

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION

No. FD07N00031

Royal Courts of Justice  
Monday, 20<sup>th</sup> October 2008

Before:

MRS. JUSTICE PARKER

B E T W E E N :

G K

Petitioner

- and -

R S B

Respondent

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MR. GUPTA (instructed by Dawson Cornwell) appeared on behalf of the Petitioner.

THE RESPONDENT did not attend and was not represented.

J U D G M E N T

(As approved by the Judge)

1 MRS. JUSTICE PARKER:  
2

3 1. I have been hearing nullity proceedings brought by a Petitioner. The Petitioner  
4 is protected by injunctions in respect of her own personal safety and I am  
5 asked also to say that if there is to be any report of these proceedings either  
6 officially or in the press, there is to be no identification of any individual  
7 concerned with these proceedings save insofar as counsel or solicitors may be  
8 referred to, and of course the name of the judge may be given. I will refer in  
9 this judgment in open court to the names of these parties because these are  
10 proceedings brought in public in relation to status but in any report they will be  
11 referred to by their initials.  
12

13 2. The Petitioner is G K; the Respondent is R S B. The Petitioner seeks  
14 annulment of the marriage, which was celebrated on 26<sup>th</sup> June 2006 in India,  
15 pursuant to s.12 of the Matrimonial Causes Act 1973, namely, duress, which  
16 makes a marriage voidable rather than void, if proved. Both these parties  
17 come from the Sikh community in Punjab, India. Until last week these  
18 proceedings were strenuously defended by the Respondent and indeed I  
19 gave directions for the full trial of these proceedings on 18<sup>th</sup> September last,  
20 when it looked as though there were going to be very many witnesses, some of  
21 them giving evidence over video link from India, in relation to the  
22 circumstances of this wedding and subsequent marriage.  
23

24 3. The Petitioner is now 29, having been born in February 1979. She comes from  
25 a rural community in Punjab. Her parents were elderly and frail at the date of  
26 her wedding to the Respondent. Her father died last year from a brain tumour;  
27 her mother has had a stroke and is in poor health.  
28

29 4. On 19<sup>th</sup> October 2001 she was married to her first husband now deceased. He  
30 also came from a Sikh family in Punjab, the same family as the Respondent in  
31 these proceedings. This was an arranged marriage. After the marriage they  
32 lived together in India and then came to England in February 2002 where they  
33 lived in the home of her first husband's parents. At some time after the  
34 marriage she discovered that her first husband had a long history of drug use  
35 and criminal activity; I have seen a computerised printout as to his criminal  
36 record from which that is clearly established. She tells me that her parents-in-  
37 law kept quiet about the fact that the husband had a serious drugs problem and  
38 that he had a serious history of convictions. She says that she experienced  
39 domestic violence within that marriage. She also says that in keeping with her  
40 culture and her tradition she left her parents' family not only physically but  
41 emotionally and in every other way and became part of her first husband's  
42 family of which her father-in-law, Mr. P S B, was the head.  
43

- 1 5. In September 2002 her first husband started to serve a four year term of  
2 imprisonment for an offence of robbery in this jurisdiction. She remained  
3 living with her parents-in-law in London. She was working as a bus driver.  
4 She was also, she says (and I see no reason to doubt), working, running the  
5 family home, cleaning, caring for it and servicing the household. On the first  
6 husband's discharge from prison in 2005 he went to India. She returned on  
7 two occasions for periods of about 3 weeks and she came back to England  
8 between holiday trips to India in order to continue with her work as a bus  
9 driver. She was, it seems, an important source of the family income for the  
10 household in London.  
11
- 12 6. On 9<sup>th</sup> June 2006 her first husband was killed in a road traffic accident in India.  
13 On 11<sup>th</sup> June 2006 she flew to India for the funeral which took place on 13<sup>th</sup>  
14 and 14<sup>th</sup> June. She told me that the day after the funeral she was confined to  
15 her bedroom by her father-in-law. On that day her father-in-law came into her  
16 bedroom and said "We don't want to lose you" and announced that she was to  
17 marry his nephew - the Respondent in these proceedings. She told me that  
18 whether or not she agreed or consented to this course was irrelevant to the  
19 father-in-law; he said that there was no choice, it was his order. She said she  
20 wanted time to think, he said that there was nothing to think about.  
21
- 22 7. Further pressure was put on the Petitioner after that conversation. The next  
23 day or the day after a doctor was called and pills were prescribed. She said  
24 that the family were suspicious, so obtained a syringe from the chemist with  
25 medication contained inside it, to inject her. The three who did this were her  
26 mother-in-law, her sister-in-law and her mother-in-law's sister – that is the  
27 mother of the nephew who was the proposed bridegroom. Her father-in-law,  
28 that is Mr. P S B, continued to put pressure on her with implied and direct  
29 threats. She was not allowed to see her parents; she was allowed out for one  
30 closely guarded and supervised short telephone call in which she told them that  
31 she was marrying but that was the only communication with them that she was  
32 allowed. She was confined to her room throughout, only allowed to go out to  
33 the lavatory, again closely guarded by a female member of the household. She  
34 was threatened that she would never see her parents again nor go back to  
35 England.  
36
- 37 8. Those aspects of her oral evidence repeated what she had said in her divorce  
38 petition and in her written evidence. She expanded upon that evidence in oral  
39 evidence today. She said on one occasion when she had been allowed out to  
40 go to the toilet the woman who was accompanying her had left and she saw the  
41 Respondent, whom she had only briefly met before, in the corridor. She asked  
42 him what was happening. He said, "I don't want to talk about it" then her  
43 father-in-law put her in the room and said "Look at me. Don't dare to do that,

1 I can do anything. I can kill you and say that it was a suicide. I can say that  
2 you committed suicide because your husband died”, and that threat was a  
3 threat which he made on subsequent occasions.  
4

5 9. She continued to be drugged until the day of the wedding; this was on 26<sup>th</sup>  
6 June 2006, two and a half weeks after her husband’s death and 11 days after  
7 the funeral. She was allowed out of her room to be met with wedding  
8 preparations. She went through with the wedding partly out of fear, partly as a  
9 result of pressure and partly because she was drugged. During the whole of  
10 this period of time her passport, her tickets and her money were kept from her  
11 and other threats were that she would never be allowed out, and that she would  
12 never be allowed home to England.  
13

14 10. She told me that it was not part of her culture to marry so soon after a death.  
15 There is a period of mourning during which the widow wears white, in fact her  
16 parents had been asked not to bring her her white sari for the funeral which  
17 they had attended, which was before her incarceration. A widow can be  
18 married when she feels that she is ready but a period of at least a year is  
19 considered appropriate. For a wedding to take place in such haste after her  
20 husband’s death (she told me) was quite unprecedented.  
21

22 11. After the wedding she was allowed to visit her parents briefly. She was not  
23 allowed to spend time alone with them but she did manage to spend some little  
24 time with her sister in which she told her that she had been forced to marry.  
25 She did not tell her parents at that time, she had no opportunity and in any  
26 event, they were both in poor health and she wanted to protect them.  
27 Her sister, however, rang Mr. P S B after her visit to her parents and  
28 complained to him that she, that is the Petitioner, had been forced to marry the  
29 Respondent. When she arrived home after the visit and this telephone call had  
30 been made Mr. P S B beat her. After that she was sent to Chandigarh with the  
31 Respondent who forced her to have sexual intercourse with him. She then,  
32 after about two weeks in India after the wedding, returned to England and to  
33 her job and to her parents-in-law’s house. Her mother was with her but she  
34 was concerned to protect her mother and did not tell her until later in the year  
35 that she had been forced to enter into this marriage.  
36

37 12. The Respondent did not join her until mid-September 2006. Her mother  
38 returned to India on 1<sup>st</sup> October 2006, by which time the Petitioner had told her  
39 mother what in fact had happened in India. Her mother wanted to protect her  
40 but the Petitioner thought that two women on their own were not going to be  
41 able to do anything about the situation and her mother, therefore, returned to  
42 India. Very shortly after her mother left the Petitioner ran away from the  
43 family home in London and she has not lived with the Respondent since. She

1 ran away to a secret address which remains secret and she tells me that she  
2 found things extremely difficult, she had no permanent accommodation, she  
3 has health problems, and her alopecia, from which she had suffered during her  
4 marriage to her first husband, returned to a very difficult and worrying degree.  
5 I have seen photographs of the effect that her hair loss had on her appearance.  
6 She told me that she suffered from depression and she found it difficult to  
7 cope. She tried to access legal advice through a voluntary organisation in  
8 London. She had problems obtaining legal aid and it was not until December  
9 2007 that she was in a fit state to instruct solicitors and have the financial  
10 wherewithal by the grant of a funding certificate to bring these proceedings for  
11 nullity against the Respondent.  
12

13 13. The Petitioner told me that she believes that she was forced into the marriage  
14 partly to keep her earning capacity within the family and indeed to keep her  
15 available to do the housework and look after the household, and also so that  
16 the Respondent, who is an Indian citizen with no right of abode in this country,  
17 could obtain a spousal visa. She says that he forced her to complete the  
18 application form by which he obtained entry in mid-September 2006. After  
19 her separation from the Respondent she and her family in India, have been  
20 subjected to threats and that is why she sought and is subject to injunctive  
21 protection.  
22

23 14. It was important, I ruled, in a case of this nature to hear oral evidence from the  
24 Petitioner of a more than cursory kind. It has not, of course, been subject to  
25 cross-examination, but her counsel, Mr. Gupta, has taken her carefully and in a  
26 non-leading fashion through the account that I have described. The story is a  
27 dramatic one and I thought it was important that I should satisfy myself that  
28 I was being told the truth. The evidence, both what the Petitioner has said and  
29 the manner in which she said it, has wholly convinced me that her account is  
30 true. She was a conscientious and careful witness who, on a number of  
31 occasions during the course of her evidence, corrected false impressions which  
32 she had given, due to her giving evidence mostly in English although with the  
33 assistance of an interpreter, so that when it became apparent to her that the  
34 question was being posed on a false basis she immediately stepped in to put  
35 that right. She was tearful, distressed, sad, upset but with no histrionics.  
36

37 15. I am quite satisfied that:

- 38
- 39 i) culturally and in reality her father-in-law was head of the family;
  - 40
  - 41 ii) he had power in the household and she was used to taking commands
  - 42 and instructions from him;
  - 43

1       iii)     she had been part of that family, that is her first husband's family which  
2             is also her second husband's family, for four years at the date of her  
3             marriage to the Respondent;

4  
5       iv)     her own family could not protect her, they are not wealthy and they are  
6             not powerful;

7  
8       v)     I am satisfied that she was threatened and that she took those threats  
9             seriously. She thought that she would not be let out and if she continued  
10            to refuse, harm might come to her. The fact her husband had such a  
11            serious criminal history from which the family had not protected her  
12            was also significant. The detail to which I have already referred, when  
13            she said that her father-in-law had threatened that he could kill her and  
14            make it look like a suicide, was impressive and convincing. I thought it  
15            was important to pay particular attention to the evidence in relation to  
16            drugs. This was an unusual allegation which I thought deserved scrutiny  
17            and indeed, Mr. Gupta took her through this part of her evidence with  
18            particular care. She gave clear detail demonstrating how when at first  
19            she was given tablets, they had been put into her hand and there would  
20            be an attempt to try to make her take them, but then the family had  
21            thought that she had not taken the drugs and therefore they resorted to  
22            injections. She demonstrated where she had been injected and when a  
23            question was put on a false basis she corrected that to make it clear what  
24            in fact she was describing. She described who was there and when her  
25            evidence had been misunderstood (that she had been injected through  
26            her clothes) corrected that to clarify that they had removed her clothes to  
27            inject her and was quick to correct a question from me (when I asked  
28            was she wearing a sari) to say that she was not, she was wearing a  
29            salwar kameez. The detail in which she described these events was  
30            wholly consistent and wholly compelling. She told me that she had  
31            fallen asleep after she had been given the injections.

32  
33       vi)     She described how she had sat on her bed in the room from which she  
34             was not allowed to leave "crying and with no-one to talk to, when I was  
35             conscious" she said.

36  
37     16. I am finally quite satisfied that the Petitioner is not in collusion in any way  
38         with the Respondent in this case. The spousal visa, to which the Respondent  
39         became entitled, has been under significant scrutiny as a result of these  
40         proceedings. I have seen a letter from the Home Office, dated 15<sup>th</sup> September  
41         2008, from which it is clear that the Respondent's permission to remain in this  
42         country so as to enable him to attend the court hearing of 20<sup>th</sup> October 2008

1 (before these proceedings were compromised) that his leave to remain had  
2 been extended until 15<sup>th</sup> December 2008 and no further.

3  
4 17. I am quite satisfied that had she not been subjected to the pressures which  
5 I have already described that the Petitioner would not have entered into this  
6 marriage.

7  
8 18. The test that I apply, contained in s.12(c) of the Matrimonial Causes Act 1973,  
9 is that either party to the marriage did not validly consent to it whether in  
10 consequence of duress, mistake, unsoundness of mind or otherwise. In a  
11 recent decision of Mr. Justice Munby NS v. MI [2006] A.E.L.R at p.48, the  
12 judge reviewed the authorities in relation to this area of the law, starting at  
13 para.27, quoting and citing Szechter (orse.Kasov) v. Szechter [1971] p.286,  
14 Singh v. Singh [1971] p.226 and Singh v. Kaur [1981] 11 Fam.Law 152. The  
15 historical test was that a marriage was voidable on the ground of duress only if  
16 it could be shown that there was threat of immediate danger to life, limb or  
17 liberty.

18  
19 19. The judge also cited Hirani v. Hirani [1982] 4 FLR 232 where the Court of  
20 Appeal held:

21  
22 “The crucial question in these cases, particularly where a  
23 marriage is involved, is whether the threats, pressure or  
24 whatever it is, is such as to destroy the reality of consent and  
25 overbears the will of the individual”.

26  
27 In P v. R (Forced Marriage Annulment Procedure) [2003] 1 FLR 661,  
28 Mr. Justice Coleridge expressed the test as being whether:

29  
30 “...the Petitioner’s consent is vitiated by the circumstances: in  
31 particular the force, both in the physical sense and in the sense  
32 that enormous emotional and other pressure was brought to bear  
33 upon her whilst she was in Pakistan”.

34  
35 In Scott (falsely called Sebright) v. Sebright [1886] 12 PD 31, the test as set  
36 out by Mr. Justice Butt was that the feelings of the Petitioner towards the  
37 Respondent were:

38  
39 “...such that of her free and unconstrained will she never would  
40 have married him; that she had been reduced by mental and  
41 bodily suffering to a state in which she was incapable of offering  
42 resistance to coercion and threats”.

1 In Hall v. Hall [1868] LR 1 PD 481

2  
3 “Pressure of whatever character, whether acting on the fears or  
4 the hopes, if so exerted as to overpower the volition without  
5 convincing the judgment, is a species of restraint under which no  
6 valid will can be made”.

7  
8 In Re SA (Vulnerable Adult Capacity Marriage) [2005] EW 8(c) 294 2 (Fam)  
9 [2006] 1 FLR 867:

10  
11 “Where the influence is that of a parent or other close and  
12 dominating relative, and where the arguments and persuasion are  
13 based upon personal affection or duty, religious beliefs,  
14 powerful social or cultural conventions, or asserted social,  
15 familial or domestic obligations, the influence may be subtle,  
16 insidious, pervasive and powerful”.

17  
18 20. I am quite satisfied, as I have said, that, if given a free choice, this Petitioner  
19 would never have married the Respondent. The Petitioner has therefore  
20 satisfied me that she is entitled to her decree of nullity and I shall so  
21 pronounce. The only final matter with which I need deal is the question of  
22 disclosure. These proceedings, as I say, have taken place in open court subject  
23 to the reporting restriction which I have imposed. However, the Petitioner  
24 would like to be in a position to disclose the contents of this judgment  
25 particularly to the Home Office who are dealing with the immigration aspects  
26 of the Respondent’s application and I so direct.

27  
28 21. The Respondent, who has withdrawn his opposition to this decree, has,  
29 through his solicitors, produced, together with Mr. Gupta’s solicitors, a minute  
30 of consent order. It is not appropriate for it to be recorded (as drafted) that the  
31 decree is pronounced by consent. In Para 1 of the draft the words “to a decree  
32 on an undefended basis” after “...that these proceedings do proceed”, should  
33 be omitted. Otherwise I approve the terms of the order.

34  
35 \_\_\_\_\_  
36