

CASE DETAILS

ILAVARASAN

v.

THE SUPERINTENDENT OF POLICE & ORS.

(Criminal Appeal No(s). 002752-002752 of 2023))

AUGUST 28, 2023

[S. RAVINDRA BHAT AND ARAVIND KUMAR, JJ.]

HEADNOTES

Issue for consideration: Issue arose as regards the conduct of advocates as to whether they are capable of certifying self respect marriages u/s. 7A of the Hindu Marriage Act, 1955; and whether the Suyamariyathai marriage-self-respect marriage can be solemnised in secrecy.

Hindu Marriage Act, 1955 – s. 7A (as amended and applicable in Tamil Nadu) – Special provision regarding suyamariyathai and seerthiruththa marriages-self respect marriages – Advocates, if cabable of certifying marriages u/s. 7A – Appellant married a girl in accordance with s. 7A and the same was solemnized under the aegis of Advocates and other social workers – Allegation that the girl was detained or restrained against her will by her parents – Habeas corpus petition by the appellant – Dismissed by the High Court – Correctness:

Held: It is erroneous to hold that such marriage requires a public declaration and that the marriage conducted in secrecy with few strangers around, be it Suyamariyathai form, would not amount to solemnization, u/ ss. 7 and 7-A – To superimpose the condition of a public declaration, which is absent in s. 7A, would narrow the wide import of the statue as also would be violative of the rights u/Art. 21 – Furthermore, it cannot be said that advocates are incapable of certifying marriage, however, advocates being officers of the Court, should not undertake or volunteer to solemnize marriages but can act as witness – On facts, since the girl wishes to reside with the appellant of own freewill, thus, issuance of directon to the respondents to ensure that she joins the appellant – Constitution of India – Art. 21. [Para 6, 8]

Judicial Notice – Role of advocates in solemnizing marriages:

Held: Advocates or lawyers have many capacities—one being officers of the Court, thus should not, while acting as counsel or advocates, undertake or volunteer to solemnize marriages – It would result in advocates chambers or offices turning out to be matrimonial establishment – However, in their capacity as friends or relatives of the intending spouses, they can act as witness. [Para 9]

LIST OF CITATIONS AND OTHER REFERENCES

S. Balakrishnan Pandiyan v. Inspector of Police 2014 (7) MadLJ 651 – disapproved.

S. Nagalingam v. Shavigami (2001) 7 SCC 487; *Lata Singh v. State of UP*, (2006) 5 SCC 475; *Shafin Jahan v. Asokan KM*, (2018) 16 SCC 368; *Laxmibai Chandaragi B. v. The State of Karnataka* (2021) 3 SCC 360 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2752 of 2023.

From the Judgment and Order dated 05.05.2023 of the High Court of Judicature at Madras at Madurai in HCPMD No.560 of 2023.

Appearances:

A Velan, Ms. Navpreet Kaur, Mritunjay Pathak, Advs. for the Appellant.

Dr. Joseph Aristotle S., Adv. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****S. RAVINDRA BHAT, J.**

1. Heard learned counsel for the parties, with their consent.
2. The brief facts are that the appellant had preferred a habeas corpus proceeding, alleging that he had married Mathithra in accordance with

Section 7A of Hindu Marriage Act, 1955 and the same was solemnized under the aegis of Advocates and other social workers. He had alleged that she had been forcibly taken away, coerced into marrying her maternal uncle, after which she was restrained at the behest of her parents. The appellant alleged that Mathithra was detained or restrained against her will. The High Court dismissed the petition and recorded comments adverse to the conduct of Advocates, stating that they are incapable of certifying marriages under Section 7A of the Hindu Marriage Act, 1955 (as amended and applicable in Tamil Nadu). The appellant, aggrieved by the impugned order, has approached this Court.

3. This Court had by its order dated 04.08.2023 directed that the concerned District Legal Services Authority to facilitate recording the statement of the alleged victim, Mathithra. Pursuant to the directions, the concerned Legal Services Authority and the District Judge, Ramanathapuram facilitated the process. The report furnished by the Secretary, District Legal Services Authority, Ramanathapuram, Tamil Nadu was forwarded by the District Judge, through letter dated 12.08.2023. The report of the Secretary, District Legal Services Authority pertinently states as follows:

"I humbly submit that, I examined the alleged victim Mathithra with the assistance of Lady Judicial Magistrate. From my examination it reveals that, alleged victim Mathithra married one Elavarasan S/o. Vellaidurai, on her own will and she is residing with the said Elavarasan at Madurai, Othakadai, Anubunagar on her own volition. Further my examination reveals that, she was earlier married to her maternal uncle Thiru. Vijayan at the age of sixteen, against her wishes and she was compelled by her parents and relatives to live with him. Now the alleged victim wants to reside with Elavarasan at later's residence at Door no. 221, North street, Morpannai, Uppur; Ramanathapuram District."

4. A copy as well as the translated copy of the statement of Mathithra recorded by the Secretary, District Legal Services Authority under Section 164 Cr.P.C. has also been placed on the record. It confirms the report. In the light of these developments, the Court is satisfied that Mathithra, in fact, wishes to reside with the appellant of own freewill. The respondents are directed to ensure that she in fact join the appellant.

5. The above would have been dispositive of these proceedings. However, this Court notices that the High Court in the impugned order followed a previous decision of a co-ordinate bench reported as “S. Balakrishnan Pandiyan v Inspector of Police” 2014 (7) MadLJ 651.

6. The Madras High Court took note of the Tamil Nadu Amendment Act and the Hindu Marriage Act, especially Section 7A which dispensed with the necessity of solemnizing marriage in terms of the forms enumerated in other provisions of the Hindu Marriage Act and described a special procedure under the newly inserted provision (Section 7A). That provision merely required the intending spouses to declare and express to each other their willingness to take each other as spouses and symbolically garlanding each other and tying a “Thali”. The Court interpreted the procedure of declaration by the intending spouses “in the presence of relatives, friends or other persons”. The High Court was of the opinion that such marriages involved a public declaration:

“We are very clear in our mind that even the protagonists of the Suyamariyathai/Seerthiruththa form of marriage did not visualize marriages being solemnized in secrecy. The very idea of performing marriages with celebration is to publicly declare the marital status of the parties. Even Thanthai Periyar used to conduct Suyamariyathai form of marriages publicly so that the world recognized the status of the couples. Hence, celebration of marriage is not antithetical to form of marriage. Therefore, we are of the opinion that a marriage conducted in secrecy with few strangers around, be it Suyamariyathai form, will not amount to solemnization, as required under Section 7 & 7-A of the Hindu Marriage Act.”

7. This Court in “S.Nagalingam vs. Shivgami” (2001) 7 SCC 487, had upheld Section 7A inserted in the Tamil Nadu Amendment Act, declaring as follows:

“Section 7-A applies to any marriage between two Hindus solemnized in the presence of relatives, friends or other persons. The main thrust of this provision is that the presence of a priest is not necessary for the performance of a valid marriage. Parties can enter into a marriage in the presence of relatives or friends or other persons and each

party to the marriage should declare in the language understood by the parties that each takes the other to be his wife or, as the case may be, her husband, and the marriage would be completed by a simple ceremony requiring the parties to the marriage to garland each other or put a ring upon any finger of the other or tie a thali. Any of these ceremonies, namely, garlanding each other or putting a ring upon any finger of the other or tying a thali would be sufficient to complete a valid marriage. Sub-section (2)(a) of Section 7-A, specifically says that notwithstanding anything contained in Section 7, all marriages to which this provision applies and solemnized after the commencement of the Hindu Marriage (Tamil Nadu Amendment) Act, 1967, shall be good and valid in law. Sub-section (2) (b) further says that notwithstanding anything contained in Section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Tamil Nadu Amendment) Act, 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any court, all marriages to which this section applies solemnized at any time before such commencement, shall be deemed to have been valid. The only inhibition provided is that this marriage shall be subject to sub-section (3) of Section 7-A. We need not elaborately consider the scope of Section 7-A (3) as that is not relevant for our purpose. ”

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 7A¹, in the opinion of this Court, it is not only narrowing the otherwise wide import of the statue but also would be violative of the rights under Article 21 of the Constitution of

1 7A. Special provision regarding suyamariyathai and seerthiruththa marriages. -

(1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthiruththa marriage or by any other name, solemnized in the presence of relatives, friends or other persons -

- (a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or
- (b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or
- (c) by the tying of the thali.

(2) (a) Notwithstanding anything contained in section 7, but subject to the other provisions of this Act, all marriages to which this section applies solemnized after the commencement of the Hindu Marriage [Tamil Nadu] Amendment Act, 1967, shall be good and valid in law.

(b) Notwithstanding anything contained in section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage ([Tamil Nadu] Amendment) Act, 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any Court, but subject to sub-section (3), all marriages to which this section applies solemnized at any time before such commencement shall be deemed to have been, with effect on and from the date of the solemnization of each such marriage, respectively, good and valid in law.

(3) Nothing contained in this section shall be deemed to-

(a) render valid any marriage referred to in clause (b) of sub-section (2), if before the commencement of the Hindu Marriage [Tamil Nadu] Amendment) Act, 1967, -

- (i) such marriage has been dissolved under any custom or law; or
- (ii) the women who was a party to such marriage has, whether during or after the life of the other party thereto, lawfully married another; or

(b) render invalid a marriage between any two Hindus solemnized at any time before such commencement, if such marriage was valid at that time; or

(c) render valid a marriage between any two Hindus solemnized at any time before such commencement, if such marriage was invalid at that time on any ground other than that it was not solemnized in accordance with the customary rites and ceremonies of either party thereto:

Provided that nothing contained in this sub-section shall render any person liable to any punishment whatsoever by reason of anything done or omitted to be done by him before such commencement.

(4) Any child of the parties to a marriage referred to in clause (b) of sub-section (2) born of such marriage shall be deemed to be their legitimate child:

Provided that in a case falling under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (3), such child was begotten before the date of the dissolution of the marriage or, as the case may be, before the date of the second of the marriages referred to in the said sub-clause (ii).

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*).

9. The Court also notices the observations made by the impugned order, with respect to the role of the advocates. The concerns voiced by the High Court are not entirely unfounded. Advocates or lawyers have many capacities- one being Officers of the Court. Therefore, they should not, while acting as counsel or advocates or their capacity as advocates, undertake or volunteer to solemnize marriages. That can well result in Advocates chambers or offices turning out to be matrimonial “establishment”- a consequence never intended- or perhaps never contemplated by law. However, in their capacity as friends or relatives of the intending spouses, their role as witnesses cannot be ruled out.

10. The appeal is allowed in the above terms. Pending applications, if any, are disposed of.

Headnotes prepared by:
Nidhi Jain

Appeal allowed.