

**HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

118

FAO-3482-2025

Reserved on 28.05.2025.

Date of Pronouncement: **June 9th, 2025**

Gurdip Singh through his SPA Holder Harjit Kaur

.....Appellant

VERSUS

Amanjot Kaur and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present : Mr. Navjot Singh, Advocate for the appellant.

ROHIT KAPOOR, J.

1. The instant appeal has been filed by the appellant-husband against the judgment and decree dated 24.4.2025 passed by the Family Court, Fatehgarh Sahib, whereby the petition filed by him under Section 12(1)(c) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for seeking annulment of his marriage with respondent No.1-wife, has been dismissed.

2. Briefly stated, the case of the appellant is that his marriage was solemnised with respondent No.1 on 7.2.2016 and they had been residing and cohabiting as husband and wife at his village. No child was born from their wedlock. It is alleged by the appellant that prior to the solemnisation of the marriage, he had categorically asked respondent No.1 as to whether she is having any relationship or liking for any other person, however the same was denied by her. In the month of November 2017, one video was posted on social media and on many other websites, in which respondents No.1 and 2 were seen in a compromising position. Respondent No.1 moved an application before the Senior Superintendent of Police, Fatehgarh Sahib

against respondent No.2 and his family members and in pursuance thereof FIR No.100 dated 30.12.2017 was registered under Sections 376/506/120-B of IPC and under Section 66 of the I.T. Act, wherein she allegedly admitted her relationship with respondent No.2 since 2012 and also admitted that she had not disclosed about the relationship to the appellant and his family members. Annulment of the marriage was sought on the ground of fraud alleging concealment of prior relationship, by filing petition under Section 12 (1) (c) of the Act.

3. Respondent No.1 in her reply denied all allegations including the factum of alleged meeting between the appellant and her before the Roka ceremony and it was stated that she never met the appellant before the marriage, and that he has created a false story.

4. From the pleadings of the parties, the following issues were framed :-

1. Whether the petitioner is entitled to annulment of marriage, as prayed for? OPP.
2. Whether the petition is not maintainable in the present form? OPR.
3. Whether the petitioner has no cause of action to file the present case? OPR.
4. Whether the petitioner has concealed the true and material facts from the court? OPR.
5. Relief.

5. The appellant/petitioner, in order to prove his case examined PW1 SC Satinder Singh, who brought the record regarding FIR No. 100 dated 30.12.2017 lodged by respondent No.1 and proved the copy of the same as Ex. P3. Thereafter the appellant examined PW2 Harjit Kaur, who is his mother and special power of attorney. She brought on record the attested copy of the power of attorney Ex. P1, DVD as Ex. P2, copy of FIR as Ex. P3, copy

of complaint as Ex. P4. The appellant also examined one Baljinder Singh, his uncle, who supported the version of the appellant/petitioner. The appellant also tendered certain documents like the certified copy of application under Section 12 of Protection of Women from Domestic Violence Act as Ex.P5, certified copy of order dated 21.1.2020 as Ex.P6 and copy of power of attorney dated 14.3.2018 as Ex.P7 and closed his evidence. No evidence was led on behalf of respondent No.1.

6. After considering the arguments advanced by the learned counsel for the parties and after discussing in detail the evidence brought on record, the learned Family Court decided issue No.1 against the appellant, *inter-alia* on the ground that he has failed to prove the allegations regarding his consent having been obtained by fraud due to concealment of facts by respondent No.1. While deciding the issue, a specific reference was made to the testimony of the mother and power of attorney holder of the appellant, who while appearing as PW2 admitted in her cross examination, that there was no concealment of facts by respondent no. 1 before the marriage, nor did she commit any cheating with them after the marriage. PW 3 in his cross examination stated that he had not accompanied the appellant and his mother before the marriage or roka ceremony. It was held that the DVD Ex. P2 was not proved as per the Evidence Act, as neither the photographer, who had allegedly prepared the same was examined, nor any certificate under Section 65-B of the Evidence Act was brought on record.

7. Issues No. 2 to 4 were also decided against the appellant and in favour of respondent No.1, however, the same are not required to be delved upon, for the purpose of deciding the instant appeal.

8. We have heard the learned counsel for the appellant, who has contended that the impugned judgment and decree is based on wrong appreciation of the pleadings and the evidence available on the record. It has been argued that the concealment of the material fact regarding prior relationship of respondent no. 1 with respondent no. 2 stands duly proved and, therefore, the prayer of the appellant for annulment of the marriage is required to be allowed.

9. Having heard the learned counsel for the appellant and after going through the findings of the learned Family Court, we find that there is no error or illegality in the impugned judgment and decree dated 24.4.2025. The premise on which the appellant sought the decree of nullity of marriage under Section 12(1)(c) was, that prior to the solemnization of his marriage with respondent No.1, a '**separate meeting**' was held and at that time, he categorically asked respondent No.1 as to whether she is having any relationship or liking for any other person. However, after the discussion, she denied having any such relationship. It was further alleged that during the courtship period, respondent No.1 never disclosed any fact to the Appellant about her relationship or liking for any other person. It was alleged that this concealment by respondent no. 1 about her relationship with respondent no. 2, before marriage, tantamounts to fraud under Section 12 (1) (c) of the HMA Act.

10. Undisputedly the appellant never stepped into the witness box himself and no opportunity of cross-examination was provided to respondent No.1 regarding the aforementioned allegations, which were within the specific knowledge of the appellant alone.

11. It would be apposite to refer to the provisions of Section 114 illustration (g) of the Indian Evidence Act, 1872, which read as under:-

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

Illustrations

The Court may presume —

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it”

12. A Division Bench of this Court in the case of “**Rupinder Mann v. Gurpartap Singh**” 2011 SCC Online P&H 17109, while relying upon the judgment of the Hon’ble Supreme Court in ‘**Man Kaur (Dead) by LRs Vs. Hartar Singh Sangha**’, 2010 (10) SCC 512 *inter alia* held:

“The discovery of fraud at the time of marriage or soon thereafter or at any point of time prior to 09.05.2007 could have been deposed by the respondent himself. But the respondent has not appeared as a witness. The Hon'ble Supreme Court in Man Kaur's case (supra) has laid down the principles, when a statement of attorney can be read into evidence on behalf of the principal. It has been held to the following effect:

“12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) ...

(e) ...

(f) ...

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder.Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

In view of the aforesaid judgment, the statement of the attorney in respect of matters, which are in the personal knowledge of the principal, cannot be admitted into evidence. The evidence of the attorney does not fall in the exceptions carved out in the aforesaid judgment. Therefore, the evidence of the attorney on behalf of the respondent in respect of his health, non-

disclosure of material facts and the knowledge of the appellant of such facts, is not admissible into evidence”

13. The ratio of the judgment of this Court and the judgment of the Hon’ble Supreme Court in the aforementioned cases, *supra*, is fully applicable to the facts and circumstances of the instant case. The evidence in respect of concealment of material facts at the time of separate meeting and during the period of courtship prior to the marriage, could have been deposed by the appellant alone, being the facts in his personal knowledge. Having failed to step into the witness box, an adverse inference in terms of illustration (g) of Section 114 of the Evidence Act, 1872, is required to be drawn against him.

14. Even the power of attorney holder of the appellant, who is his mother, while appearing as PW2 has admitted in her cross-examination that there was no concealment of fact by respondent No.1 before the marriage. It has also been admitted by the said witness produced by the appellant that respondent No.1 has not committed any cheating with them after her marriage with the appellant.

15. The appellant has failed to prove, by leading any cogent evidence, that his consent was obtained by fraud. It has not been shown by the appellant that the evidence taken as a whole, cannot reasonably justify the conclusion arrived at, or there is an element of improbability arising from proved circumstances, which outweigh the finding of the Family Court. The learned counsel appearing on behalf of the appellant has failed to draw the attention of this Court, to any misappreciation of evidence by the Family Court.

16. We, therefore, do not find any scope to interfere with the finding of the Family Court and the same is hereby confirmed.

17. In the result, we find no substance in this appeal and the same is hereby dismissed, but without any order as to costs.

Appeal dismissed.

(ANIL KSHETARPAL)
JUDGE

(ROHIT KAPOOR)
JUDGE

June 9th, 2025

ajaysharma

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No