

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO-2933-2013 (O&M)
Reserved on: 19.05.2025
Date of decision: 28.05.2025

POONAM VED PRAKASH ARORA

..Appellant

Versus

PAWAN PREMNATH BERRY

..Respondent

2. CRA-S-1049-SB-2017(O&M)

PAWAN BERRY

..Appellant

Versus

POONAM BERRY

..Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Vandana Sharma Bhandari, Advocate (through V.C.)
for the appellant (in FAO-2933-2013) and
for the respondent (in CRA-S-1049-SB-2017).

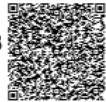
Mr. B.D. Sharma, Advocate
for the respondent (in FAO-2933-2013) and
for the appellant (in CRA-S-1049-SB-2017).

ANIL KSHETARPAL, J.

1. **Brief facts of the case:-**

1.1 With the consent of learned counsel for the parties, FAO-2933-2013 and CRA-S-1049-SB-2017 shall stand disposed of by this common order.

1.2 In FAO-2933-2013, the appellant who was married with the respondent assails the correctness of the order passed on 18.03.2013 while



declaring their marriage as nullity being in violation of Section 5(i) of the Hindu Marriage Act, 1955 (in short '1955 Act'). In CRA-S-1049-SB-2017, the husband Pawan Berry assails the correctness of order passed on 12.01.2017 on an application under Section 340 Cr.P.C.

1.3 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.4 Pawan, the husband was previously married with Venu in March, 1993. Out of their wedlock, two children namely Yash and Harsh were born. Pawan claims that there was customary divorce, which was reduced into writing on 18.02.2003. Venu, the first wife of Pawan filed petition for grant of decree of divorce by mutual consent, which was decreed on 07.07.2003. After divorce, Pawan married Poonam. She was previously married with Sachin Kapoor of Alwar. The marriage between Poonam and Sachin Kapoor was dissolved by a Court decree on 05.12.2003, whereas, she claims that the marriage was dissolved by customary divorce on 20.03.2003. Pawan and Poonam married on 04.07.2003 at Surat and out of their wedlock, Bhawansh (son) was born on 20.10.2004. Poonam left the matrimonial home on 20.09.2004, but she never returned. Initially, Pawan filed HMP-40-2009, seeking decree of divorce at Surat, which was transferred to Family Court located at Rohini, Delhi, by an order passed on 20.08.2010 by the Hon'ble Supreme Court. Pawan alleges that he came to know about subsistence of Poonam's first marriage with Sachin during two mediation sessions held in Mediation Centre at Supreme Court on 08.07.2010 and 11.08.2010. Thereafter, he filed a petition for annulment of marriage under Section 5 and 11 of '1955 Act' on 16.04.2012. The Family Court held that the marriage of



Pawan with Poonam was void in view of Section 11 read with Section 5(i) of the '1955 Act' because both the parties had the respective spouses living at the time of their marriage i.e. on 04.07.2003.

2. **Arguments addressed:-**

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record of the petition filed under Section 5 and 11 of the '1955 Act'.

2.2 Learned counsel representing Poonam has made the following submissions:-

- i. Pawan cannot be permitted to take benefit of his own fault in view of Section 23(1)(a) of '1955 Act'.
- ii. Pawan is guilty of hiding the fact that he has two children.
- iii. Pawan is estopped from filing the petition because he had knowledge of Poonam's first marriage.
- iv. Pawan has failed to explain the delay in filing the petition as the marriage between the parties took place on 04.07.2003, whereas, the petition was filed on 16.04.2012.
- v. Pawan has acquiesced, hence, the petition filed under Section 11 of the '1955 Act' was liable to be dismissed.

2.3 Per contra, learned counsel representing the respondent while referring to the statement of Poonam and her mother submits that Pawan did not conceal about having two sons from his first marriage. He submits that



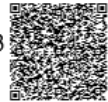
Harsh (one of his sons) had attended the engagement ceremony of Pawan and Poonam, hence, there was no concealment. He further submits that the trial Court has erred in launching prosecution against Pawan for committing an offence punishable under Section 193 IPC.

3. Analysis and Discussion:-

3.1 This Bench now proceeds to analyze the arguments put forth by the parties.

3.2 It is significant to note here that Poonam and her mother while appearing in the witness-box have admitted the presence of Harsh, son of Pawan from first marriage in the photographs clicked at the engagement ceremony, hence, Pawan cannot be held guilty of concealment of fact. On www.bharatmatrimony.com, he uploaded his status as previously married/divorce. Poonam and her mother also admit that they were aware about Pawan's previous marriage.

3.3 Section 23(1)(a) of '1955 Act' will not be applicable to the facts of the present case. Pawan is not in any way taking advantage of his own wrong or disability. Pawan prays for annulment of marriage on the ground that at time of his marriage with Poonam on 04.07.2023, she was previously married with Sachin Kapoor and their marriage was not dissolved by a decree of divorce passed by a competent Court. It should also be noted here that Pawan was also married at the date of his second marriage i.e. 04.07.2023 and he was also not divorced from his previous wife Venu because the decree of divorce was granted on 07.07.2003. However, that itself cannot become a ground to deny the relief to Pawan because the statute makes a clear distinction between a void and a voidable marriage as laid



down in Section 11 and 12 of the '1955 Act'. The present case falls in the category of void marriages, which signify that the marriage was null and void since its inception as the marriage between Pawan and Poonam contravenes the condition specified in Section 5(i). On the other hand, Section 12 of the '1955 Act' discusses about the voidable marriages. Hence, the conclusion drawn by the Family Court is not erroneous.

3.4 Learned counsel for the appellant relies upon a Division Bench judgment passed in **Jaswinder Singh Vs. Manjeet Kaur, 2019(3) RCR (Civil) 631**. In the aforesaid case, the Division Bench has held that the husband had knowledge of the wife's previous marriage and that she had a spouse living at the time of her second marriage, however, the husband filed the petition after 14 years of being aware about her previous marriage. In view of the aforementioned facts the Court declined to grant relief to the husband. However, in the matter at hand, it is proved on record that Pawan came to know about Poonam's living spouse during the mediation proceedings before the Supreme Court, which were held on 08.07.2010 and 11.08.2010, whereas, the petition under Section 5 and 11 were filed 16.04.2012. The Supreme Court in **Swapanjali Sandeep Patil Vs. Sandeep Ananda Patil, 2019 AIR (SC) 1500**, has held that no limitation period has been prescribed for presenting an application to declare a marriage as null and void. The Court also noticed that the petition in the aforesaid case arose from the Special Marriage Act, 1954.

3.5 Similarly, in **Balbir Singh Vs. Baljinder Kaur, 2019(2) PLR 582**, the Division Bench reiterated that for seeking a decree of nullity with respect to a void marriage there exists no limitation period. In the aforesaid



case, the Division Bench followed the judgment of the Supreme Court in *Swapanjali Sandeep Patil's case (supra)*. The attention of the Court has not been drawn by learned counsel representing Poonam to any provision of the Limitation Act, 1963, providing for a period of limitation for filing petition under Section 11 of the '1955 Act'.

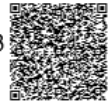
3.6 Similarly, rule of estoppel is not applicable in the present case because Poonam has failed to prove that she changed her position on false representation of Pawan. The rule of estoppel as embodied in Chapter VIII of the Indian Evidence Act, 1872, would come into operation only when Poonam proves that because of Pawan's false/incorrect declaration, act or omission intentionally caused, she acted thereupon resulting in changing her position. It is not proved by Poonam that on false representation of Pawan, she believed that her marriage with Sachin Kapoor stands dissolved by the Court.

3.7 Similarly, there is no delay in filing the petition because Pawan has proved that he came to know about spouse of Poonam in August, 2010.

3.8 Acquiesced is also part of broader rule of estoppel. Hence, Poonam has failed to prove that Pawan acquiesced to the fact that Poonam had a spouse living at the time of her second marriage.

3.9 The parties are residing separately from 20.09.2004. Nearly 21 years have elapsed.

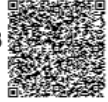
3.10 With respect to the criminal appeal, the Court has directed Pawan's prosecution on the ground that he gave incorrect dates on which the mediation took place before the Supreme Court. It is pertinent to note that Pawan stated that he acquired knowledge with respect to Poonam's previous



marriage for the first time in the mediation session held before Supreme Court on 03.09.2010 and 06.09.2010, whereas, the transfer petition was disposed on 30.08.2010. Thus, the Court formed opinion that Pawan has misled the Court in securing a decree for annulment of marriage, hence, the reader of the Court was directed to file a criminal complaint under Section 340 of Cr.P.C. for committing an offence under Section 193 IPC.

3.11 It may be noted here that in fact there were two sessions of mediation before the Supreme Court, first session was on 08.07.2010, whereas, the second was on 11.08.2010. In the opinion of this Court, such lapse of memory with regard to exact date on which mediation before the Supreme Court took place should not entail prosecution only because Pawan disclosed wrong dates. Prosecution under Section 340 Cr.P.C. read with Section 191, 192 and 193 IPC should be ordered only when it is found that a false declaration has been made by a person, which he either knows or believes to be false or does not believe to be true.

3.12 In this case, the error is only of dates when the mediation sessions took place in Supreme Court, however, such human error should not become a reason for the Court to launch prosecution. Memory of a human being is not perfect and is subject to various factors including lapse of memory or error in recollecting the exact date when the event took place. However, such error does not fall within the scope of giving false evidence as provided under Section 191 IPC, which lays down that the person who has made false statement either knows or believes it to be false. In other words, the person who has made the statement knows that such statement is



false and has intentionally gave such false statement. In the matter at hand, error in stating a date, is unintentional.

3.13 On 16.03.2007, while issuing notice of motion, further proceedings were stayed, and the stay continues to operate till date. Hence, at this stage, it would not be appropriate to initiate proceedings against Pawan.

4. Decision:-

4.1 Consequently, FAO-2933-2013, is dismissed, whereas, CRA-S-1049-SB-2017, is allowed resulting in setting aside the order passed by the Family Court on 12.01.2017.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)
JUDGE**

**(VIKAS SURI)
JUDGE**

May 28th, 2025

Ayub

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No