

Delhi High Court

Sarabjit Singh vs Ms. Gurpal Kaur on 27 July, 2012

Author: Kailash Gambhir

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 27.07.2012

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MAT.APP.73/2009

Sarabjit Singh

.....Appellant.

Through: Mr. V.Shankra, Adv.

Vs.

Ms. Gurpal Kaur

.....Respondent

Through: Mr.Manoj Goel, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

1. By this appeal filed under Section 28 of the Hindu Marriage Act, 1955 the challenge is by the husband to the impugned order dated 22.7.2009 passed by the learned Additional District Judge thereby recalling the judgment and decree dated 22.4.2008 on the application moved by the respondent wife under Section 151 CPC.

2. Brief facts of the case as borne out from the respective pleadings of the parties are that the appellant husband and the respondent wife were married on 27th January, 2002 at Gurgaon according to Hindu rites and ceremonies and a child was born out of the wedlock of the parties on 24.1.2003. Thereafter, a petition for divorce by mutual consent was filed by both the parties under Section 13(B)(1) of the Hindu Marriage Act, 1955 and as per the averments made in the said petition the stand taken was that the parties had been living together as husband and wife after solemnization of their marriage at house bearing No. J-4/90B, DDA Flats Kalkaji, New Delhi; that both the parties last resided together as husband and wife at house No. 47, Second Floor, Rampuri, Kalkaji, New Delhi up to first week of April, 2007 and thereafter due to some temperamental differences the husband left the company of his wife and then started residing separately. It was also averred that efforts were made by the parents of the respective parties to persuade the parties for reconciliation, but the same failed and the marriage between the parties irretrievably broken down and hence, both the parties had mutually agreed to dissolve their marriage. It was averred that both the parties had amicably settled all their claims and disputes with regard to dowry, stridhan, maintenance-present, past & future and permanent alimony etc.in respect of wife, petitioner No.1 as

also in respect of the minor child of the petitioners in her custody, for a total sum of Rs. 2 lakhs payable on the part of husband, petitioner No.2 to petitioner No. 1 as full and final settlement of all their claims. It was also averred that the custody of the child will remain with the mother upto the age of 8 years and thereafter her husband will be at liberty to take the child in his custody for better upbringing of the child. It was also averred that mutual consent of the parties was not obtained by force, fraud or undue influence and the said petition was not preferred by them in collusion with each other. The said petition was filed by both the parties through a common Advocate, namely, Ms. Ranjana Kaur and the petition was signed by both the parties besides being supported by their respective affidavits. Respective affidavits of the parties were duly identified by their common Advocate and the same were duly attested by the oath Commissioner. Along with the said petition, the parties placed on record their marriage card, photograph of the marriage, photocopy of the driving license of the wife, photocopy of the bank passbook of the husband, photocopy of the election card of the husband and the petition also carried separate photographs of both the husband and the wife. Along with the said petition, Power of Attorney was filed by the said common Advocate, Ms. Ranjna Kaur. The said Power of Attorney is shown to be carrying the signatures of both the parties. The said joint petition was taken up by the matrimonial Court on 9.4.2008 and the ordersheet of 9.4.2008 shows the presence of both the parties along with their counsel, Ms. Ranjana Kaur. The joint statement of both the parties was recorded by the Court on the same day and the matter was then adjourned for order on 17.4.2008 on which date the Court directed the presence of the wife, petitioner No. 1, to certify the encashment of the cheque, which was given to her by her husband, petitioner No. 2 at the time of recording of their joint statement. The matter was accordingly taken up by the Court on 17.4.2008 and after hearing the arguments of counsel for the parties, the Court allowed the said petition filed by both the parties under Section 13B(1) of the Hindu Marriage Act, 1955. Both the parties were shown to be present on the said date along with their common counsel Ms. Ranjna Kaur. The learned Court recorded the submission of petitioner No. 1, informing the Court that the cheque which was given to her by her husband, petitioner No. 2 was duly encashed.

3. Simultaneously, both the parties had also filed a joint petition under Section 13(B)(2) of the Hindu Marriage Act, 1955 along with an application under Section 151 CPC to seek waiver of the statutory period of six months for entertaining the second motion. The second motion petition also carried the photographs of both the parties. The second motion petition was also supported by the respective affidavits of both the parties. Both the affidavits were duly attested by the Oath Commissioner after both the deponents were duly identified by their Advocate, Ms. Ranjana Kaur. The joint statement of both the parties was recorded by the Court on the second motion as well and after waiving the statutory period of six months, the Court adjourned the matter for 22nd April, 2008 for arguments/orders. The arguments were heard by the learned Court on 22 nd April, 2008 and on the same day the Court allowed the said joint petition filed by the parties under Section 13(B)(2) of the Hindu Marriage Act,1955 thereby dissolving their marriage by mutual consent.

4. The said judgment and decree dated 22nd April, 2008 was challenged by the respondent wife by preferring CM(M) No. 328/2009 on the ground that the said judgment/decree was procured by her husband by fraud as well as by impersonation of respondent wife. The respondent wife in the said appeal took a stand that she had neither appeared before the Trial Court nor had filed any such

divorce petition by mutual consent and did not even engage any Advocate for such purpose. The said CM(M) was disposed of by this Court vide order dated 17th April, 2009 thereby directing the respondent wife to move an appropriate application before the Trial Court to seek recall of the orders dated 9th, 17th and 22nd April, 2008. This Court further directed the Trial Court to dispose of such an application of the wife within a period of four weeks from the date of presentation of the application. Pursuant to the said direction given by this Court, the respondent wife had moved an application under Section 151 of CPC, 1908 to seek setting aside of the order/judgment/ decree of divorce dated 9th April, 2008, 17th April, 2008 and 22nd April, 2008. The respondent wife in her application reiterated her stand, as was taken by her in the appeal that the said judgment and decree was obtained by her husband by playing fraud upon her and also on the court. The respondent wife further took a stand that the appellant husband had forged her signatures on the said petitions, affidavits, etc. and took the help of some lady to impersonate her. The respondent wife further took a stand that she had never engaged any Advocate for filing the said petitions and that she had neither signed any paper nor tendered any statement on oath or ever appeared before the Court for seeking divorce by mutual consent. The respondent wife further disclosed that it was only in the last week of November, 2008 that she had learnt about the passing of the said judgment and decree dated 22nd April, 2008. The respondent further stated that at the time of marriage they were residing at J4/90B, DDA Flats Kalkaji, New Delhi and on 2.3.2008 they had shifted to House No. G9A, Kalkaji, New Delhi. It was also stated by the respondent wife that in the year 2006, the appellant husband had purchased the house bearing No. 47, Second Floor, Rampuri, Kalkaji, New Delhi after selling gold and diamond jewellery of the respondent and also taking a huge amount from the respondent including a sum of Rs. 50,000/- which was given to the appellant by the father of the respondent. It is also the case of the respondent that on 21.11.2007 she had lodged a complaint with the police control room by dialing help line No. 100 and upon such complaint of the respondent DD entry 3A was registered along with later DD entry Nos. 7A, 21 and 60. Pursuant to the said complaint, the appellant husband and his mother were questioned by the Inspector, Women Cell and the medical examination of the respondent wife as well as her mother-in-law was also done. It is also the case of the respondent wife that in December, 2007 her husband clandestinely sold the Kalkaji flat for a sum of Rs. 45 lakhs and pocketed the said entire amount without giving a single penny to her. It is also the case of the respondent wife that on 2.3.2008 they had shifted to the rented accommodation i.e. house bearing No. G-9A, Third floor, Kalkaji, New Delhi. It is also the case of the respondent wife that on 18.5.2008 the appellant husband had left the house by saying that he was going to Mumbai on training for 12 months in connection with his new job and while working on his new job the appellant husband used to visit her once in every month to stay with her and their son. It is also the case of the respondent wife that on 6.10.2008 the appellant husband came to the matrimonial home from Mumbai to spend the holidays and on 10.10.2008, when the respondent did not find him available in the matrimonial home and when he was also not returning her phone calls, the matter was reported by the respondent wife to the police control room and upon such complaint of the respondent DD entry No.15A and 65B dated 10.10.2008 were registered. The said complaint was, however, dropped by the police when the police established contact with the appellant husband on phone. It is further the case of the respondent wife that on 27.10.08 the appellant husband came to the matrimonial home for celebrating Diwali festival but on 29.10.2008, he again left the matrimonial home on the pretext of going to Airport to return to Mumbai for resuming his job and on the said date for the first time the appellant husband called the

respondent wife to tell her that he does not want to live with her any more. It is also the case of the respondent wife that on the night of 1.11.2008 the appellant husband thrashed her and threatened her that if she does not leave the matrimonial home then she will be eliminated and due to such threats extended by the appellant husband to the respondent wife on the morning of 2.11.2008, she left the matrimonial home to stay with her parents at Nabha, Punjab. The respondent wife had also lodged complaint with the police at Women Cell, Patiala on 6.11.2008 bringing to the notice of the police the threats meted out to her by her in-laws and her husband and the same had been registered vide DD No. 453/P/SP City/6.11.2008. Accordingly, summons were issued by the police against the appellant husband. It is also the case of the respondent wife that on 15.11.2008, she learnt from a colleague/friend of her husband about the grant of the said decree of divorce. It is thereafter that the respondent wife took necessary steps to move the said petition under Article 227 of the Constitution of India and then the above application under Section 151 CPC. The said application by the respondent wife was allowed by the learned Additional District Judge by passing a detailed order dated 22.7.2009 and feeling aggrieved with the said order, the appellant husband has preferred the present appeal.

5. Arguing the present appeal, Mr. V. Shankra, learned counsel representing the appellant husband submitted that the learned Trial Court has committed grave illegality by brushing aside the established principles of law by setting aside the mutual consent decree of divorce, which was passed after the Court had fully satisfied itself about the identity of the parties, their relationship and after holding a due enquiry as laid down under Section 23(1)(bb) of the Hindu Marriage Act, 1955. The counsel further argued that the allegations of fraud along with impersonation have been raised by the respondent wife in a clandestine manner not only to cause harm to the image of the appellant husband and his married life but also to cause aspersions on the conduct of the Presiding Judge and the members of the Court staff. The contention raised by counsel for the appellant husband was that the Trial Court ought to have acted with great caution and circumspection in setting aside the decree of mutual consent and not in such a casual manner as has been done by the Trial Court. The counsel also argued that the reports as were submitted by the FSL were totally untrustworthy and the same were also not corroborated by any other evidence before the same could be relied upon in due observance of the legal principles laid down by the Hon ble Supreme Court in the cases of Shashi Kumar Banerjee & Others V. Subodh Kumar Banerjee AIR 1964 SC 529 and State of Gujarat Vs. Vinaya Chandra Chhota Lal Patni (1967) 1 SCR 249. The Counsel further submitted that another illegality which was committed by the learned Trial Court was to deny cross-examination of the scientific expert, who had submitted the FSL reports and, therefore, in the absence of cross-examination of an expert witness his evidence could not be treated as conclusive evidence worth consideration by the Trial Court. The counsel also argued that senior Scientific officer (documents), who had submitted his reports is not the authorized person named under Section 293(4) of the Criminal Procedure Code and it is only the Director Finger Print Bureau who is the competent expert under this provision to submit his expert opinion and, therefore, FSL reports dated 26.5.2009 and 2.6.2009 prepared and filed by Senior Scientific Officer (documents) cannot be considered as expert reports admissible under law. Counsel further argued that the proceedings before the matrimonial Court were purely civil in nature and, therefore, the learned Trial Court had committed illegality in invoking Section 293(1) of the Code of Criminal Procedure for holding an enquiry to examine the genuineness of the signatures of the appellant husband and the respondent

wife and, therefore, also such reports were totally inadmissible in law so far the civil proceedings are concerned. The counsel also argued that the learned Trial Court illegally invoked Section 293 of the Code of Criminal Procedure to admit the said FSL report without even affording any opportunity to the appellant husband to cross-examine the scientific expert. The counsel also submitted that the appellant husband had filed objections to the report of the FSL, but the same were not adjudicated upon by the Trial Court. The counsel also argued that even under Section 45 of the Evidence Act, 1872 the opinion of an expert in the field of science or art, or to identify handwriting or fingerprint impressions is a relevant fact but not straightway admissible. The counsel further argued that the CBSE certificate as was filed by the respondent wife along with her application to prove that she was not present in the Court on 9.4.2008 as on that day she was on CBSE duty for evaluation of the question papers, is totally untrustworthy as the said certificate shows handwritten dates from 2.4.08 to 15.4.08 but without any indication of the time when the respondent wife was alleged to be present on the CBSE duty. The contention raised by the counsel for the appellant husband was that the respondent wife could have easily presented herself before the Court on the said date even if she was on CBSE duty on that particular day. The counsel further argued that the Trial Court in the impugned order has wrongly stated that the appellant husband did not press his objections to the FSL report or the appellant husband did not press for the examination of the officer, who had submitted FSL reports. The counsel for the appellant husband also submitted that after the passing of the judgment and decree of divorce dated 22nd April, 2008, the Court had become functus officio and, therefore, had no jurisdiction to entertain the said application moved by the respondent wife under Section 151 CPC.

6. Based on the above submissions, the counsel for the appellant husband urged that the impugned order passed by the learned Trial Court is without any jurisdiction and the same is not sustainable in the eyes of law. In support of his arguments counsel for the appellant husband placed reliance on the following judgments:-

- 1) Swatantra Sahni v. Santosh Kumari 1988 RLR 469
- 2) Krishna Khetrpal v. Satish Lal AIR 1987 Punjab & Haryana
- 3) Shashi Kumar Banerjee & Ors. v. Subodh Kumar Banerjee AIR 1964 SC 529
- 4) Keshav Dutt v. State of Haryana (2010) 9 SCC 286
- 5) Sonam Tshering Bhutia v. State of Sikkim 2004 Criminal L.J. 3136
- 6) Nirmal D/o Manohar Lal v. State of Punjab 2002 CrL. L.J. 447
- 7) Rajmani v. State 67(1997) DLT 351 (DB)
- 8) Rajesh Kumar v. The State (Delhi Admn.) 1995 (32) DRJ 227
- 9) Heera Lal v. State 52(1993) DLT 231

7. Opposing the present appeal and refuting the arguments advanced by the Ld. counsel for the appellant husband, Mr. Manoj Goel, Ld. counsel representing the respondent wife with all vehemence contended that the appellant husband has played serious fraud not only upon the respondent wife but upon the Court as well and now he is trying to legitimize his illegal and fraudulent acts. The counsel argued that the law in this regard is well established that fraud vitiates everything and any benefit or advantage acquired by any party through fraudulent acts cannot be allowed to be retained by such party. The counsel also submitted that the procedural technicalities also cannot come in the way of undoing the effect of the fraudulent acts. The counsel further argued that the Trial Court rightly exercised its inherent powers vested with every civil Court under Section 151 CPC and, therefore, to say that the Court had become functus officio after passing the decree of divorce and could not have proceeded with the application of the respondent wife under Section 151 CPC is not sustainable. The counsel further argued that the appellant husband at this stage cannot take up the plea of denial of opportunity to him for cross-examination of the handwriting expert as neither the appellant husband himself pressed for his cross-examination and nor for producing any private handwriting expert as would be evident from the observations of the Court duly recorded in the judgment itself. The counsel thus submitted that it is trite that the judgment of the Court is final and conclusive as to what was argued before it and not what could be argued before it. The counsel further submitted that the appellant husband never took a stand before the learned Trial Court about inadmissibility of the FSL reports on the alleged ground of wrong invocation of provision of Section 293 of the Code of Criminal Procedure by the Trial Court. The argument advanced by the counsel for the respondent wife was that in a criminal case the burden of proof is much higher than in a civil case and, therefore, if the said FSL reports are admissible in criminal law then the same would hold good in civil proceedings with greater force. Counsel also submitted that the arguments raised by the counsel for the appellant husband that the report of the handwriting expert could not have been used without corroboration is completely misplaced as the opinion of the expert is straightway admissible even in the absence of examination of such expert witness in the witness box. The counsel further submitted that by virtue of Section 73 of the Evidence Act, 1872 the Courts have ample powers to compare the admitted writings and signatures with the disputed signatures and handwritings of any party to the suit or witness and while doing so, the court can also take the help of any other corroborative evidence including the opinion of handwriting expert and then form its own opinion. The counsel further submitted that in any event Civil Court always has the power to direct any scientific investigation through appointment of a Local Commissioner in terms of Order 26 Rule 10 and 10A CPC and such reports are evidence per se even without the examination of a Commissioner in witness box. The counsel further submitted that the argument advanced by the learned counsel for the appellant husband contending that the Trial Court has based its judgment on the report of the handwriting expert is completely misplaced as the learned Trial Court has relied upon clinching circumstantial evidence and other instances of fraud played by the appellant husband on the Court as well as on the respondent wife and the report of the handwriting expert was used only to corroborate the circumstantial evidence for pronouncing the impugned judgment. The counsel further submitted that the material already available on record clearly brings home the fraud played by the appellant husband on the Court as well as on the respondent wife. Citing various such circumstances, the counsel submitted that the Advocate Ms. Ranjna Kaur, who was allegedly engaged by both the parties for presenting the joint petitions under Section 13(B)(1) & 13(B)(2) of the Hindu Marriage Act, 1955 was untraceable despite innumerable efforts made by the Trial Court

to serve her. The counsel further submitted that non-disclosure of her address by the said counsel on her vakalatnama, in contravention of circular No. STBC/CR/No.18/2006 dated 5.7.2006 of the Bar Council, is a clear indication of the fact that there was no lawyer on the rolls of the Bar Council with the name of Ranjana Kaur. The counsel thus submitted that somebody fictitiously and fraudulently used the name of Ms. Ranjana Kaur to play fraud upon the Court and upon the respondent wife. The counsel thus urged that appearance of such a person is in contravention of Section 29 and 30 of The Advocates Act, 1961. The counsel further placed reliance on the report dated 25.2.2009 submitted by the Delhi Bar Council stating therein that there is no person with the name of Ranjana Kaur enrolled with the Bar Council. The counsel further argued that disclosure of Bar Council enrolment number by every Advocate is mandatory in terms of instructions issued by the Bar Council of India and vakalatnama filed by the said Ranjana Kaur also did not carry her enrolment number. The counsel further argued that even Oath Commissioner before whom the affidavits of the parties were sworn and identified by Ms. Ranjna Kaur, Advocate could not be traced as necessary registration number and other particulars were missing in the seal of the Oath Commissioner. The counsel further argued that non-disclosure of these mandatory particulars is also in violation of the relevant rules framed under Notary Rules, 1956. The counsel further submitted that identification of the deponent by an Advocate is a serious matter and since in the present case the Advocate has identified the imposter respondent wife, therefore, it was all the more necessary for the appellant husband to have produced such an Advocate to dispel the said suspicious circumstance. The counsel further argued that the appellant husband has mentioned his false address at the time of presentation of the divorce petition i.e. 1/4 Kalkaji, New Delhi although at that point of time he was residing at G-9A, Kalkaji, New Delhi along with the respondent wife. Counsel for the respondent wife placed reliance on two service reports dated 29.4.2009 and 4.5.2009 to support his argument that the appellant husband was not residing at 1/4 Kalkaji, New Delhi for the past several years. The counsel further submitted that the appellant husband supplied his wrong proof of address along with divorce petition i.e. the copy of the voter identity card, which was of the year 1995 and not for the relevant period to show his correct address. The counsel further submitted that the appellant husband has also played mischief by filing a photocopy of the bank passbook of the respondent wife which carried the address of the respondent wife of the period prior to her marriage. The counsel further submitted that the letter dated 5th March, 2008 sent by the CBSE and the attendance certificate issued by the said Board clearly establishes the fact that the respondent wife could not have been in the Court on the relevant date as she was on CBSE duty.

8. The counsel further argued that the photographs of the respondent wife in both the petitions have been tampered with as on a bare perusal of both the original petitions moved by the parties under Section 13(B)(1) & (2) of the Hindu Marriage Act, 1955 it would be evident that the photographs of the respondent wife have been pasted after removing the earlier photographs of her imposter. The counsel also argued that the appellant husband had even misled the Court by doing sham money transaction of Rs. 2 lakhs when in fact no such cheque of Rs. 2 lakhs was ever offered by the appellant husband to the respondent wife and nor the same was ever accepted by her. The counsel further submitted that the copy of the deposit slip which was obtained from the bank clearly shows that the same was filled in the handwriting of the appellant husband and not in the handwriting of the respondent wife. The contention raised by the counsel for the respondent wife was that the said amount of Rs. 2 lakhs was withdrawn by the appellant himself from the bank account of the

respondent on the very next day of obtaining the judgment and decree dated 22.4.2008.

9. Based on the above submissions, counsel for the respondent wife submitted that the appellant husband had obtained the judgment and decree by playing serious fraud both upon the Court and the respondent and, therefore, the learned Trial Court has not committed any illegality by invoking its inherent powers under Section 151 CPC to set aside such a fraudulent judgment and decree dated 22.4.2008. In support of his arguments counsel for the respondent wife placed reliance on the following judgments:-

1) Ram Chandra Singh V. Savitri Devi & Ors. 2003(8) SCALE 505.

2) United India Insurance Company Limited Vs. Rajendra Singh & Others (2000) 3 SCC 581

3) Indian Bank Vs. M/s Satyam Fibres (India) Pvt.Ltd. AIR 1996 SC

4) S.P.Chengalvaraya Naidu (dead) by LR's Vs. Jagannath (dead) by LR's & Ors. AIR 1994 SC 853

5) Hamza Haji Vs. State of Kerala & Anr. (2006) 7 SCC 416

10. I have heard the learned counsel for the parties at great length and given my anxious consideration to the arguments advanced by them. I have also carefully gone through the records of the learned Trial Court.

11. Fraud and justice never dwell together (*fraus et jus nunquam cohabitant*). In *Smith v. Eos*, *Elloe Rural District Council* reported in (1950) AC 736, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In yet another case i.e. *Lazarus Estate Ltd. vs. Beasley* reported in (1956) 1 QB 702 , Lord Denning J said that no judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. In *S.P. Chengalvaraya Naidu (dead) by LR's Jagannath (dead) by LR's and Ors.* AIR 1994 SC 853, the Apex Court commenced the verdict with the following words "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is settled position of law that a judgment or decree obtained by playing fraud on the court is nullity and non est in the eyes of law.

12. The Supreme Court in *Meghmala & Ors. v. G.Narsimha Reddy and Ors.*(2010)(8) SCC 383 observed:

"Fraud is an anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine. An act of fraud on court is always viewed seriously."

13. In a recent Supreme Court judgment of *Smt.Badanu (Deceased) by her LR's V.Bhati* (2012) (5) SCALE 715, it has been observed that "Fraud generally lights a candle for justice to get a look at it; and rogue s pen indites the warrant for his own arrest".

14. The facts of the case as have been unfolded by the parties in the present appeal have simply shocked and flabbergasted this Court. The appellant husband has challenged the order dated 22.7.2009 passed by the learned Trial Court thereby setting aside the judgment and decree dated 22.4.2008 earlier passed by the same Court on the ground that the same was obtained by the appellant husband by practicing fraud upon the Court. In a detailed order passed by the learned Trial Court, it reached the conclusion that the respondent wife was not a signatory to the joint motions nor she had ever appeared before the Court for recording her statements. The learned Trial Court also found the signatures of the respondent wife on the said joint petitions being forged one. The learned Trial Court took into consideration the two FSL reports dated 26.5.2009 and 2.6.2009 and other factors on record clearly pointing out to various forgeries and frauds committed by the appellant husband in obtaining the said decree of divorce by mutual consent. The Trial Court also held that the appellant husband went to the extent of withdrawing an amount of Rs. 2 lakhs from the account of the respondent wife by getting such cheque signed from the respondent wife on the pretext of withdrawing an amount of Rs. 20,000/- for the purpose of getting his car repaired and then filling an amount of Rs. 2 lakhs on the said cheque and after signing the same on its reverse side obtained the said payment of Rs. 2 lakhs himself. The learned Trial Court also found non-disclosure of the enrolment number on the Power of Attorney filed by Ms. Ranjana Kaur and her non-appearance and non- production by the appellant husband at the stage of hearing of Section 151 CPC application as an important circumstance in the chain of events, which led to the passing of the said judgment and decree dated 22.7.2009. The learned Trial Court also rejected the contention raised by the counsel for the appellant husband that it had no inherent jurisdiction to recall the impugned judgment and decree dated 22.4.2008 after placing reliance on various judgments of the Hon ble Supreme Court vide citations (2000)3 SCC 581 United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors; AIR 1996 SC 2592 Indian Bank vs. M/s Satyam Fibres (India) Pvt. Ltd.; AIR 1994 SC 853 S.P.Chengalvaraya Naidu (dead) by LRs. Vs.Jagannath (dead) by LRs and others,; (2006) 7 SCC 416 Hamaza Haji vs. State of Kerala.

15. Mr. V. Shankra, the learned counsel representing the appellant husband has challenged the impugned order dated 22.7.2009 mainly urging the following grounds:-

A. That the learned Trial Court became functus officio after passing the judgment and decree dated 22.4.2008 in the divorce case and, therefore, it was incompetent to entertain the said application moved by the respondent wife under Section 151 CPC and then to pass the impugned order dated 22.7.2009.

B. That FSL reports dated 26.5.2009 and 2.6.2009 prepared by the Senior Scientific Officer (documents) cannot be treated as reports under law due to the non-fulfillment of the requirements laid down under Section 293 and 294 of the Code of Criminal Procedure. C. That the proceedings before the learned Trial Court were purely civil in nature and, therefore, the learned Trial Court wrongly invoked the provisions of Section 293 and 294 Criminal Procedure Code. D. That the learned Trial Court failed to decide the objections filed by the appellant husband on 6.6.2009 thereby challenging the said two FSL reports and also by denying an opportunity to the appellant husband to cross-examine the author of the said FSL reports. E. That the learned Trial Court did not grant opportunity to the appellant to examine private handwriting expert to prove signatures of the

respondent on joint motion petitions, affidavits, power of attorneys and court statements.

16. Mr. Manoj Goel, the learned counsel appearing for the respondent wife on the other hand justified the reasoning given by the learned Trial Court in the order dated 22.7.2009 for setting aside the judgment and decree dated 22.4.2008 by putting forth the following rebuttal:-

A. Under Section 151 CPC, 1908 every Court and Tribunal has inherent powers to recall or correct its own order where manifest injustice has been done by the Court due to its own acts or due to the acts of any of the parties, who by misrepresenting the facts played fraud upon the Court.

B. The admissibility of the reports submitted by the FSL was never questioned by the appellant husband and the two applications moved by the appellant husband, one for cross-examination of the author of the FSL reports and the other for producing his own handwriting expert were not pressed by the appellant husband.

C. The report of the handwriting expert can be considered by the Courts even in the absence of an examination of such an expert in the witness box.

D. The Court has ample powers by virtue of Section 73 of the Evidence Act, 1872 to compare the writing/signatures in dispute with admitted signatures of such a party and in doing so, it can always consider the opinion given by the handwriting expert.

E. The Civil Courts also have power to appoint a Commissioner for scientific investigation in terms of Order 26 Rule 10A CPC, 1908 and such reports are evidence per se even without the examination of such a Commissioner.

F. Non-impleadment of Ms. Ranjana Kaur, Advocate in the present appeal although she was impleaded in the Section 151 CPC application filed by the respondent wife, non-disclosure of the enrolment number by the said Advocate on her Power of Attorney and her non-production by the appellant husband in Section 151 CPC proceedings and also in the present appeal, ex facie proves various frauds played upon by the appellant husband at every stage of the case.

G. Non-disclosure of complete particulars including the registration number by the Oath Commissioner who had attested the affidavits of the parties in support of the joint motion petitions.

H. Disclosure of false address by the appellant husband in his divorce petition i.e. premises bearing No. 1/4 Kalkaji, New Delhi-19 even though he was residing at G9A, Kalkaji, New Delhi-19 along with the respondent wife.

I. The clear tampering of both the photographs of the respondent wife on the said joint motion petitions.

J. The Trial Court was misled by the appellant husband by showing a sham and fraudulent money transaction towards settling all material claims of the respondent wife in a sum of Rs. 2 lakhs as no such amount was agreed by the respondent wife nor any such cheque was handed over by the

appellant husband to the respondent wife and the same was clandestinely deposited by the appellant husband in the bank account of the respondent wife and thereafter withdrawn by the appellant husband himself immediately after the passing of the judgment and decree dated 22.4.2008.

17. Dealing with the first objection raised by the counsel for the appellant that the learned Trial Court became functus officio after passing of the judgment and decree and, therefore, it become incompetent to decide the application moved under Section 151 CPC, 1908 this Court reiterates the well established legal principle that the Courts have unlimited and unrestricted powers under Section 151 CPC to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the Court. The Hon ble Apex Court in the case of Indian Bank vs M/s Satyam Fibres (India) Pvt. Ltd. AIR 1996 SC 2592 took a view that the Courts have inherent powers to set aside an order obtained by practicing fraud upon that Court. Relevant para of the same is reproduced as under:-

" Since fraud effects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that court. Similarly, where the court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. The Court has also the inherent power to set aside a sale brought about by fraud practiced upon the Court or to set aside the order recording compromise obtained by fraud.

18. Referring to the observation of the Hon ble Supreme Court in the case of Hamza Haji vs State of Kerala and Another (2006) 7 SCC 416 where the Apex Court had extensively dealt with the subject of fraud:

10. It is true, as observed by De Grey, C.J., in Rex Vs. Duchess of Kingston [2 Smith L.C. 687] that: "'Fraud' is an intrinsic, collateral act, which vitiates the most solemn proceedings of courts of justice. Lord Coke says it avoids all judicial acts ecclesiastical and temporal".

11. In Kerr on Fraud and Mistake, it is stated that:"in applying this rule, it matters not whether the judgment impugned has been pronounced by an inferior or by the highest Court of judicature in the realm, but in all cases alike it is competent for every Court, whether superior or inferior, to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud."

12. It is also clear as indicated in Kinch Vs. Walcott [1929 APPEAL CASES 482] that it would be in the power of a party to a decree vitiated by fraud to apply directly to the Court which pronounced it to vacate it. According to Kerr, "In order to sustain an action to impeach a judgment, actual fraud must be shown; mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury."

13. In *Corpus Juris Secundum*, Volume 49, paragraph 265, it is acknowledged that, "Courts of record or of general jurisdiction have inherent power to vacate or set aside their own judgements". In paragraph 269, it is further stated, "Fraud or collusion in obtaining judgment is a sufficient ground for opening or vacating it, even after the term at which it was rendered, provided the fraud was extrinsic and collateral to the matter tried and not a matter actually or potentially in issue in the action.

It is also stated: "Fraud practiced on the court is always ground for vacating the judgment, as where the court is deceived or misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair".

14. In *American Jurisprudence*, 2nd Edition, Volume 46, paragraph 825, it is stated, "Indeed, the connection of fraud with a judgment constitutes one of the chief causes for interference by a court of equity with the operation of a judgment. The power of courts of equity in granting such relief is inherent, and frequent applications for equitable relief against judgments on this ground were made in equity before the practice of awarding new trials was introduced into the courts of common law.

Where fraud is involved, it has been held, in some cases, that a remedy at law by appeal, error, or certiorari does not preclude relief in equity from the judgment. Nor, it has been said, is there any reason why a judgment obtained by fraud cannot be the subject of a direct attack by an action in equity even though the judgment has been satisfied."

15. The law in India is not different. Section 44 of the Evidence Act enables a party otherwise bound by a previous adjudication to show that it was not final or binding because it is vitiated by fraud. The provision therefore gives jurisdiction and authority to a Court to consider and decide the question whether a prior adjudication is vitiated by fraud. In *Paranjpe Vs. Kanade* [ILR 6 BOMBAY 148], it was held that: "It is always competent to any Court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud."

16. In *Lakshmi Charan Saha Vs. Nur Ali* [ILR 38 Calcutta 936], it was held that "the jurisdiction of the Court in trying a suit questioning the earlier decision as being vitiated by fraud, was not limited to an investigation merely as to whether the plaintiff was prevented from placing his case properly at the prior trial by the fraud of the defendant. The Court could and must rip up the whole matter for determining whether there had been fraud in the procurement of the decree. "

19. The respondent wife in the present case had earlier challenged the judgment and decree dated 22.4.2008 by preferring a CM(M) No. 328/2009 and vide orders dated 17th April, 2009 this Court had disposed of the said CM(M) by directing the respondent wife to move an appropriate application before the same Court for recalling the said judgment and decree. The relevant para of

the said order dated 17th April, 2009 is reproduced as under:-

Keeping in view the serious allegations in the present petition, I direct petitioner to move an appropriate application before the trial court for recall of the aforesaid orders. I also direct the trial court to dispose of petitioners application for recall of said orders within a period of four weeks from the date the application is filed by petitioner. It shall also be open to trial court to pass an appropriate interim order that it deems fit and proper in the facts and circumstances of the case. I further direct the District & Sessions Judge-I, Tis Hazari Courts, Delhi to ensure that record of HMA No.217/2008 and 218/2008 are properly secured.

20. It is pursuant to the said direction given by the High Court that the respondent wife had filed the said application under Section 151 CPC and the entire genesis of the said application was that she had never signed the joint motion petitions nor she had appeared before the Court and nor even she had authorized any Advocate to represent her in the said petitions. In nutshell, the respondent wife has leveled serious allegations of fraud upon the appellant husband in obtaining such fraudulent judgment and decree not only by forging her signatures on the petitions etc. but even by producing some imposter in place of the respondent wife before the Court and also by pasting her photographs on both the petitions after the grant of the said judgment and decree dated 22.4.2008. With these kind of serious allegations leveled by the respondent wife in the said application, this Court cannot subscribe to the argument advanced by the counsel for the appellant that the Court which had passed the judgment and decree was powerless or became functus officio to decide the said application moved by the respondent wife under Section 151 CPC. In view of the settled legal position this Court does not find any merit in the contention raised by counsel for the appellant husband that the Trial Court became functus officio after passing the judgment and decree dated 22.4.2008.

21. Coming to the second limb of the argument advanced by the counsel for the appellant husband relating to inadmissibility of the two FSL reports as were submitted by the Senior Scientific Officer (documents), this Court on perusal of the record does not find that at the time of calling for the said FSL reports the Court had referred to the said provision i.e. Section 293 of the Code of Criminal Procedure, 1973 and it is only in the impugned order that the Court while discussing about the admissibility of such FSL reports in the evidence referred to Section 293 and 294 of the Code of Criminal Procedure, 1973. There is no dispute that the instant case is a pure civil dispute between the parties and there could not have been any occasion for the Court to refer to Section 293 and 294 of the Code of Criminal Procedure, 1973. However, at the same time, the said report submitted by the FSL could still be taken into consideration by the learned Trial Court in terms of Section 45 of the Indian Evidence Act, 1872 read with Order 26 Rule 10A of the Code of Civil Procedure, 1908. It is a totally flawed argument that such report cannot be taken into consideration by the Court unless the expert enters the witness box to prove his report. On the contrary, if there exists enough corroborative evidence on record, the Courts can always take the help of such expert opinion to form a final view with regard to any forgery in the signatures or in the handwriting of any of the parties before the Court. In criminal trials, these reports may not form the sole basis for holding any person guilty of offence, but so far the civil trials are concerned, there the Court proceeds on the hypothesis

of preponderance of probabilities and such a view can be formed by the Court taking into consideration the opinion of the expert as corroborative to the other material available on record. The opinion of the handwriting expert is not conclusive but is in the nature of opinion and it is always safe to rely upon report of an expert, if there is some other reliable evidence on record sufficient enough for the Court to form a particular view. The Apex Court in the case of *Murari Lal vs State of Madhya Pradesh* reported in (1980) 1 SCC 704 although dealing in a criminal matter, took a view that even the uncorroborated testimony of an handwriting expert may be accepted in cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt. The relevant para of the judgment is reproduced as under:-

We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.

22. In the matter of *Lalit Popli v. Canara Bank & Others* (2003) 3 SCC 583 the Apex Court while dealing with the case of civil nature, in the following para, held as under:-

13. It is to be noted that under Sections 45 and 47 of the Evidence Act, the court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three sections of the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the handwriting expert, the court can compare the admitted writing with the disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of the handwriting expert need not be invariably corroborated. It is for the court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when an expert's evidence is not there, the court has power to compare the writings and decide the matter (See *Murari Lal v. State of M.P.*)

23. It would be thus seen that it is for the Court to decide in the facts of each case whether to accept the evidence of the handwriting expert even if the same has not been proved on record by summoning the expert witness as there is no straight jacket formula or rule of thumb in this regard. Be that as it may, this Court does not find any fault on the part of the learned Trial Court in placing reliance on the two FSL reports submitted by the Senior Scientific Officer to form its view that the appellant husband had not only forged signatures of the respondent wife on the joint petitions but had committed a serious fraud upon the Court by producing some imposter in place of his actual wife i.e. respondent herein. There is enough material available on record other than FSL reports which clearly points out such forgery and fraud committed by the appellant husband in obtaining the said judgment and decree dated 22.4.2008. There is no denial of the fact that the appellant husband had moved two separate applications, one for adducing independent handwriting expert and the other raising objections to the said FSL reports and for examination of the author of the two FSL reports. On perusal of the impugned judgment, it is manifest therefrom that the appellant husband did not press the said application for producing his own handwriting expert and, therefore any contention being raised by the counsel for the appellant husband contrary to the said record merits straightway rejection. The other objection raised by the counsel for the appellant husband with regard to the filing of objections against the said reports and for cross-examination of the author of the FSL reports, the answer thereto has already been given in the above discussion. For the sake of repetition, it is reiterated that in the given facts of each case the Courts can either enter into the realm of evidence to decide the objections to the report of the expert witness by calling the expert witness in the witness box or take the help of an expert opinion in terms of Section 45, 47 and 73 of the Indian Evidence Act, 1872 read with Order 26 Rule 10A of the CPC, 1908 so as to give a finding on the handwriting or on the signatures taking note of the other corroborated material available on record. Here it is pertinent to mention that the expertise of the Senior Scientific Officer who is from a Government laboratory, CFSL, known for its independence and impartiality, cannot be easily doubted in the absence of any mature suggestion otherwise and therefore also no fault can be found with the reasoning of the learned trial court giving due weightage to the said two FSL reports.

24. In the light of the aforesaid discussion, the other four contentions raised by the counsel for the appellant husband also deserve outright rejection.

25. As discussed above, it is not merely based on the FSL reports that the learned Trial Court had reached the conclusion of the appellant husband playing a fraud upon the Court as well as upon the respondent wife for obtaining the said decree of divorce under Section 13(B)(2) of the Hindu Marriage Act, 1955 but on many other vital circumstances on which the learned Trial Court formed the said view. One of such strong circumstance available on record itself is that in both the petitions filed under Section 13(B)(1) and 13(B)(2) of the Hindu Marriage Act, 1955, there exists an apparent tampering on the first page of the said petitions. On bare perusal of the first page of the petitions, one can clearly take note of the fact that while the photograph of the appellant husband is affixed with the help of staple pins, the photograph of the respondent wife is affixed by pasting and also that there exists marks of the staple pins beneath the photograph of the respondent wife. On being questioned on this aspect for such variation in affixing the two photographs, no explanation came forth from the counsel for the appellant. It is inconceivable and more so in the absence of any

explanation that on the same page photograph of the appellant is affixed with the help of the staple pins while the photograph of the respondent wife is affixed by pasting. The above facts clearly supports the view that the earlier photographs of the imposter were removed and later on at the same place photographs of the respondent wife were affixed.

26. One of the contentions raised by the counsel for the appellant was that the parties had placed on record their marriage photograph and therefore the passport size photograph of the respondent could be easily compared by the court with the help of the marriage photograph placed on record in both the petitions. This argument of the counsel for the appellant appeared attractive at the first blush but was found meritless because of two reasons; firstly, the courts usually look at the passport size photograph affixed on the first page of the petition and not marriage photographs filed along with the petition and secondly; in the marriage photograph, the woman being in a bridal dress up, the courts do not take the pains of comparing both the photographs i.e. one affixed on the petition and second on the marriage photograph after having a closer scrutiny of the same.

27. Another important circumstance demonstrating clear fraud on the part of the appellant is the disappearance of the so called Ms. Ranjana Kaur, who had appeared for both the parties in the said joint motion petitions in her alleged capacity of an Advocate. Not only that she had failed to cause her appearance in Section 151 proceedings but even she was not impleaded by the appellant husband in the present appeal. On perusal of the Power of Attornies filed by Ms. Ranjana Kaur, she had given following addresses in the separate power of attornies filed by her along with the joint motion petitions.

Ist Motion

Ranjana Kaur
B.S. Mehta Square,
Patiala House Courts,
New Delhi

II nd Motion

Ranjana Kaur
B.S. Mehta Courts,
Patiala House Courts,
New Delhi

28. Undeniably, the above addresses are not complete addresses of the

said lady, Ms. Ranjana Kaur. In the power of attorney filed with the Second Motion instead of mentioning „B.S.Mehta Square the address disclosed is „B.S. Mehta Courts , which is non-existent place in Patiala House Courts. It is a well recognized fact that person committing fraud or any crime commits many mistakes and leaves behind many traces of evidence. It is often said that truth has the bad habit of getting surfaced though may be, with the passage of time. It cannot be expected that the said Ranjna Kaur, if she was an Advocate, would not be knowing her office address so as to correctly disclose it in her Power of Attorney. Shockingly, the Power of Attorney does not carry the complete particulars of the appellant husband and the respondent wife in the relevant columns and nor even the date of execution of the said Power of Attornies. The said Power of Attornies also do not carry the enrolment number of Ms. Ranjana Kaur as per the requirement of circular No. STBC/CR/No.18/2006 dated 5.7.2006 of the Bar Council. Ms. Ranjana Kaur was also not found to be on the rolls of the Bar Council of Delhi as per the report dated 25.2.2009, submitted by the Bar

Council of Delhi to the learned Trial Court. Under Section 29 and 30 of The Advocates Act, 1961, only an Advocate duly enrolled with the concerned State Bar Council can appear and represent the parties before the Court of law. In the backdrop of the aforesaid clinching evidence available on record it is manifest that no Advocate with the name of Ms. Ranjana Kaur exists on the rolls of the Bar Council of Delhi or elsewhere and not only the appellant husband had produced some imposter in place of the respondent wife before the learned Trial Court but had the audacity and temerity to take the help of some other lady who impostered herself to represent both the parties as an Advocate. Had there been any such Advocate with the name of Ms. Ranjana Kaur in the profession then nothing could prevent the appellant husband to have produced such a lady, if not before the Trial Court, then at least before this Court. One can also not lose sight of the fact that in the affidavits filed by the parties along with both the petitions, the mandatory particulars as are required to be disclosed by the Oath Commissioner are totally missing. Neither the name of Oath Commissioner nor his registration number can be seen filled in the seal of the Oath Commissioner. It would be relevant to reproduce the extracts of the instructions issued by this court vide circular No.332/Genl-II/DHC dated 14.9.2010 to the Oath Commissioners in discharge of their duties.

9. All Oath Commissioners shall (whether attesting affidavits at the designated place(s) or otherwise) maintain a register clearly giving the following:-

(a) Date and Serial number of the affidavit

(b) case number for which the affidavit is being attested. In the event of a new case, the case number to be left blank (c) name of the deponent.

(d) Name of the father/mother of the deponent.

(e) Address of the deponent as per the affidavit.

(f) Name of the person identifying the deponent.

(g) Signature of the deponent.

(Note: The address of the person identifying the deponent should also be given-but this may prove cumbersome)

10. Every Oath Commissioner shall maintain three rubber stamps as prescribed by the High Court. These rubber stamps shall provide for the following:

(a) Name of the Oath Commissioner in block letters.

(b) Number given by the High Court to the Oath Commissioner.

(c) Period of commission

- (d) A statement that the Oath Commissioner has been appointed by the High Court.
- (e) Space for the name, occupation and signature of the person identifying the deponent.
- (f) The name of the deponent.
- (g) The name of the father/mother of the deponent.
- (h) The address of the deponent.
- (i) Date and serial number of the affidavit.

(j) Space for the signature of the Oath Commissioner

29. It is thus apparent that the Oath Commissioner who had

attested the affidavits of both the parties in the said joint motion petitions failed to carry out the said instructions and therefore attestation of these affidavits is also not above suspicion.

30. It is also hard to digest the fact that the appellant husband was asked to fill the post dated cheque in favour of self on behalf of the respondent wife despite the alleged strained relationship between the parties. The appellant husband in his reply to the application under Section 151 CPC took a stand that he was asked by the respondent wife to write a post dated cheque on her behalf so as to facilitate her to withdraw the amount in cash and the appellant accordingly, in good faith, filled up the cheque so as to enable her to take out the amount in time after the date of the final order/judgment. This admission on the part of the appellant husband also clearly exposes the appellant as to what extent he has gone to cover up his fraudulent acts.

31. The letter dated 5th March, 2008 issued by the Central Board of Secondary Education and the attendance certificate issued by the Board also cannot be ignored as the respondent wife on the relevant date was attending to the teaching duties and, therefore, could not have caused her appearance before the learned matrimonial court in the said divorce case on 9.4.2008.

32. In the above circumstances, coupled with other attendant facts, this Court has no hesitation in holding that the appellant husband has committed serious fraud not only upon the respondent wife but upon the Court as well and this Court finds no perversity and illegality in the conclusions arrived at, by the learned Trial Court in allowing the application moved by the respondent under Section 151 CPC. No doubt the learned Trial Court while deciding the said application under Section 151 CPC placed strong reliance upon the two FSL reports, but simply because the other incriminating assertions were not comprehensively discussed by the learned Trial Court, this Court would not take any different view in this matter. Time and again the Courts have taken a very serious view against

any litigant playing fraud on the Court or misrepresenting the facts or forging the documents or abusing the process of the Court.

33. Truth is the foundation of justice and it has to be common endeavor of all to uphold the truth and no one can be permitted to pollute the steams of justice.

34. Fraud, on the other hand, which means deceit, trickery, material misrepresentation, sharp practice, or breach of confidence perpetrated for profit or to gain some unfair or dishonest advantage, is a crime deemed to be fundamentally opposed to the principles of justice. The Fraud on the court makes a mockery of our pious judicial system which is at mercy of the litigants from whom the courts expect truthful and honest disclosure of facts.

35. It is only when people are convinced that the justice which they seek by submitting themselves to the jurisdiction of the court is based on the foundation of truth, that they would acquire trust & confidence on the judicial system. Therefore, the judges, being the custodians of the justice delivery system must play a proactive role so as to abjure the practice of dishonest litigation and fraudulent intendance on the court. They must ensure that the dishonest and unscrupulous litigants are dealt with sternly to give a clean message that there is no incentive for the wrong doers in the temple of justice.

36. The Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all courts need to play an active role. The committee observed that "Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of criminal justice system. For justice to be done truth must prevail. It is truth that must protect the innocent and it must be the truth that must be basis to punish the guilty. Truth is the very soul of justice. Therefore truth must become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth."

37. In Mohan lal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271, the Apex Court observed "...that the question arises whether the presiding officer of the court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice. It is well established and settled principle that a court must discharge its statutory functions- whether discretionary or obligatory- according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done."

38. Therefore, in order to succeed in this endeavor and to preserve the integrity of our system, the party exercising dishonest & fraudulent acts with an intent to obtain a favourable order must not only be barred from getting the reliefs prayed for, but also be subjected to severe sanctions by the order of the court.

39. In *Chandra Shashi v. Anil Kumar Verma*, (1995) 1 SCC 421, the court observed that "In order to enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in court when they would find that truth alone triumphs in court."

40. Heavy/exemplary costs must be imposed on the party/litigant who even dares to show the courage of misleading the court, making it to believe in its concocted story and inducing it to pronounce judgment based on its untrue submissions.

41. It has been observed in a recent judgment of the Hon ble Supreme Court in *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam* 2012(4) SCALE 666, that "...one way to curb such tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The court would be fully justified in even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation."

42. In the above case, the court placed reliance on its earlier decision, given by the same Bench, in the case of *Rameshwari Devi v. Nirmala Devi* (2011) 8 SCC 24, in which the Court went on to say that the courts may even resort to criminal proceedings in the cases of fraud and observed that "Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling a tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

43. The Bench placed heavy reliance on the case of *Swaran Singh v. State of Punjab*, (2000) 5 SCC 668, in which the court observed that "...perjury has also become a way of life in the law courts. A trial judge knows that the witness is telling a lie and is going back on its previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint. Perhaps law needs amendment to clause (b) of section 340(3) of the code of criminal procedure in this respect as the High Court can direct any officer to file a complaint. To get rid of the evil of perjury, the court should resort to the use of the provisions of law as contained in chapter XXXVI of the code of criminal procedure."

44. In the present case, in a zeal to obtain a prompt decree of divorce, the appellant husband instead of filing the petition for divorce on any of the grounds as envisaged under sub-Section 13(1) of the Hindu Marriage Act, 1955, resorted to the said fraudulent practice by forging the signatures of the respondent wife on both the petitions and affidavits, bringing an imposter before the Court instead of the actual respondent & producing a fake Advocate to achieve his sinister design of obtaining a fast decree of divorce so that he could marry some other lady. The appellant husband has thrown to the winds all norms by affixing the photograph of some other lady in place of the respondent wife in

both the petitions. It is quite evident that the appellant husband is not alone in such fraudulent acts and certainly there is some legal brain who must have encouraged the appellant husband in committing such murky and fraudulent acts to pollute the streams of justice.

45. To ensure that such fraudulent acts are not committed again the matrimonial / family courts and other subordinate courts shall adhere to implement the following instructions:-

(i) All the matrimonial/family courts shall take care that they put their own signatures on the photographs of the parties at the time of recording statements of the parties in the joint motion petitions under Section 13B(1) and Section 13B(2) of the Hindu Marriage Act, 1955.

(ii) The concerned ministerial staff attached with the matrimonial / family courts shall ensure that the photographs on the joint motion petitions are pasted and not stapled.

(iii) The ministerial staff attached with all subordinate Courts shall verify that the Power of Attorney filed by any advocate carries his/her complete official/residential address and Bar Council Enrolment number.

(iv) The ministerial staff attached with all subordinate Courts shall verify that the attested affidavits clearly carry the necessary registration particulars of the Oath Commissioner in terms of the instructions issued by the High Court vide circular No. 332/Genl-II/DHC dated 14.9.2010.

46. Registry is directed to circulate this copy to all the Judicial Officers presiding over the matrimonial/family courts and other subordinate Courts for the strict compliance of the above instructions.

47. In the light of the above discussion this Court finds the present appeal is devoid of any merit and the same is accordingly dismissed with exemplary costs of Rs.2 lacs.

KAILASH GAMBHIR, J th 27 July, 2012 rkr