Divisional Manager, LIC, Bhagalpur where she mentioned that in November, 2003, they had solemnized marriage and they started living as husband and wife but without any date. Thereafter, the respondent filed a criminal case and in the FIR she did not mention any arranged marriage as claimed by her subsequently and only stated that since 9th of November, 2003, they had been living like husband and wife while both of them had been



working at Sahebganj. No where did she disclose the names of persons in presence of whom the marriage was solemnized. The appellant was arrested and was put under custody and the appellant got bail from this Court when the document was brought on record showing that the respondent claimed herself as unmarried in the office of LIC till 14.03.2007. The appellant in his written statement denied ever living as husband and wife with respondent and if they solemnized marriage on 09.11.2003, why would the respondent get voluntary transfer to Bhagalpur in 2005 when the appellant remained there even after 2005? The appellant reiterated that there was never a relationship of love between the appellant and respondent and they were co-workers having good relationship and they never talked about any marriage. Further, the appellant and respondent never lived as husband and wife. The appellant denied the marriage as claimed by the respondent and claimed that this fact came to his knowledge only in January, 2006 when the respondent revealed her true intention. Even the allegation of demand of dowry was completely false and baseless. The appellant further stated in his written statement that he has only one wife, namely, Bibha Kumari and there is no other marriage and from his wife Bibha Kumari he has two children. Thus, the appellant stated that there



was no question of restitution of conjugal rights as the respondent is not the wife of the appellant and, therefore, the petition of the respondent/petitioner was liable to be dismissed.

04. On the basis of pleadings of the parties, the learned Principal Judge, Family Court, Bhagalpur framed the following issues:-

- (i) Is the case as framed maintainable?
- (ii) Has the petitioner got valid cause of action for the suit?
- (iii) Is the petitioner first legally wedded wife of the respondent as claimed?
- (iv) Is the petitioner entitled to a decree for restitution of conjugal rights as prayed for?
- (v) To what other relief or reliefs, if any, is the petitioner entitled to?

05. In support of her case, the respondent produced and examined the following oral & documentary evidence(s) before the learned Family Court:-

Oral Evidence(s):

PW-1	-	Mahesh Prasad Singh
PW-2	-	Kailash Rajak
PW-3	-	Vikas Singh
PW-4	-	Tesu Kumari



PW-5 - Rohit Kumar Thakur
PW-6 - Awan Kumar Singh
PW-7 - Smt. Renu Kumari

Documentary Evidence(s):

Exhibit-1- Certificate issued by Pandit Pankaj Kumar Jha, showing that he has performed/solemnized marriage between these appellant and respondent on 09.11.2003 in the night at Adampur, Bhagalpur, but the original certificate contains no date of issuance, but contains the signatures of witnesses, Sri Sudhir Kr. Thakur, Rohit Kumar, Neeta Thakur for the bride and Mahesh Singh, Vikas Singh and Nand Rani Devi for the Bride-groom.

Exhibit-2- Positive of pair photographs of the petitioner and the opposite party as wife and husband.

Exhibit-3- Details of the petition submitted by respondent before the L.I.C. Bhagalpur, Branch-I, showing her address as C/o Ravindra Rajak at Adampur, Bhagalpur and her date of birth as 01.01.1967.

Exhibit-4- Details submitted by respondent to the L.I.C. Bhagalpur, Branch-I showing her address as wife of Neeraj Kumar Singh C/o Shobha Devi, Nurse, Lal Bag, Tilkamanjhi, Bhagalpur on 31.03.2010.

Exhibit-5- Letter issued by Chief Manager, LIC



Office, Bhagalpur Branch-I showing the address of the respondent as wife of Neeraj Kumar Singh, C/o Smt. Shobha Devi house no. 64 Techno Point Gali, Lal Bag, Tilkamanjhi, Bhagalpur.

Exhibit-6- Information regarding change of marital status given by respondent Tesu Kumari to the Chief Manager, LIC Bhagalpur, Branch-I showing Neeraj Kumar Singh son of Sachida Nand Singh, Dogachhi, Tarar P.S.-Sanhaula, Bhagalpur as her husband.

Exhibit-7- The statement of LIC showing nominee of Tesu Kumari as Neeraj Kumar Singh her alleged husband working as Higher Grade Assistant.

Exhibit-8- True copy of extract of the guest house registered LIC Division showing sl. no. 3504 dated 08.11.2003 that Tesu Kumari and Neeraj Kumar Singh stayed there in the night in one bedroom-2, likewise sl. no. 3507 dated 24.05.2003, 3275 dated 16.11.2002 etc. show that the respondent Neeraj Kumar Singh had stayed there for official purposes in the said guest house of LIC at Patna.

Exhibit-9- Attested photostat copy of report of chairperson of complaint committee, Life Insurance Corporation, Bhagalpur, namely, Renu Kumari Ghosh dated 02.12.2006, who had found that Neeraj Kumar Singh had legally married with Tesu Kumari.

Exhibit-10- Certificate issued by the Manager, O.S., Divisional Office, Patna verifying the contents of the aforesaid guest house register showing that Tesu Kumari-Petitioner and Neeraj Kumar Singh had stayed since 08.11.2003 to 09.11.2003 in the



Divisional Office guest house in one room.

Exhibit-11- Copy of complaint/report given by Tesu Kumari to S.P. Bhagalpur regarding the marriage held with appellant and later on, demanding dowry of Rs. 10 lacs and misbehaviour of the appellant and his family members with her. Earlier the petition was marked as 'X'.

Ext. 11/1 earlier marked X/1- The statement of R. K. Dubey. **Ext. 11/2** earlier marked X/2- The statement of Rajesh Kumar Dubey. **Ext. 11/3** earlier marked X/3- the statement of Pandit Pankaj Kumar Jha. **Ext. 11/4** earlier marked X/4- The statement of Sudhir Kr. Thakur dated 23.11.2006 etc., before the inquiry committee of Mahila Koshang S.P. Office, Bhagalpur showing therein that the alleged marriage between the petitioner and the opposite party was held on 09.11.2003 as per Hindu Rites and Rituals.

Mark Y to Y/9- Ten different positive photographs showing intimate relation and casual moments in the life of the parties and these photographs have been allegedly prepared from the C D attached with the case record.

Mark Y/10- The LIC I.D. Card of Tesu Kumari showing her as daughter of Sitaram Thakur and working as HGA at LIC, Bhagalpur, date of birth 01.01.1967 Sl. no. 354062, date of issue 27.07.2005 and **Mark Y/11** is Voter I.D. Card of Tesu Kumari bearing Sl no. T.T.N 1182-211 showing Tesu Kumari to be wife of Neeraj Kumar Singh.



06. On the other hand, the appellant produced and examined the following oral & documentary evidence(s) before the learned Family Court:-

Oral Evidence(s):

OPW-1 - Keshav Kumar Singh
OPW-2 - Shivjani Devi
OPW-3 - Nigam Kumar Singh
OPW-4 - Bibha Singh
OPW-5 - Neeraj Kumar Singh (opposite party)

Documentary Evidence(s):

Exhibit-A- The photostat copy of result dated 04.02.2004 of fellowship Exam, November, 2003 regarding Neeraj Kumar Singh of Techno point lane, Lal Bag, Tilkamanjhi.

Exhibit-B- The I.D. along with photographs for MLA Election, 2005 Sahebganj regarding duty in the said election of Neeraj Kumar Singh dated 17.02.2005.

Exhibit-C- LIC receipt regarding issuance of report from Manager of LIC Patna Division regarding stay of Neeraj Kumar Singh there since 08.11.2003 to 09.11.2003 showing the old records of the year, 2003 have already been destroyed.

Exhibit-D- Manual of LIC Departmental Examination (Hand-Book) in printed form.

Exhibit-E- Booklet Trains at a glance from Patna to Bhagalpur via Kiul and Patna to Naugachia via Barauni, Railway Time-Table from July, 2003 to



January, 2004.

Exhibit-F- Certified true copy of FIR of Kotwali (Adampur) P.S. Case No. 288 of 2007 dated 19.05.2007 U/s 498A IPC and $\frac{3}{4}$ of Dowry Prohibition Act by Tesu Kumari, the petitioner, against Neeraj, Shivjani Devi-mother of Neeraj along with written report dated 18.05.2007 of Tesu Kumari regarding the alleged atrocities and cruelty done against her and demand of dowry etc.

Exhibit-G- Result of Neeraj Kumar Singh, of fellowship examination November, 2003 dated 04.02.2004, issued by the Secretary General of LIC Department concerned.

Exhibit-H- Certified copy of true xerox copy of order dated 27.02.2008 passed by the High Court in Criminal Misc. No. 54883/2007, Neeraj Kumar Singh Vs. State of Bihar, by which the petitioner has been granted bail.

Mark-X- True photostat copy of alleged medical prescription dated 22.03.2012.

Mark-X/1 is true photostat copy of Sanha No. 349 of 2006 dated 25.01.2006, Neeraj Kumar Singh vs. Tesu Kumari.

Mark-X/2- Copy of Sanha No.2545 of 2006, Neeraj versus Tesu Kumari dated 7.06.2006, **Mark-X/3** is another Sanha No. 1467 of 2006, Tesu Kumari Versus Neeraj Kr. Singh and others dated 05.04.2006.

Mark-X/4- The true photostat copy of the FIR lodged by Tesu Kumari against Neeraj Kumar Singh and others dated 15.05.2007, **Mark-X/5** is true



photostat copy of the order dated 27.02.2008 passed by the Hon'ble High Court Patna in Cr. Misc. No. 54883 of 2007. **Mark-X/6-** Voter Identity Card of Bibha Kumari wife of Neeraj Kumar Singh.

Mark-X/7- Photostat copy of Voter ID of Neeraj Kr. Singh S/o Sachidanand Singh, **Mark X/8-** Photostat copy of information given by Tesu Kumari to the LIC Bhagalpur. **Mark-X/9-** Copy of complaint given by Tesu Kumari to Senior Manager, LIC Bhagalpur. **Mark-X/10-** Copy of voter list of Bhagalpur Constituency (MLA) of 2010, showing that Bibha Devi is wife of Neeraj Kumar Singh.

Findings of the learned Family Court:-

07. After hearing both the parties and considering the oral and documentary evidence(s) available on record, the learned Family Court came to the conclusion that the matrimonial case as framed was maintainable and the respondent has valid cause of action for filing the suit. The respondent is the first legally wedded wife of the appellant and she is entitled to decree of restitution of conjugal rights against the appellant. Accordingly, the learned Family Court allowed the petition decreeing the suit on contest but without cost in favour of the respondent and against the appellant and ordered that the respondent is first legally wedded wife of the appellant and she is entitled for a decree of restitution of conjugal rights against



the appellant as prayed for and the appellant is legally bound to discharge his marital obligations with the petitioner and to lead conjugal life with her as husband and wife.

Submissions on behalf of parties:-

08. Learned counsel appearing on behalf of the appellant submitted that the judgment and decree under appeal is bad in the eye of law as well as on facts and the same is fit to be set aside. The learned court below has erroneously decreed the suit in favour of respondent whereas from perusal of depositions of witnesses and documents exhibited in the case, it is apparent that the respondent failed to prove the alleged marriage with the appellant. Learned counsel further submitted that the learned court below has wrongly relied on the wrongly recorded deposition of OPW-4 while passing the decree in favour of the respondent which was objected by the counsel for the appellant and the same was challenged in writ jurisdiction before this Court in CWJC No. 13078 of 2013. Learned counsel further submitted that the learned trial court misdirected itself while passing the judgment under appeal by ignoring the provisions of law as enumerated under Sections 5 & 7 of the HMA which provide that if marriage has not been solemnized in accordance with the provisions of those sections, then no decree can be



passed under Section 9 of the HMA. Learned Family Court is not competent to pass decree of restitution of conjugal right in favour of respondent unless and until the marriage in question is declared valid by a competent court. Learned Family Court is empowered to pass decree under Section 9 of the HMA when it is admitted that respondent is legally wedded wife of the appellant but in the present case marriage of the respondent is itself under doubt. The learned Family Court has wrongly relied on Exhibit-1 which does not bear signatures of parties as well as date of issuance. Moreover, the said *Pandit* was not examined in this case. The close relatives like Didi and Jijaji of the respondent have also not come forward to prove and establish the genuineness of respondent's case. Likewise, Exhibit-8 (extract of the guest house register), allegedly bearing the signatures of the parties was disputed by the appellant, as the appellant stayed there for official purpose wherein the signature of appellant is forged and fabricated. Learned counsel further submitted that Ext. 9 (Report of Chairperson of Complaint Committee, LIC) is an *ex-parte* proceeding whereas during cross-examination of the chairperson, it was disclosed that said witness was known to the appellant and the respondent since 2006 and though alleged marriage took place on 09.11.2003 and



the persons present in the alleged marriage could not be identified by this witness. Learned counsel further submitted that the learned Family Court wrongly disbelieved the documents of the appellant which *prima facie* proves that on 09.11.2003 till 05:00 PM, the appellant was present at Patna. On 09.11.2003, the appellant was attending departmental examination at Patna till 5:00 PM and there was no question for leaving for Bhagalpur at 02:55 PM by Dadar Express as 09.11.2003 was Sunday and on that day Dadar Express was not available. This fact clearly proves that the alleged marriage was never solemnized on that date as claimed by the respondent and the whole case of the respondent gets falsified by this fact. Learned counsel further submitted that in Para-1 of the cross-examination of PW-1 there was interpolation by making correction as year '2002' in place of '2004'. The learned Family Court ought to have dismissed the respondent's case on the basis of pleadings and evidence available on record which do not support the case of the respondent at all. Learned counsel further submitted that learned Family Court has exceeded its jurisdiction vested in it by law in passing the impugned judgment and hence the judgment under appeal is perverse and is liable to be set aside.



09. On the other hand, Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the respondent submitted that there is no infirmity in the impugned judgment and decree passed by the learned Family Court. Learned Family Court after considering the oral and documentary evidence(s) produced and examined on behalf the parties, found that the respondent is the first legally wedded wife of the appellant and allowed the petition filed on behalf of the petitioner/respondent for restitution of conjugal rights. Mr. Trivedi further submitted that PW-5, Rohit Kumar Thakur, in his examination-in-chief as well as cross-examination fully supported the fact about solemnization of marriage of the respondent with appellant on 09.11.2003. Insofar as interpolation in Para-1 of cross-examination of PW-1 is concerned, the appellant did not raise any objection to the alleged interpolation while recording the statement of PW-1 by the learned Family Court and the law is well settled that if any such miss-recording of statement is made by the Court below it must be brought to the knowledge of the court immediately by filing application but no such application or objection was filed on behalf of the appellant before the learned trial court. Hence such objection is fit to be rejected. Mr. Trivedi further submitted that PW-1 in Para-4 of his deposition



stated that Pankaj Kumar Jha got the marriage solemnized according to Hindu custom, '*saptapadi*' was done, vermilion was applied and everybody blessed the couple and to this effect, Pandit Pankaj Kumar Jha provided the certificate (Ext.-1) and there was no cross-examination on this issue on behalf of the appellant. Mr. Trivedi further submitted that PW-2, Kailash Rajak also supported the marriage by Hindu custom, '*saptapadi*', applying vermilion and marriage was solemnized by Pandit Pankaj Kumar Jha. In para-3 of his deposition, this witness supported the story of taking steps around the holy fire, except the wrong counting of number of rounds and likewise, other witnesses also supported the factum of marriage and that '*Kanyadan*' had been done by Sudhir Thakur. The respondent examined herself as PW-4 and in Para-9 of her deposition, she supported the fact that marriage was solemnized in presence of all the above named persons. Mr. Trivedi further submitted that initially, Pandit Pankaj Kumar Jha was cited as witness on behalf of the respondent but he did not come to the court for his examination as he came in collusion with the appellant. However, it is apparent from the record that he appeared at Mahila Koshang for his deposition. Mr. Trivedi further submitted that Chairperson of the Women Complaint Committee



of LIC, Renu Ghosh, has been examined as PW-7 where she has proved her findings given as Chairperson of Women Complaint Committee of LIC which has been taken into evidence as Ext.9. The said findings support the case of the respondent that both the appellant and respondent were married. From Ext. 9, it also transpires that the statement of Pandit Pankaj Kumar Kumar was recorded from which it is evident that he got the marriage of the respondent performed with appellant as per Hindu rites and rituals. The learned senior counsel further submitted that as far as claim about non-running of Dadar Express, the learned Family Court has taken into consideration this fact and accepted the submission about Trains taking different routes through nearby Stations.

Findings:-

10. Having gone through the records and the rival submissions, the following points are framed for determination by this Court:-

(I) Whether the respondent is the legally married wife of the appellant?

(II) If yes, whether the respondent is entitled to restitution of conjugal rights or not?

Point No. (I):-

11. Admittedly, the appellant and respondent had been



working together in the year 2003. On the point of solemnization of marriage, the *Pandit* has not been examined though it has come in the deposition of OPW-4, Vibha Singh, that in the 'Crime Against Women Cell', the *Pandit* gave a statement to the effect that he performed the marriage of the appellant with the respondent. The said *Pandit* also issued a certificate, which was marked exhibit with objection, that he performed the marriage of the respondent with the appellant. All witnesses examined by either side appear to be interested witnesses with varied degree of interest and it will require careful examination of their deposition with reading of documents to arrive at a just conclusion.

12. The star witness of the respondent side is respondent herself, who deposed as PW-4. In her deposition, she stated that her marriage was solemnized with Neeraj Kumar Singh, appellant herein, on 09.11.2003 in the house of one Ravindra Rajak at Bhagalpur in presence of *pandit* Pankaj Kumar Jha and the relatives of both sides. After her marriage, she spent her conjugal life with the appellant till 04.04.2006. She has further deposed that subsequently, feelings of her husband towards her drastically changed and she came to know that her husband had solemnized marriage with another lady



after taking heavy dowry and under pressure of his mother. On 05.04.2006, she went to her matrimonial home but she was driven out and a demand of Rs. 10,00,000/- was made. The witness further deposed that when her husband refused to restore the conjugal life, she gave an application bearing No. 56 of 2006 to the Crime Against Women Cell. At the consultation center of Women Cell of Superintendent of Police, Bhagalpur, her husband appeared and showing his inability, refused to restore conjugal life with the witness. Before the Women Cell, the *pandit* Pankaj Kumar Jha, Sudhir Kumar Thakur, Rakesh Dubey and Rajesh Dubey got recorded their statements in support of the claim of the witness. The witness further deposed that she filed a criminal case bearing G.R. No. 1374 of 2007, which is still pending before the Court of learned Sub Divisional Judicial Magistrate, Bhagalpur and police has submitted charge-sheet in this case stating her to be the first married wife of the appellant.

In her cross-examination, she reiterated that her marriage was solemnized on 09.11.2013 and she further deposed that on the date of marriage, she came from Patna to Bhagalpur at 09:30-10:00 PM by *Dadar* train. The train left Patna at 03:00-4:00 PM in the evening. She had her examination in the first sitting at Patna and she had no examination in the second



sitting. The witness further deposed that the appellant was also not having any examination in second sitting. The witness further deposed that from the year 2003 to 2007, she had shown herself as unmarried in the office record. From 1997, when she joined the service, till 2007, she named her father as her nominee in office records since her husband wanted to keep their inter-caste marriage secret. The witness further deposed that her husband solemnized another marriage on 23.11.2005 with Bibha Kumari Singh and concealing this fact, her husband used to visit her till 04.04.2006. The witness further deposed that there was no photography of the marriage ceremony, however, there is a joint photograph taken by a friend of the appellant at her residence, but she could not tell the name of this friend. The witness further deposed that after one year of her transfer to Sahebganj, the appellant was transferred to the same place. The said transfers were at the instance of both the parties. The witness also deposed that on 01.11.2003, she and the appellant were at Patna and they decided to get married on 09.11.2003 and in the night of 09.11.2003, the son of her sister called the *Pandit*. The witness also deposed that after marriage, she stayed in a hotel at Sahebganj on three occasions wherein she mentioned the name of the appellant as her husband, but her



husband never affixed his signature anywhere. The witness also deposed that she made a complaint before the Women Complaint Cell of LIC of India wherein she stated about her marriage with the appellant, but she could not say whether she gave the date of marriage or not. However, she filed the certificate issued by *Pandit* showing her marriage date to be 09.11.2003. The witness further deposed in her cross-examination that no one from the village of the appellant participated in the marriage ceremony.

13. PW-1, Mahesh Prasad Singh, in his deposition supported the claim of the respondent about her marriage with appellant in his examination-in-chief. This witness deposed that he attended the marriage which was solemnized by *pandit* Pankaj Kumar Jha following the Hindu rites and rituals. Seven rounds of sacred fire were taken and thereafter ritual of applying vermilion on forehead was done. *Pandit* Pankaj Kumar Jha gave a certificate of marriage on which the witness affixed his signature from the side of bride-groom. The witness also deposed that the appellant kept his marriage with the respondent secret, but later on, refused to keep her when the respondent went to the house of the appellant.

In his cross-examination, this witness also deposed



that the marriage was solemnized on 09.11.2003, but he could not say about the Day. The marriage ceremony was performed during the period of 10:00 PM to 11:30 PM. The marriage was attended by the witness, his brother-in-law Vikas Singh and Nandrani Devi. The witness further deposed that he was invited by the appellant in the marriage. At around 09:15 PM, he was at Bhagalpur Railway Station, as he had gone to Tilkamanjhi for treatment of his sister-in-law, Nandrani Devi, who has since died but he could not say about the date of her death. The witness further deposed that from the side of bride-groom, he, his brother-in-law and his sister-in-law attended the marriage ceremony whereas from the side of girl four persons attended the ceremony. The parents or siblings of the appellant were not present. The witness further deposed that he knows the appellant since his childhood but they are not related. The witness, however, deposed that he could not tell the name of the grandfather of the appellant. The witness admitted that the respondent is one of the bailors of his brother, Murari Singh, who is on bail after being convicted and sentenced to undergo life imprisonment. The witness further deposed that the fact of marriage of the appellant and respondent had been kept secret for about three years. The witness denied the suggestion that as



Tesu Kumari, the respondent herein, has stood surety for the brother of the witness, he has been deposing falsely in her favour.

14. PW-2, Kailash Rajak, is the second witness of the respondent as petitioner before the learned trial court, who deposed in his examination-in-chief that he knows both sides as husband and wife. He further deposed that the marriage of Tesu Kumari was solemnized in accordance with the Hindu rites and rituals with circumambulation around sacred fire by pandit on 09.11.2003 at around 11:30 PM in the house of Ravindra Rajak in Adampur.

In his cross-examination, PW-2 has deposed that Tesu Kumari was like her sister and she was introduced to the witness by his staff Rekha Kumari. The witness further deposed that Tesu Kumari stayed in the house of Ravindra Rajak, DSP. The witness further deposed in his cross-examination that the marriage of Tesu Kumari was solemnized on 09.11.2003 with Neeraj Kumar and the marriage was attended by the uncle of Neeraj Kumar, namely, Mahesh Singh, brother-in-law of Mahesh Singh, namely, Vikas Singh and Nandrani Singh wife of Vikas Singh from the side of Neeraj Kumar. However, the witness stated that he could not say about relationship of these



persons with Neeraj Kumar. PW-2 further deposed that he attended the marriage from the side of girl and other persons, who attended the marriage were Sudhir Kumar Thakur (*Jija*), Rohit Kumar Thakur and sister of Tesu Kumari. The marriage ceremony started at 11:00 PM and it ended within half hour. The bride-groom took five rounds of sacred fire and the bridegroom applied vermilion on the forehead of bride. No photography took place during the marriage which was solemnized by a *pandit* who did not give any certificate of marriage. The witness further deposed that he had been called in marriage by the son of the sister of Tesu Kumari, namely Rohit Kumar Thakur, by calling him on his mobile phone having No. 9955211387 at around 08:00 PM. The witness further deposed that at the time of her marriage, Tesu Kumari was working in the LIC office, Bhagalpur and the son of her sister used to stay with her. The witness further deposed that he does not know about the parents or siblings of Tesu Kumari. The witness also deposed that he knew Neeraj Kumar Singh two months prior to the marriage. At the time of marriage, Ravindra Rajak was not present in his house and Rekha Kumari was also not present at the time of marriage. The witness further deposed in his cross-examination that *Kanyadad* of the girl was done by brother-in-law (*Jija*) of



the girl.

15. PW-3, Vikas Singh has also deposed in his examination-in-chief that the marriage of Tesu Kumari was solemnized with Neeraj Kumar Singh on 09.11.2003. The witness further deposed that on 09.11.2003, he had gone to Bhagalpur for treatment of his wife along with his brother-in-law and had been waiting for train at Bhagalpur station. The train came from Patna to Bhagalpur and a co-villager of his brother-in-law Mahesh Singh descended with a girl. Thereafter, he, his wife and his brother-in-law came to a house in Adampur, Bhagalpur to attend the marriage from the side of bridegroom and to bless them. On 09.11.2003, after exchange of garlands, the marriage was solemnized by *pandit* Pankaj Kumar Jha and they gave their blessings to the newly wedded couple. The witness further deposed that *pandit* Pankaj Kumar Jha issued a certificate of marriage on which he affixed his signature as a witness.

In his cross-examination, the witness deposed that he came to know Tesu Kumar for the first time on 09.11.2003 and also Neeraj Kumar Singh. The witness reiterated that he attended the marriage from the side of bridegroom though he has no relationship with them. The witness further deposed in



his cross-examination that his wife was being treated for brain tumour and she died on 11.05.2007. The witness further deposed that they reached the station at 08:30 PM and the appellant and Mahesh Singh met him at station. The witness further deposed that he could not say whether Neeraj Singh descended from any train or not. He was introduced to Neeraj Singh at 09:20 PM by Mahesh Singh that Neeraj Singh was from his Village. The witness further deposed that he, Mahesh Singh, his wife, Neeraj Singh and 5-6 other persons were also present and all of them went to the house of Tesu Kumari. He did not know those 5-6 other persons. At the house of Tesu Kumari, the marriage ceremony started at 10:00 PM and it was completed around 11:00 PM. Already five persons were present at marriage venue when the witness reached the place. This witness also deposed that no photography was done in the marriage, but the witness further deposed in his cross-examination that after exchange of garlands, the bride and bridegroom took rounds around the sacred fire and *mantras* were chanted by the *pandit*. The *pandit* gave a paper to Mahesh Singh for affixing his signature as witness. The witness also deposed that he and his wife also affixed their signatures on the said paper as witnesses from the side of bridegroom. However, the witness deposed that he did



not see who was the witness from the side of the bride.

16. PW-5, Rohit Kumar Thakur deposed in his examination-in-chief that petitioner Tesu Kumari is his maternal aunt (mausi) and Neeraj Kumar Singh is the husband of Tesu Kumari and his maternal uncle (mausa). Both of them have been working in Life Insurance Corporation of India. The witness further deposed that he used to stay with his *Mausi* in the year 2000 for the purpose of his studies. The witness further deposed that in the morning of 09.11.2003, he was told on his mobile phone by Neeraj Kumar and Tesu Kumari to make preparation of marriage. He started preparation of marriage with his maternal uncle Kailash Rajak and purchased the articles of marriage along with his mother from the market as told by Pandit Pankaj Kumar Jha. On the night of 09.11.2003, both sides came from Patna to Bhagalpur and came to the marriage venue with three other persons. The witness further deposed that marriage was solemnized at around 10.30 PM in accordance with Hindu Rights and Rituals and in presence of witnesses by *Pandit* Pankaj Kumar Jha and marriage ceremony was attended by the parents of this witness, Kailash Rajak, Mahesh Singh, Vikas Singh, Nand Rani Devi etc. The witness further deposed that the *Kanyadan* was done by his father Sudhir Thakur. After



completion of marriage ceremony, Pandit Pankaj Kumar Jha gave a written certificate of marriage on which the witness also affixed his signature as a witness of marriage. The witness further deposed that he gave a Nokia mobile phone to Neeraj Kumar Singh as a gift and also guided him about operation of the mobile phone. After marriage both sides started living as husband and wife at Adampur, Bhagalpur and also at Sahebganj and this witness stayed with his *Mausi*. The cordial relationship between husband and wife continued till 2006. The marital discord arose when Tesu Kumari came to know about the second marriage of her husband in the year 2006. Tesu Kumari went to the house of her husband in the year 2006 where her husband Neeraj Kumar Singh and his mother demanded dowry, cash etc. and also misbehaved with her.

In his cross-examination, this witness deposed that at the time of marriage, his parents came from *Rosera* and they attended the marriage. The witness further deposed that he came to know about the marriage of Neeraj and his *Mausi* and he received the phone call at 04:00 PM. The witness further deposed that the call came even in morning of 09.11.2003. But he could not remember the phone number. He made calls to Kailash uncle and Pandit Pankaj Kumar Jha. He told them after



04:00 PM and his parents were present in Bhagalpur. The witness further deposed that no photography was done in the marriage. Only a single joint photograph of Neeraj and Tesu was taken. The witness further deposed that the parents and brother of Tesu Kumari had no information about the marriage. No person from the building where she stayed was invited in the marriage. The witness also deposed that in the said marriage, his parents, Kailash Rajak and Pankaj Kumar Jha attended from the side of Tesu Kumari. From the side of Neeraj Kumar two males and one female attended but he does not know their names. These persons stayed in the night after marriage. The witness further deposed that Dadar Express came at around 10:00 PM on 09.11.2003 from Patna to Bhagalpur and the rituals started at around 10:50 PM.

17. PW-6 appears to be a hearsay witness of the marriage and this witness deposed that the marriage of Tesu Kumari and Neeraj Kumar Singh was solemnized in November, 2003 and they have been living as husband and wife at Bhagalpur and both of them were working in Life Insurance Corporation of India. The witness further deposed that concealing the fact of his first marriage, under pressure of mother, Neeraj Kumar Singh solemnized second marriage with a



girl of his own caste in surreptitious manner, so that Tesu Kumari could not know about it. On coming to know about second marriage, Tesu Kumari came to her matrimonial home at Dogachhi Tarar, in the year 2006 where Neeraj Kumar and his mother misbehaved with her and drove her out from their house. Again in the year 2008, Tesu Kumari went to her matrimonial home at Dogachhi. Considering the condition of Tesu Kumari, villagers gave an application to Superintendent of Police Bhagalpur and also to SDJM, Bhagalpur for allowing Tesu Kumari to lead conjugal life with Neeraj Kumar Singh and on the said application along with other villagers this witness also affixed his signature. Considering the helpless condition of Tesu Kumari, the aunt of Neeraj Kumar, Smt. Karuna Devi allowed her to stay in her house as daughter-in-law in the year 2008 and she has been staying there since then.

In his cross-examination the witness deposed that he knows Tesu Kumari since November, 2003 and her marriage was solemnized on 09.11.2003 but he did not attend the marriage. He has heard about the marriage. He came to know about the marriage on 10.11.2003. The witness further deposed that he has no relationship with Tesu Kumari and Neeraj Kumar Singh was his neighbor. The witness further deposed that Neeraj



Kumar Singh solemnized second marriage with a girl from Hazaribag and this witness attended the '*barat*' in the said marriage but he does not remember the date, month and year of the marriage. The witness further deposed that the application given to Superintendent of Police, Bhagalpur was from Tesu Kumari in which it was stated that Tesu Kumari wanted to stay in her matrimonial home but she was not being allowed. The witness further deposed that he saw Tesu Kumari in his village for the first time in the year 2006. Prior to marriage, Tesu Kumari had been staying in Bhagalpur whereas Neeraj Kumar Singh stayed in his village. Presently Tesu has been staying in Bhagalpur and she has not been staying in the village house of Neeraj Kumar Singh. Tesu has been staying in the house of uncle of Neeraj Kumar at Dogachhi.

18. PW-7, Smt. Renu Kumari, is the last witness of the respondent before the learned trial court, who, in her examination-in-chief, deposed that she is the Chairperson of Women Complaint Committee of LIC of India, Bhagalpur and is also a lawyer. She knows both sides who have been working in the Life Insurance Corporation of India. The witness further deposed that Tesu Kumari gave a complaint petition in the year 2006 against her husband Neeraj Kumar Singh in the aforesaid



committee. On the basis of the said complaint, after giving written notice, both sides were called. From the side of the complainant, a joint photograph, CD, marriage certificate issued by the Pandit, register entry of the hotel etc. were produced as evidence. Intensive inquiry was made and both sides were heard. Pandit Pankaj Kumar Jha was also present who stated about performing the marriage of both sides in accordance with Hindu Rites and Rituals and also gave a certificate of marriage which was signed by witnesses from both sides. The witness further deposed that she also examined the entry register of Shivlok hotel of Sahebganj where both sides stayed as husband and wife. The witness also deposed that the staff of the Branch Office of LIC, Sahebganj and also the landlord of the premises taken on rent in Sahebganj also confirmed that petitioner and respondent were living as husband and wife. The witness further deposed that after examination of all the evidence in December, 2006, the Women Complaint Committee gave its decision that the complainant Tesu Kumari was the legally wedded wife of Neeraj Kumar Singh.

In her cross-examination, the witness deposed that she knows Tesu Kumari since 09.09.2006 and also Neeraj Kumar Singh from the same time. The witness further deposed that she



has not recorded the statement of all the persons who attended the marriage except *Pandit* Pankaj Kumar Jha who gave the statement that he had solemnized the marriage of both parties. After inquiry, she handed over all documents to the office of LIC. There was a joint photograph taken of both parties which was also handed over to the LIC office. The witness further deposed that she is not having the complaint which was given by Tesu Kumari to her department. However, the witness deposed that she inquired about both sides staying as husband and wife after marriage at a hotel in Sahebganj and she submitted a report to the office of LIC. The witness further deposed that she could not say whether signature of Neeraj Kumar was on the register or not. The witness further deposed that Tesu Kumari had been staying in the house of Arun Kumar Sharma as a tenant but how long she stayed in the house and what was the period of stay, she could not say. One of the landlords was Mishra Ji and she made inquiry from him. The witness further deposed that she recorded the statement of two landlords. The witness further deposed that she recorded the statement of Tesu Kumari but she could not say whether she recorded the statement of Mahesh Singh, Anita Thakur, Vikas Singh, Sudhir Thakur, Nand Rani Devi and Kailash Rajak. The witness further deposed that the Inquiry



Committee of the LIC was chaired by her and Ms. M.P. Chandran and Pushpa Rani and Manager Rajiv Kumar were its members. The witness further deposed that after getting the complaint petition from Tesu Kumari, she did not inquire about the status of both sides as mentioned in their documents.

19. On the other hand, the witnesses examined on behalf of the appellant Neeraj Kumar Singh have all denied the marriage of Neeraj Kumar Singh with Tesu Kumari. It is relevant to mention here that all the witnesses of appellant are his close relations like brothers, mother and his wife. OPW-1 Keshav Kumar Singh, OPW-3 Nigam Kumar Singh are brothers of the appellant. OPW-2, Shivjani Devi is the mother of the appellant whereas OPW-4 Bibha Singh is the wife of the appellant.

20. The Examination-in-chief of OPW-1, 2 and 3 are almost similar. The witnesses have deposed in their examination-in-chief that marriage of Neeraj Kumar Singh was solemnized in accordance with Hindu Rights and Rituals with Bibha Singh, D/o of Achyutanand Singh of Village-Khaira, Dist.-Chatra on 23.11.2005 in presence of persons from both sides at Deoghar. The witnesses further deposed that Tesu Kumari tried to enter into their house and Neeraj Kumar Singh



gave an informatory petition in the year 2006 to the Court of learned Chief Judicial Magistrate, Bhagalpur. The witnesses also deposed that they know Tesu Kumari only for the reason that she falsely implicated Neeraj Kumar Singh in a criminal case. The witnesses also deposed that it was wrong to say that Neeraj Kumar Singh has solemnized marriage with Tesu Kumari. OPW-2 has also deposed that Tesu Kumari got registered a case against her and her son in May, 2007 for demanding dowry and torture pursuant to said demand. OPW-2 further deposed that in the year 2006, Tesu Kumari tried to enter into her house claiming that she has solemnized marriage with Neeraj Kumar Singh but when her son denied the marriage unequivocally, she did not allow Tesu Kumari to enter into the house. The OPW-2 further deposed that the criminal case filed against her by Tesu Kumari is still pending in Fast Track Court No.5, Bhagalpur.

In his cross-examination, OPW-1 deposed that his other name is Rambadan and he has been working in Army for 15 years and in the year 2003 he was posted in Meerut. But he could not say what was his place of posting on 09.11.2003. The witness further deposed that Neeraj Kumar Singh is his elder brother and he was posted in Sahebganj in the year 2003 and he had no knowledge about marriage of Tesu Kumari and Neeraj



Kumar Singh. In the year 2006, Tesu Kumari tried to forcibly enter into his house and her attempt was foiled by the villagers. The witness also deposed that in September, 2007, Neeraj went to jail in a false case and further deposed that it was wrong to suggest that on 05.05.2008, Tesu Kumari was called in the village for compromise. The witness denied that his mother demanded Rs. 10,00,000/- from Tesu Kumari. The witness also deposed that he knows Mahesh Singh but could not say whether he is a senior 'Panch' in the Gram Panchayat. The witness also deposed that he does not know whether Mahesh Singh was present in the marriage or not. The witness further deposed in his cross-examination that Vimalendra Singh was his own uncle and the name of his wife is Karuna. He denied the suggestion that Tesu Kumari has been staying in the house of Vimalendra Singh. The witness further deposed that Tesu Kumari stayed for a day or two in the house. The witness also denied the suggestion that while Tesu Kumari was staying in the house of his uncle, Rambadan damaged the house of his uncle. The witness further deposed that Tesu Kumari and Neeraj Kumar Singh were posted in the same office at Sahebganj in the year 2003.

OPW-2 in her cross-examination deposed that she did



not lodge any case when Tesu Kumari tried to enter into her house in the year 2006 with some antisocial elements. The witness further deposed that only marriage solemnized by Neeraj is with Bibha Devi and he has not solemnized any other marriage. The witness further deposed that in October, 2003 she went to the house of her daughter at Nagpur and returned in January, 2004. The witness also deposed that her son Neeraj was posted in Sahebganj from 2003 to 2007 and during this period she never visited the house of her son. She also knows that Tesu Kumari was also posted at Sahebganj at the relevant period. The witness further deposed that she never received any notice from Women Cell of Bhagalpur and she did not assault Tesu Kumari in the year 2006. The witness admitted that Tesu Kumari has filed a case for torture with regard to dowry in which she is also an accused. In May, 2008, Tesu Kumari came to her house. The witness further deposed that Vimalendra Singh is her younger brother-in-law and the name of his wife is Karuna. In the year 2008, Karuna gave a portion of her house to Tesu Kumari for her stay. The witness further deposed that she did not make any inquiry from Karuna Devi in this regard. The witness further deposed that she has no knowledge that her son Neeraj solemnized marriage with Tesu Kumari.



In his cross-examination, OPW-3 Nigam Kumar Singh deposed that he has been working in Army since 2000. The witness further deposed that he has not seen the document of marriage of Tesu Kumari and Neeraj Kumar Singh and further deposed that no marriage was solemnized and there is no documentary proof.

21. OPW-4, Bibha Singh has deposed in her examination-in-chief that her father entered into marriage talks with the father of the Neeraj Kumar Singh and her marriage was solemnized with Neeraj Kumar Singh on 23.11.2005. The witness further deposed that she is educated lady and had a degree in Chemistry at the time of marriage. Her marriage was solemnized in Deoghar Temple in presence of relatives and friends in accordance with Hindu Rights and Rituals. After marriage she came to her matrimonial home and started her conjugal life with her husband and she gave birth to twin daughters on 02.12.2007. The witness further deposed that just after her marriage, Tesu Kumari started threatening her husband that she should also marry her otherwise he would be implicated in false case. At that time Tesu Kumari had been working in Bhagalpur whereas her husband was posted at Sahebganj. On receiving the threat, her husband gave an informatory petition



on 25.01.2006 to the Chief Judicial Magistrate, Bhagalpur. The witness further deposed that on 05.04.2006, Tesu Kumari tried to enter into her house with the help of some antisocial elements but she could not succeed in her designs. Tesu Kumari firstly gave an informatory in the year 2006, and thereafter filed a criminal case. But she never claimed that her marriage was solemnized in the house of Ravindra Rajak at Adampur and this shows her claim of marriage is baseless and frivolous. The witness also deposed that only relationship of Tesu Kumari with her husband was that both of them had been working in the same department. Her husband was transferred to Bhagalpur in August, 2007 whereas Tesu Kumari took voluntary transfer in March, 2005 from Sahebganj to Bhagalpur. The witness also deposed that the claim of Tesu Kumari, that her husband and his family members were not accepting her due to their demand of dowry, is completely false and mischievous. Her in-laws are not greedy people for dowry and they did not demand any dowry from her father. The witness further deposed that the claim of Tesu Kumari was completely false and mischievous.

In her cross-examination the witness deposed that at the time of marriage Neeraj Kumar Singh was aged about 35 years and her father inquired from villagers why Neeraj Kumar



Singh did not solemnize marriage till 35 years and he came to know that the marriage of sister of Neeraj Kumar Singh was solemnized in the year 2002 and as Neeraj Kumar Singh did not like any proposal so he did not solemnize his marriage. The witness further deposed that she knew that the informatory of her husband was of the intent that Tesu Kumari was giving threats on phone. The witness further deposed that she was present with Neeraj Kumar Singh in Women's Cell. In the Women's Cell, *Pandit* Pankaj Kumar Jha stated about performing marriage of Tesu Kumari with Neeraj Kumar Singh. Rakesh Dubey and Rajeev Dubey also stated that they saw Tesu Kumari with Neeraj Singh in compromising position and they suggested them to solemnize marriage. The witness also deposed that Tesu Kumari stayed in the house of aunt of her husband for a month. The witness also deposed that she did not get opportunity to look into the CD provided by Tesu Kumari in the Court. She also deposed that she had no talk with the villagers of Neeraj Kumar Singh who gave application on behalf of Tesu Kumari. The witness further deposed that on 28.10.2008, she came to the house at Tilkamanjhi and thereafter in November, 2008, Tesu Kumari came into the house of her aunt-in-law at Dogachhi. The witness denied the suggestion that



an inter-caste marriage of Tesu Kumari with Neeraj Singh was solemnized and for this reason his family solemnized his second marriage with her. This witness further denied the suggestion that being wife of Neeraj Singh, she has been deposing falsely.

22. Respondent Neeraj Kumar Singh recorded his statement before the learned Family Court as OPW-5. This witness, in his examination-in-chief, at the outset denied his marriage with Tesu Kumari at the house of DSP Ravindra Rajak and stated the claim to be mischievous and false. The witness further deposed that in 2003, the witness and the respondent were working in LIC at Sahebganj Branch and they have only professional relationship. The respondent never proposed marriage with the witness. In March, 2005, the respondent voluntarily got herself transferred from Sahebganj to Bhagalpur whereas the witness remained at Sahebganj till August 2007. The witness further deposed that while he had been posted at Sahebganj, one Achyutanand Singh, resident of District-Chatra, proposed the marriage of his daughter with the witness and thereafter in November, 2005 his marriage was solemnized with Bibha Kumari in accordance with the Hindu rites and rituals at Deoghar Temple. Since then, both of them have been living together and birth of twin sons took place on 2nd December,



2007. The witness further deposed that in January, 2006, the respondent disclosing her intention of marriage, started threatening the witness why he solemnized marriage and the witness made it clear that as he was unmarried, he solemnized marriage as per wishes of their parents. Thereafter, the respondent disclosed that she wanted to marry the witness. After that, the respondent started threatening the witness, who filed an informatory petition on 25th January, 2006 before the Chief Judicial Magistrate, Bhagalpur. Thereafter, the respondent gave informatory petition No. 1467 of 2006 on 05th of June 2006, claiming that both of them have solemnized the marriage taking God as witness and Neeraj Kumar Singh gave a certificate of temple to the respondent but this fact is completely false and it also falsified the claim of the respondent about marriage taking place on 09.11.2003. The witness further deposed that respondent gave an application to Sr. Divisional Manager, LIC, Bhagalpur, in which the respondent did not give any date of marriage. Again, when criminal case was lodged by the respondent against the witness and his mother on 18.05.2007, in that case, she did not mention anything about marriage taking place on 09.11.2003 by a *Pandit* in presence of some persons at Bhagalpur and merely stated that since 09.11.2003, both of them



had been living together but this fact is completely false. The witness further deposed that the respondent was required to submit her marital status in the office of LIC but from 2003 to 2007, the respondent had shown her to be unmarried and on the basis of this fact, the witness got bail from Patna High Court. Thereafter, since 2008 the respondent started showing her to be married. The witness further deposed that after coming to know about his marriage, the respondent making out a concocted story connived with certain persons, who had always been ready to do anything for money, filed a criminal case and in that case, the witness was granted bail by Patna High Court. The witness further deposed that though *Pandit Pankaj Kumar Jha* was cited as witness, but the respondent refused to examine him as her witness. The brother-in-law of the respondent, Sudhir Kumar Thakur, was not examined despite his name was mentioned as one of the witnesses. All these facts show the falsity of the present case. The witness further deposed that on the date of alleged marriage, he had gone to Patna for participating in departmental examination and he remained there till 5:00 PM in the evening. In the same night, the witness left the place and reached Sahebganj on 10.11.2003. The witness further deposed that he has solemnized marriage only with Bibha Kumari in



accordance with Hindu rites and rituals and thereafter they had been living as husband and wife. The witness further deposed that he remained at Sahebganj from 2003 to August, 2007 and never stayed in Bhagalpur during this period. The witness further deposed that he never stayed with Tesu Kumari as husband and wife and there had been no physical relationship.

In his cross-examination, the witness deposed that he had been knowing that petition of the respondent was filed for restitution of conjugal relationship. The witness also deposed that he cross-examined the witnesses of the respondent. The witness also deposed that he does not know what was the caste of respondent though he was '*Rajput*' by caste. The witness further deposed that he had been working in LIC since 15.10.1992 and joined at Sahebganj in December, 2002. The witness denied knowledge about respondent staying in the house of Ravindra Rajak at Bhagalpur. The witness identified the identity card of respondent and stated that this Identity Card was issued on 27.05.2006. In the said certificate, in the column of address, care of Ravindra Rajak, DSP, C.C. Mukherjee Road, Adampur, Bhagalpur was written. The witness denied the suggestion that during posting at Sahebganj Branch, he and respondent used to converse on daily basis about their well-



being. The witness deposed that the talk was with regard to office work. He also denied the suggestion that he and respondent used to stay together. The witness further denied the suggestion that he and respondent used to stay in the house of Arun Sharma and Anukul Mishra on rent as husband and wife. The witness was shown a joint photograph of the witness and respondent. On seeing this photograph, the witness deposed that this photograph was prepared on the basis of photograph submitted in election department and the photograph was prepared in forged manner. The witness denied the suggestion about making wrong averment about the joint photograph and further denied the suggestion that the exhibited photograph was taken by his friend at Adampur residence.

The witness further deposed in his cross-examination that he did not file any application for taking a look at the Compact Disk filed by the respondent in his report. The witness was shown an identity card. On seeing it, the witness deposed that it was issued by Election Department. The witness further denied the suggestion that he used to visit the Adampur residence of the respondent and he had been staying with the respondent as husband. The witness deposed that house of his co-villager, Aman Kumar Singh is situated behind the house of



the witness. The witness further deposed that Vimalendra Singh and Karuna Devi are his own uncle and aunt. The witness further deposed that he has no information as to how many days the respondent stayed in the house of Vimalendra Singh. The witness further deposed that it is wrong on part of respondent to say that in order to conceal his marriage with respondent, he solemnized the marriage at Deoghar Temple and stated that his marriage took place at his village. The witness further deposed in his cross-examination that he does not know marriages are to be solemnized taking 'fire' as witness. The witness admitted that on 05.04.2006, Tesu Kumari tried to enter in his house with the help of 4-5 antisocial elements but she could not be succeed. The witness denied the suggestion that the averment made in Paragraph-9 of his evidence, is wrong. The witness further denied the suggestion that he was hiding the truth and he concealed the fact about his marriage with respondent from his parents and stated that his marriage was not solemnized with the respondent. The witness deposed that he has knowledge about complaint given by respondent to the Women Cell of LIC. The witness denied the knowledge that the respondent made him nominee as her husband in her service-book. The witness further deposed that in the year 2002-03 whenever he went to write his



departmental examination, he used to stay in the guest house or hotel and affix his signature at the time of arrival and departure in the guesthouse of his department. The witness identified 7 pages of the register of guest house, showing arrival and departure, which was in his handwriting but denied his writing and signature at Page 3504. The witness further deposed that in November, 2003, he stayed in guest house of his department for writing examination, but he could not say where the respondent stayed. However, the witness deposed that he could not remember where he stayed during examination of 9th November, 2003 and denied the suggestion that he and the respondent stayed at the same place. The witness further deposed in his cross-examination that he has knowledge that some of the witnesses mentioned in the case diary in the Case under Section 498A recorded their statement that they participated in his marriage with respondent. The witness further deposed that he has knowledge that in the Case of 498A, the written certificate given by *Pandit* for the marriage was filed. The witness was shown the decision of the Complaint Committee of LIC and the witness stated that it was the decision of Smt. Renu Kumari Ghosh. The witness further deposed that he has knowledge about cost of staying at the guesthouse of LIC at Patna is



deposited through MR and he knows that for staying in Room No. 2 on 09.11.2003, MR was issued in whose name. The witness denied suggestion that he concealed the truth in his earlier cross-examination regarding register of LIC Guesthouse, Patna. The witness further deposed that LIC guesthouse was situated between the examination center and Station and distance of examination center and Station is about 3-4 kilometers. The witness further deposed that he participated in the second shift from 02:00 to 05:00 PM of examination on 09.11.2003.

23. From the analysis of the evidence(s) of the parties, it is admitted fact of both sides that the appellant and respondent had been working as colleagues and were posted at same place during the period when the marriage is claimed, i.e., on 09.11.2003. Thereafter, there is completely contradictory claims on the part of the parties. The learned Principal Judge, Family Court, Bhagalpur has analyzed the evidence of the parties in detail and recorded a finding that the marriage of respondent was solemnized with the appellant on 09.11.2003 and she is his first legally wedded wife.

24. From the arguments on the side of the appellant, stress has been put on wrong appreciation of evidence,



particularly, the documentary evidence like Ext. 1, which is stated to be a certificate issued by the *pandit* who performed the marriage ceremony, mainly, on the ground that the said *pandit* was not examined. However, it has been contended on behalf of the respondent that the *Pandit* was gained over by the appellant side and for this reason, he was not examined. However, there are other circumstances, which could help the Court to arrive at a definite finding. The OPW-4, in her cross-examination, admitted that the said *pandit* Pankaj Kumar Jha came before Women Cell (*Mahila Koshang*) and stated about performing the marriage ceremony of the respondent with Neeraj Kumar Singh. Apart from that OPW-4 has also admitted that persons named, Rakesh Dubey and Rajiv Dubey were also present, who stated that they saw Neeraj Singh with the respondent in compromising position and advised them to solemnize the marriage. Further, there is Ext. 11/1 to Ext. 11/4 series, which are statements of certain persons acquainted with the matter, recorded before the Enquiry Committee of *Mahila Koshang*, SP Office, Bhagalpur, corroborate the claim of the respondent regarding the marriage ceremony was performed on 09.11.2003. Further, exhibits 8 and 10 show the appellant and respondent stayed together in a single room and it is also a relevant fact since it shows the intimate



relationship of the appellant and respondent. Further, photographs which have been marked Y to Y/9, are of similar nature. It also reveals the intimate relationship of the parties as the photographs are quite candid. Though the photographs have not been marked exhibits and do not fall within the category of admissible evidence, but they cannot be simply brushed aside considering their corroborative nature and since veracity of the compact disk, from which, the photographs have been taken out, have not been challenged. Though objections were raised on marking of exhibits 11/1 to 11/4, but some of the documents have been taken on record as exhibits and from the orders of the learned Principal Judge, Family Court, it appears that the objections raised were overruled and rightly so. Further, exhibit-9 is also a supporting document in favour of the marriage of the respondent with appellant. This document is dated 2nd of December, 2006 and if the appellant and respondent were put to notice and the fact about marriage was recorded by a neutral person working as Chairperson of Complaint Committee of LIC, such report has got some weight in the eyes of law.

25. Further, the document related to prosecution of the appellant under Section 498A of IPC and complaint petition etc. are also indicative of existence of matrimonial relationship of



the parties. Further, certain facts have come up in the depositions of the witnesses of the respondent as well as the appellant. It has been admitted by the witnesses of appellant (OP's witness) that the respondent was allowed to stay for about a month by the own uncle and aunt of the appellant. No person would allow a stranger to stay in his house unless there exist some sort of relationship and this fact is common knowledge. When the respondent as petitioner put her case that due to the fact that appellant and the respondent belonged to different caste and the appellant wanted to hide his relationship with the respondent from his parents and for this reason, no admission is expected from the appellant. If it was a marriage performed behind the back of the family members of the appellant, naturally, the appellant and his family would deny such marriage. But it appears the own uncle and aunt of the appellant put their trust in the claim of the respondent and allowed her to stay in their house for about a month. One of the defences taken by the appellant is that the respondent claimed her to be unmarried till 2007 in her service book maintained at LIC but it might be for the aforesaid reasons and a suggestion was put to the appellant that it was at the behest of the appellant.

26. Thus, in the light of preponderance of probabilities,



we are of the view that despite certain infirmities in the evidence of the petitioner, the respondent herein, the marriage was solemnized between the appellant and the respondent on 09.11.2003 in accordance with Hindu rites and rituals.

27. Moreover, the oral evidence of the respondent is unwavering and uncontroverted on the point of marriage of the respondent with the appellant. The witnesses of the respondent are of different hue and all of them could not be said to be interested witnesses, rather it has been taken as a plea at the time of argument that the own sister and brother-in-law, who were said to be present at the time of solemnization of marriage, did not appear as witnesses in support of the case of the respondent. However, whichever witnesses appeared, they supported the case of the respondent about her marriage taking place with the appellant on 09.11.2003. Further, the appellant has not been able to challenge the veracity of the deposition of witnesses of respondent.

28. On the other hand, all the witnesses of the appellant are interested witnesses. All the time it is not that interested witnesses could not be relied but in the present case their evidence must be considered with certain circumspection since they are highly partisan witnesses being the brothers,



mother and wife of the appellant. Their denial is uniform and further the appellant has tried to show that it was not possible for the appellant to be present at Bhagalpur in the night of 09.11.2003. The reason being non-running of the train Dadar Express from Patna to Bhagalpur on that date, but this contention was taken into consideration by the learned Principal Judge, who has recorded the finding that the train used to run through different routes and was available either at Naugachia or at Bhagalpur every day. If the train was available at Naugachia, it hardly matters, it was not coming to Bhagalpur Station since these two places are adjoining places. For the same reason, the claim of the appellant that he was not present at Bhagalpur as he was in Patna till 5:00 PM, is not credible since it has been recorded in the cross-examination of appellant as OPW-5 that the Guest house where the appellant stayed was in between the Station and the guest house and the distance of the Station and examination center is stated to be 3-4 kilometers only. So, there was no hindrance in appellant catching a train and reaching Bhagalpur by the time marriage was to be solemnized. The documentary evidences adduced on behalf of the respondent was challenged by the appellant, saying it to be fraudulent and fabricated documents. But, the registers of the guest house



showing arrival and departure of the guests of an institution like LIC could not be fabricated by a person in position of the respondent. Thereafter, certain documents, which were marked for identification like photographs etc. showing intimacy of the parties, could not be easily morphed. At the same time, it is also to be considered that now-a-days mobile phones and digital cameras are mostly used to take the photographs and if a printout is taken, it would be an onerous task to ask one to prove the digital evidence. If such photographs are available, they require at least a non-biased approach for their consideration. Another point raised by the appellant so far as interpolation of year 2002 in place of 2004 is concerned, this fact was not brought to the notice of the learned Principal Judge, Family Court and it was not challenged before any superior Court. If the said fact was not brought to the knowledge of the learned Principal Judge, the issue cannot be raised at this later part of time.

29. The Hon'ble Supreme Court in case of *Ilavarasan Vs. Superintendent of Police and Ors*, reported in **2023 SCC OnLine SC 1120** has observed in Para-8, which reads as under:-

“8. The view expressed by the Madras High Court in S. Balakrishnan Pandiyan (Supra), in the opinion of this Court is erroneous. It is premised on the



assumption that every marriage requires a public solemnization or declaration. In the opinion of this Court, such a view is simplistic because often due to parental or pressure among kinship groups, or caste/community institutions, couples intending to enter into matrimony, may not be able to, for the reasons of such opposition-hold or give such a public declaration. Doing so would imperil their lives or could in the very least likely result in danger to their bodily integrity or at worst, a forceable or coerced separation of one from the other. It is not hard to visualize other pressures being brought to bear upon two individuals, who are otherwise adults and have exercised their freewill. To superimpose the condition of a public declaration, which is absent in section 7A, in the opinion of this Court, it is not only narrowing the otherwise wide import of the statute but also would be violative of the rights under Article 21 of the Constitution of India. This Court has emphasized in more than one decision (Lata Singh v. State of UP, (2006) 5 SCC 475, Shafin Jahan v. Asokan KM, (2018) 16 SCC 368, and Laxmibai Chandaragi B. v. The State of Karnataka, (2021) 3 SCC 360) the right of individuals to exercise free choice and that it is an intrinsic part of the right of life. It is, therefore, held that view expressed in S. Balakrishnan Pandiyan (Supra) is erroneous. The same is, accordingly, overruled in Nagalingam (supra).”

Though facts are not similar but the issue of pulls and pressure and different type of compulsions coming in way of



open declaration of marriage is always a factor to be considered in such case.

30. In somewhat similar situation, the Hon'ble Supreme Court in the case of ***Ranganath Parmeshwar Panditrao Mali and Anr. Vs. Eknath Gajanan Kulkarni and Anr.***, reported in (1996) 7 SCC 681 has held that if there is consistent evidence of relationship, a legal presumption arises that they were living together as husband and wife. Similarly to the effect is the observation of the Hon'ble Supreme Court in case of ***Shiramabai W/o Pundalik. Bhave and Others Vs. Captain, Record Officer For O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State and Another***, reported in 2023 SCC OnLine SC 1026 at Paragraph Nos. 14 to 23, which read as under:-

“14. It is no longer res integra that if a man and woman cohabit as husband and wife for a long duration, one can draw a presumption in their favour that they were living together as a consequence of a valid marriage. This presumption can be drawn under Section 114 of the Evidence Act that states as follows:

“114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

15. In this above context, we may refer to



Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy, where the Privy Council observed thus:

“.....where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.

xxx xxx xxx

“The parties lived together for twenty years in the same house, and eight children were born to them. The husband during his life recognized, by affectionate provisions, his wife and children. The evidence of the Registrar of the District shows that for a long course of years the parties were recognized as married citizens, and even the family functions and ceremonies, such as, in particular, the reception of the relations and other guests in the family house by Don Andris and Balahamy as host and hostess—all such functions were conducted on the footing alone that they were man and wife. No evidence whatsoever is afforded of repudiation of this relation by husband or wife or anybody.”

16. *In Mohabbat Ali Khan v. Muhammad Ibrahim Khan, it was again observing by the Privy council that:*

“.....The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years.....”

17. *Similarly, in Badri Prasad v. Dy. Director of Consolidation, this Court held as follows:*

“.....A strong presumption arises in favour of wedlock where the partners have



lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy.....”

18. *In S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi, this Court held as under:*

“4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable (see Gokal Chand v. Parvin Kumari).

19. *It is true that there would be a presumption in favour of the wedlock if the partners lived together for a long spell as husband and wife, but, the said presumption is rebuttable though heavy onus is placed on the one who seeks to deprive the relationship of its legal origin to prove that no marriage had taken place (refer : Tulsa v. Durghatiya).*

20. *A similar view has been taken by this Court in Madan Mohan Singh v. Rajni Kant, Indra Sarma v. V.K.V. Sarma (supra) and Dhannulal v. Ganeshram.*

21. *In the case of Gokal Chand v. Parvin Kumari alias Usha Rani (supra) this Court observed thus:*

“.....Continuous cohabitation of man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot



ignore them.”

22. In Kattukandi Edathil Valsan's Case (supra), citing the abovesaid decisions and relying on Section 114 of the Evidence Act, this Court held in the facts of the said case that there was a presumption of the marriage between the parents of the plaintiffs on the ground of their long cohabitation status, entitling their offspring to claim their share in the suit schedule property.

23. It can be discerned from the aforesaid line of decisions that the law infers a presumption in favour of a marriage when a man and woman have continuously cohabitated for a long spell. No doubt, the said presumption is rebuttable and can be rebutted by leading unimpeachable evidence. When there is any circumstance that weakens such a presumption, courts ought not to ignore the same. The burden lies heavily on the party who seeks to question the cohabitation and to deprive the relationship of a legal sanctity.”

31. The witnesses examined on behalf of the respondent have stated in clear terms that all the rites and rituals of Hindu marriage were performed; vermilion was applied and ‘Saptapadi’ also took place. Thus, it could not be said that the marriage was shorn of essentials in performance of the customary rites and rituals as prescribed under Section 7 of the HMA and apparently the marriage was not barred under Section 5 of the HMA.

32. In the light of aforesaid discussion, we have no hesitation in holding that the respondent is the legally married



wife of the appellant and their marriage was solemnized on 09th of November, 2003. Point No. (I) is decided accordingly.

Point No. (II):-

33. So far as second point for determination is concerned, the issue was hanging in balance due to dispute over marital status of the appellant and respondent as husband and wife. Once the respondent has been able to prove that the appellant is her husband, desertion is proved by the oral evidence of the appellant, which has already been discussed in detail. If the appellant has refused to accept the respondent as his wife, naturally, there was no question of restitution of conjugal life and whole opposition of the appellant is only on this point that the respondent is not his wife as their marriage could not be proved under the provisions of Section 5 and 7 of the HMA and therefore, he was not liable to restitute any conjugal relationship with the respondent. Section 9 of the HMA reads as under:-

“9. Restitution of conjugal right.—

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the



court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

[Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]”

34. Evidently, the appellant has deserted the respondent without any reasonable cause and in the light of discussion of the evidence of both sides, we find and hold that the respondent is entitled to get the relief for restitution of conjugal rights. Thus, Point No. (II) is also decided accordingly.

35. In the light of discussion made here-in-above, we do not find any infirmity in the judgment of the learned Principal Judge, Family Court, Bhaglapur and the same is hereby affirmed.

36. Accordingly, the present Misc. Appeal stands dismissed.

37. The appellant is directed to pay the litigation cost



to the respondent which is quantified at Rs. 1,00,000/- (one lac) within six months from the date of judgment, while bearing his own cost.

38. The office is directed to prepare the decree accordingly.

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

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	01-03-2024
Uploading Date	11-05-2024
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