



2025:DHC:7356-DB



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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 19.08.2025*

*Judgment delivered on: 27.08.2025*

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MAT.APP.(F.C.) 49/2025 and CM APPL. 7144/2025

SMT REETA JHA

.....Appellant

Through: Mr. Sanjeev Kumar, Adv.

versus

SH MUKUND KUMAR JHA

.....Respondent

Through: Mr. Adarsh Varma and Ms.  
Swati Kumar, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**

**SHANKAR**

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**JUDGEMENT**

**HARISH VAIDYANATHAN SHANKAR J.**

1. The present appeal under Section 19(1)(4) of the Family Courts Act, 1984 read with Section 151 of the Code of Civil Procedure, 1908, is preferred against the **Judgment and Decree dated 05.11.2024<sup>1</sup>** by which the learned **Principal Judge, Family Courts, Tis Hazari Courts (West), Delhi<sup>2</sup>**, has declared the marriage as between the parties herein as null and void under Section 12(1)(c) of the **Hindu Marriage Act, 1955<sup>3</sup>**.

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<sup>1</sup> Impugned Judgement.

<sup>2</sup> District Judge.

<sup>3</sup> Act.



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2. The solitary challenge in this Appeal, as urged on behalf of the Appellant, is that the provisions of Section 12(1)(c) of the Act are not applicable to the present case. Learned counsel for the Appellant submits that there was no concealment of any material fact at the time of marriage. It is argued that the Appellant herself was unaware of her medical condition, *namely*, the absence of a uterus, and therefore, in the absence of such knowledge, the question of deliberate concealment does not arise.

3. We have heard the submissions advanced by the learned counsel for the Appellant as well as the Respondent, and have also perused with care the detailed judgment rendered by the learned District Judge. For the sake of convenience, we consider it appropriate to extract the relevant portions of the Impugned Judgment herein below:

**“A. Absence of uterus in the Respondent**

14. Admittedly, the marriage of the parties was an arranged marriage, solemnized on 21.04.2016 in Delhi. The case of the petitioner (PW1) as made out in his deposition is that the respondent and her family kept him and his family in the dark about the respondent not having a uterus because of which she could not conceive. The petitioner wanted to have children. The petitioner in his examination-in-chief (evidence affidavit PW1/A) has deposed how the respondent avoided the issue of having children and going to the doctor and that finally on 13.11.2017, the petitioner took her to Origyn Fertility & IVF Centre, B.M. Gupta Hospital, Uttam Nagar, Delhi where she underwent an ultrasound of her lower abdomen. It was on 16.11.2017, that after obtaining the report when they went to the doctor, during the discussion, for the first time it came to the knowledge of the petitioner that the respondent did not have a uterus and her left kidney and thus, she could never conceive. The petitioner in his cross-examination, has reiterated that it was on 16.11.2017, after he got the medical reports, for the first time he came to know that the respondent did not have a uterus and one kidney. He has further stated that this fact was concealed from him and his parents at the time of the marriage.



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15. The petitioner examined Dr. Rashmi Sharma as PW3 who testified that the prescription dated 13.11.2017 (Ex. PW 1/4) of the respondent was prepared by Dr. Ranu Dadu. She was not cross examined, The prescription (Ex. PW 1/4) was prepared on her letterhead. The petitioner examined Dr, Ranu Dadu as PW4, who testified that her clinic was in the name of Dadu Surgical and Gynae Clinic in Pitampura, New Delhi she was a practicing gynaecologist since 2004, She proved the prescription of the respondent dated 13.11.2017 (Ex.PW 1/4) prepared by her, In the prescription she had recommended the respondent for the ultrasound of lower abdomen to Dr. Rajeev. The petitioner has examined Dr. Rajeev Choudhary as PW2, Dr. Rajeev Choudhary (PW2) has testified to having conducted the ultrasound examination and prepared the ultrasound report of the respondent dated 16.11.2017 (Ex PW-1/5) at his clinic Doctor Rajeev Ultrasound Lab as per this report the respondent did not have a Uterus and left kidney. Dr. Rajeev Choudhary (PW2) in his cross examination has denied the suggestion that he had not conducted the ultrasound of the respondent or that the report was prepared falsely at the instance of the petitioner. Significantly, the respondent (RW1) herself in her admitted handwritten acknowledgement dated 02.12.2017 [Ex. PW-1/8 (Colly)] and in her cross examination has clearly admitted that she did not have a uterus and one kidney. Thus, in view of the above findings, it stands proved that the respondent did not have a uterus.

**B. Did the respondent intentionally conceal the fact about not having a uterus?**

16. The petitioner has deposed how on one pretext or the other on every occasion the respondent started avoiding discussion of her conceiving and she told the petitioner that they should adopt. He has deposed that when the respondent failed to conceive, he requested the respondent to accompany him to a doctor but she on one pretext or the other kept avoiding for four to five months. Finally, when the petitioner put his foot down and insisted that she accompany him to the doctor, she sought a week's time and convinced him to try for the last time and that if she did not conceive she would go with him for medical treatment. Finally on 13.11.2017, he took her to the doctor who recommended an ultrasound and from the ultrasound report on 16.11.2017 for the first time it came to the knowledge of the petitioner that the respondent did not have a uterus and her left kidney. He has deposed that on being asked, the respondent for the first time disclosed that her parents earlier also had got her treated from several doctors for the same problem however, in vain.

17. The respondent in her written statement has baldly denied the above allegations. However, a scrutiny of her testimony shows



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inconsistencies in her version as to when and how she discovered for the first time that she did not have a uterus and a kidney, which makes her testimony doubtful. The respondent in her written statement and her examination-in-chief, has claimed that she had no problem in conceiving and no medical checkup or medical treatment was ever got done by the petitioner when she was in the matrimonial home. She has also claimed that the petitioner did not want to have children because of his affair with his cousin Nikki Chaudhary. However, later in her cross examination she admitted having been examined vide prescription (Ex.PW 1/4) of Dr. Ranu Dadu (PW4). She also admitted undergoing the ultrasound examination and the ultrasound report (Ex PW 1/5) showing she did not have a uterus and left kidney. In her examination-in-chief she has claimed that she once, conceived and became pregnant however, due to the immense torture and tension of the petitioner she suffered a miscarriage during her stay at the matrimonial home and was not provided any medical treatment or checkup. This claim of hers is falsified in view of her admission (later in her cross examination) that she did not have a uterus and that she was medically examined, Interestingly, while in her examination-in-chief she claimed everything was normal and that she had conceived, when questioned & her cross examination she admitted that she never got pregnant ever and claimed it was God's wish.

18. The credibility of the respondent becomes all the more doubtful, considering the completely new version she has put up in the cross examination of the petitioner by way of suggestions, that the petitioner for getting her treated for stones got her (admitted in the hospital and got her uterus and kidney removed. She has further claimed that she had this apprehension because of the alleged stitch marks she found below her navel. The petitioner has denied this version put through suggestions to him. The respondent in her cross examination has claimed having an apprehension *qua* the alleged stitch marks below her navel which the acts of the petitioner. Here she was confronted with para C of her reply to the application under Section 340 Cr.P.C wherein she had stated that she had got to know about the stitches on 17.03.2020 On the one hand she claimed that she got to know about the stitches during her stay in the matrimonial home however, admittedly she did not stay in her matrimonial home after 2017. In her cross examination when questioned further, she was not sure about specific date or year when she got to know about the stitch marks below her navel. She has admitted in her cross examination that she did not visit any doctor pursuant to her allegedly gaining knowledge *qua* the stitch marks in her matrimonial home and even after coming back to her parental home after 06.12.2017. She admitted that she had neither mentioned anything about stitch marks below her navel in her written statement or in any of her complaints nor produced any documents *qua* the same. Although she has claimed that she had an



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apprehension about the petitioner being responsible for the stitch marks however, she has nowhere stated about filing any complaint with regard to the same. The respondent in her cross examination was confronted with her complaint filed under the Protection of Women from Domestic Violence Act, 2005 (Ex. R/X2) where in, there is not a whisper about any such incident having taken place. The petitioner when questioned stated in his cross examination that during intercourse with the respondent he had not seen any surgery marks and stitch marks on her lower abdomen or near her private parts. The new version put up by the respondent to explain the absence of her uterus and kidney makes her claim doubtful that she was not aware about the absence of her uterus or kidney.

19. The father of the respondent Brij Bhushan Jha (RW3) has significantly, put up yet again, another modified version. He has testified that the respondent was normal and had no bodily infirmity but the petitioner and his family got her treated for a 'disease' best known to them and later levelled the allegation that she does not have "an ovary" and kidney. In his cross examination he stated that he was not sure about any "disease" of the respondent as mentioned by him in his evidence also admitted, that he had not seen any surgery marks on the body of the respondent, He also admitted that his allegation with regard to the disease were not mentioned in the written statement of the respondent, Santosh Kumar (RW4) the friend of the father of the respondent testified with regard to the money and gifts given at the time of the marriage and about the efforts of reconciliation made by the family of the respondent in January 2018, however he has not stated anything on this aspect.

20. The respondent has although claimed that she apprehended that the alleged stitch marks were due to the acts of the petitioner however, she could not give the reason why she did not get herself medically checked despite having this apprehension, which is something any ordinary prudent person would do. The improvement made by the respondent in the case put to the petitioner by way of suggestions in his cross examination and in her own cross-examination and in her reply to the application under Section 340 Cr.P.C, that it was the petitioner who had got her operated upon and got her uterus removed (something which is not mentioned in her written statement or in her evidence affidavit) only goes to make the claim of the petitioner appear to be truthful that the respondent was aware about not having uterus before her marriage.

21. The petitioner has deposed that on 14.05.2017, the petitioner on the advise of his parents went to the Vaishno Devi shrine for seeking blessings and after coming back the respondent informed the petitioner and his mother that she had missed her periods and that 10 days had lapsed and she was pregnant, However, around 28.05.2017 to 30.05.2017, the respondent went to



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her parental home and after a lapse of about fifteen to twenty days when the petitioner asked the respondent about her well-being, she informed him that she had fallen from the stairs and had a miscarriage. The respondent in her written statement and examination-in-chief has claimed that she had once conceived and got pregnant however, due to immense torture and tension of the petitioner she suffered a miscarriage during her stay at the matrimonial home and was not provided any medical treatment or checkup. This claim of the respondent has to be seen the light of her clear admission in her cross examination that she did not have a uterus. Where the respondent did not have a uterus, menstruation was not a possibility. It is important to note that the respondent at one point in her cross examination has claimed to have menstruation till the time she was residing at her matrimonial home (i.e. till 06.12.2017) while again later she claimed that after 16.11.2017 she did not get menstruation pursuant to which she got herself medically examined. She still further, improved stating that she did not have menstruation and this fact was told to her by the petitioner. She again further contradicted itself in her cross examination by stating that she did not get herself medically checked also. She stated that she could not say whether after collecting the ultrasound report dated 16.11.2017 she went and reconsulted any doctor. The self-contradicting stance of the respondent makes her version doubtful.

22. Dr. Ranu Dadu the gynaecologist (PW4) proved her prescription, Ex. PW 1/4. It is important to note that as per the history given by the respondent to the said doctor as mentioned in the prescription, her last menstrual period was on 28.10.2017. The false history given by the respondent clearly proves that she was all through concealing the fact that she did not have a uterus and did not menstruate. The respondent was a 24 year old city bred woman at the time of her marriage. As a female she must have become aware of the absence of menstruation as a teenager and so it is difficult to believe that she was ignorant of the fact of not having a uterus. In the light of the above observations, it is held that the respondent despite being aware, all thorough intentionally concealed the fact that she did not have a uterus.

**C. Was the concealment of not having a uterus and this not being able to conceive a material fact concerning the respondent?**

23. The case of the petitioner will come under Section 12(1) (c) of the HMA only if the consent of the petitioner was obtained by fraud as to a material fact or circumstance concerning the respondent. This brings us to the question whether the concealment, of the fact of not having a uterus by the petitioner, amounted to concealment of a material fact or circumstance concerning the respondent, The criteria of a material fact or



circumstance concerning the respondent, has been laid down in a number of decisions as discussed below.

24. In **Vandana J Kasliwal V. Jitendra N. Kasliwal** MANU/MH/1196/2006, the Bombay high Court Observed:

*“25.....in our considered opinion, though marriage is sacrosanct, it requires consent of both spouses or their guardians, if spouses are not capable of giving consent, and it must be a free consent and in that sense, have to consider whether the consent was given voluntarily. Here aid of definition of fraud, even from the Indian Contract Act, 1872 need not be overlooked and we, therefore, respectfully differ from the view taken by the single Judge in the case of Raghunath Gopal (supra), that mere non-disclosure prior to the marriage or concealment of curable epilepsy disease of girl and false representation that she was healthy does not amount to fraud within the meaning of the word used in Section 12 (1) (c) of Hindu Marriage Act, 1955. If regard be had to Section 12(1)(c) of the Act of 1955, it is clear that if a fact, or circumstances so material as to affect decision of giving consent to marriage and if there is fraud regarding the same, may be by express words or even by concealment, then, marriage could be annulled However, we hasten to make it clear that it is not every fact or circumstance which would be covered by the provision, but it must be substantially something which goes to the root of the matter, which definitely would weigh with any prudent person to change his mind. It must not be easily detectable. The Court would be very circumspect, cautious and pragmatic in identifying such fact or circumstance. In this case, the first part of the written statement itself shows that when query regarding abnormal behaviour of the appellant was made during marriage ceremony, it was stated that it might be because of mental stress due to failure in the examination and for want of sleep.*

(Emphasis added)

25. In **Pradeep s/o Namdeorao Ambhore V. Pallavi Pradeep Ambhore** MANU/MH/0859/2017, the Hon'ble Bombay High Court while dealing with section 12 (1) (c) of the HMA after discussing various decisions held thus:

*“12.... What can be gathered from the aforesaid decisions is that a fact or circumstance which would materially interfere with a happy marital life would be a 'material fact' as also a fact which if disclosed would have resulted in the husband or the wife not agreeing or consenting to the marriage would also be a 'material fact' In our view, it cannot be said that only such facts and*



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*circumstances which would materially interfere with a happy marital life would only be material facts. A fact, though it may not seriously interfere with the marital life of the party but, would be of such a nature, which if disclosed, would result in-either of the party not consenting for the marriage, would also be a 'material fact' In the cases which we have referred to hereinabove, a decree of annulment of marriage is granted where the spouse suffered from epilepsy the uterus was not in a place, the wife had never got menses, the husband had disclosed inflated income or misrepresented about His job, the wife suffered from chrome periodontitis, etc. in all the aforesaid cases, it is held that the wrongful disclosure of a material fact or the concealment of a material fact like the ones which are referred in those cases, would result in the annulment of the marriage under Section 12(1)(c) of the Act.”*

26. The petitioner has testified how he loved children and that was the reason why he had opted for giving tuition as a profession. He has also testified with regard to his keenness to have his own children because of which he time and again requested the respondent that they should have their own children. He has also testified that when the respondent could not conceive despite repeated attempts in two months, he became depressed thinking he could not have children of his own. It is on the insistence of the petitioner that the respondent finally agreed to go to the doctor to get herself checked, when she could not conceive after few months of her marriage, On 16.11.2017, when the petitioner learned from the doctor that the respondent could not conceive, it is then that he was shocked and felt cheated and defrauded.

27. The parties admittedly had an arranged marriage through marriage bureau, Brij Bhushan Jha (RW3) the father of the respondent has testified about the manner in which the marriage was arranged between the parties, both being *brahmins* from Mithila region. The marriage being a traditional arranged marriage the parties were not known to each other before the marriage. The petitioner has clearly deposed in his testimony about how important it was for him to have children as already stated above and how shattered and disappointed he was when the respondent could not conceive, Significantly, the admitted written acknowledgment [Ex .PW1/8 (colly)] of the respondent dated 02.12.2017 wherein she has stated that she was giving permission to her husband to get married again because she could not give him an heir and joy of a child as she could not conceive since she did not have a uterus, affirms that the concealment of not having a uterus, was a material fact concerning the respondent, Thus, it is held that concealment of the fact of not having a uterus and thus



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not being able to conceive, is clearly a material fact concerning the respondent which would seriously interfere with the marital life of the parties and was definitely something of such nature which if disclosed would have resulted in the petitioner not consenting for the marriage.

**D. Did the petitioner after the discovery of the fraud live with his full consent with the respondent as her husband? Is the petition barred under section 12 (2) (a) (ii) of the HMA?**

28. Section 12 (2)(a) of the HMA reads: -

*(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage*

*(a) On the ground specified in clause (c) of sub-section (1) shall be entertained if*

*(i) the petition is presented more than one year after the fraud had been discovered to operate or, as the case may be, the fraud had been discovered; or*

*(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;*

29. The fraud i.e. the concealment of the fact that the respondent did not have a uterus and was thus not able to conceive was discovered on 16.11.2017. The respondent left the matrimonial home on 06.12.2017. The issue that arises is whether in the interregnum i.e. between 16.11.2017 to 06.12.2017 the petitioner with his full consent lived with the respondent as her husband, if so, then the petition on this ground cannot be entertained. The picture that emerges from the testimony of the parties is that after discovery of the fraud on 16.11.2017, the relations never normalized between them, As made out from the testimony of the petitioner after the discovery of the fraud, the relations between the parties became strained. The petitioner has deposed how on the fraud being discovered, he questioned the respondent who for the first time disclosed that her parents earlier also had got her treated "from several doctors for the same problem however, In vain. He has testified how when the doctor categorically, stated that the respondent could never conceive and have children and how he was shocked while the respondent remained silent. He has time and again reiterated that he felt that he had been cheated and defrauded by the respondent and her family members. This part of his testimony remains un rebutted.

30. The petitioner has deposed that around 20.11.2017 to 22.11.2017, to make the situation better when the father of the petitioner intervened and tried to calm the respondent, she got angry and started abusing him and attempted to hang herself from the fan and threatened to falsely implicate them. He has claimed



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that he was still in a state of shock as his dream of having his own children got shattered. However, the respondent instead of making the situation better kept hurling abuses at the petitioner and his family. He has also deposed about how things got worse when he found a recording in her mobile phone, in which she was requesting her mother to send goons to teach the petitioner and his family a lesson and that it also contained a recording in which she was planning and plotting to usurp the property of the father of the petitioner. The recordings took place because of a pre-planned application in the mobile. On opening the chats in the mobile phone, he was shocked to find that the respondent had on several occasions texted "I love you babu" to a person not known to the petitioner. He also came across an audio recording in which the respondent in a luring tone had recorded "I love you babu" which was addressed and delivered to the above said person whose name was not saved in contact list he has further testified that when he confronted the respondent with the same, she started quarrelling and asked him why he had touched her mobile phone without asking her and that he had guts asking her who this person was also that it was enough for him to know that this person was her friend and she loved him very much. The petitioner was shocked. The testimony of the petitioner on the above aspects has remained more or less unrebutted.

31. The petitioner has testified as to how the respondent on realizing that she could no longer control the petitioner and his family on 01.12.2017, expressed her desire to stay at her parental home and as the parents of the petitioner were not keeping well when he requested her to stay back as there was no one to take care of them in his absence, she became infuriated and went to the *puja* room and lighted a camphor tablet on her hand threatening him to set herself ablaze and how finally on 06.12.2017 the respondent without informing anyone went to her parental home, He has further testified that being acquainted with the nature of the respondent and considering that she had threatened to implicate them in false cases, he had at the first / instance intimated about the entire chain of events to the police Vide Complaint dated 19.12.2017, The father of the respondent Brij Bhushan Jha (RW3) has testified that in the beginning of December 2017, the petitioner met him and asked him to take away the respondent from the matrimonial home and how later the petitioner did not respond to his calls. As per the version of the respondent also things were never fine between them even after the fact of not having a uterus was discovered and it was the petitioner-who made sure she left the matrimonial home on 06.12.2017. The respondent in her cross examination has state that after 06.12.2017 she called the petitioner several times on his phone however, he kept avoiding her. All this shows that things never normalized after the discovery of the fraud.



Also the fact that they were recording each other's conversations, shows that the relationship never resumed normalcy.

32. What is of most significance is the deposition of the petitioner that the elders and respected members of the society intervened from 29.11.2017 till 02.12.2017 after which the respondent acknowledged in writing vide her two handwritten notes dated 29.11.2017 and 02.12.2017 [Ex. PW1/8 (colly)] that she was separating from the petitioner and she did not want anything from him and also acknowledged that she did not have a uterus and one kidney and thus would never be able to conceive and thereby granted permission to the petitioner to get married again. The first handwritten acknowledgment dated 29.11.2017 of the respondent states that she was separating from her husband in her full senses and that she did not want anything from her husband. The second handwritten acknowledgment of the respondent dated 02.12.2017 as already, mentioned, states that she was giving permission to her husband to remarry because she could not give him an heir as she did not have uterus and one kidney and she could not give her husband the joy of a child.

33. The respondent in her cross examination has admitted executing the said handwritten acknowledgments Ex. PW1/8 (colly), However, she has claimed that she executed them under threat-of the petitioner that he would murder her, The petitioner has deposed that the said documents were executed in the presence of parents of both the parties and elders. The claim of the respondent that she wrote the two notes under threat of being murdered becomes difficult to believe considering that no complaint *qua* the alleged threat was ever made by her or her family, Also the said claim appears to be a clear afterthought. The second handwritten note of the respondent is dated 02.12.2017 and the respondent left the matrimonial home on 06.12.2017. It is no where the case of either of the parties that after 16.11.2017 (the date of discovery of the fraud) they resumed normal relations or cohabited.

34. In ***Bikkar Singh V. Mohinder Kaur*** MANU/PH 0146/1981, while discussing the law laid down by Section 12(1)(c) of the HMA, the Hon'ble High Court of Punjab and Haryana observed that:

*“8.....The statute declares that it is no marriage in the eye of law where one of the parties was induced to enter into a matrimonial alliance under coercion, duress or fraud evidencing lack of free consent. Therefore, marriage procured by force or fraud has no sanctity and is voidable at the election of the injured party. This being the substantive provision, the legislature, however, bars a decree of annulment of marriage as an exception if the specific conditions spelt out in sub-section (2) of Section 12 are satisfied. An analysis of this provision relevant to clause (c) of sub-section (1) would indicate that even after*



*the discovery of fraud two other significant conditions have to be satisfied; firstly, the most significant one is tie Upturn of the two spouses living together as husband and wife; secondly, that such living together must be with the full and free consent of the condoning spouse The language used here is meaningful. It first pin-points that one spouse must live with the other, but that by itself may not be sufficient For instance, if both of them are merely living in the same premises but not as husband and wife, the same may not be conclusive, The Statute father requires that such a living must be a matrimonial living together as husband and wife even after a conscious discovery of the fraud and with a full and free consent. The import of the language used, therefore, is only a pointer to the fact that there has to be a conscious and deliberate condonation and a full ratification of the matrimonial status which alone would amount to a bar against challenging a marriage which otherwise is vitiated by force or fraud In other words, both the physical and the mental requirements must concur to ratify a marriage which intrinsically is not valid, but is to be given ex post &facto sanction by subsequent conduct living together as husband and wife with free consent. I do not think that these stringent conditions of the statute would stand satisfied by a solitary act of sexual intercourse and the present case is a patent example of the inequity which would result from a contrary construction.*

9. A close analysis of the judgment under appeal would show that the larger principle and the concept of condonation of matrimonial offence was not adequately canvassed before the learned Single Judge, In particular pointed attention was apparently not drawn to the provisions of sub-section 2(a) (i) and (ii) which were the most relevant and material ones and called for specific interpretation with greatest respect to the learned Single Judge, we are inclined to hold that keeping the specific language of the statute in mind as also the larger principle of condonation, it would be an overly strict and if we may so, a hyper technical construction to lay down that a marriage otherwise patently voidable and fit for; annulment would become sanctified beyond challenge and be rendered irrevocable by a solitary act of sexual intercourse without more.

(Emphasis added)

35. Considering the entire chain of events since the fraud was discovered on 16.11.2017 and especially the handwritten acknowledgments dated 29.11.2017 and 02.12.2017 [Ex. PW1/8



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(colly)] executed by the respondent, just because the parties lived' under the same roof till 06.12.2017, it cannot be said that after discovering the fraud, the petitioner has with his full consent lived with the respondent as her husband. The said handwritten acknowledgments would not have been executed by the respondent, if the petitioner would have lived with the respondent as a husband, after the fraud was discovered. Living as a husband would presume resumption of normalcy and cohabitation i.e. the intention to rebuild the broken. This would be possible if there was a bilateral intention on the part of both spouses which in this case was consciously missing. **Thus it can be safely held that after the discovery of fraud on 16.11.2017, the petitioner with his full consent did not live with the respondent as her husband.** Thus, the bar of Section 12 (2) (a)(ii) of the HMA would not apply in this case.

36. To sum up, this Court finds that the petitioner has succeeded in discharging the onus upon him and has been able to prove on record that his consent was obtained by fraud as to a material fact concerning the respondent in terms of Section 12(1) (c) of the HMA. The marriage between the petitioner and the respondent is liable to be declared voidable as per Section 12 (1) (c) of the Hindu Marriage Act. In view of my finding on this issue there is no need for a finding on the alternate issue. Issue no.1 is accordingly decided in favour of the petitioner and against the respondent and hence the petitioner is entitled to a decree of annulment of the marriage under Section 12(1) (c) of the HMA.

***ISSUE NO2: Relief:***

37. In view of my findings on issue No.1, **the marriage between the petitioner Mukund Kumar Jha and the respondent Rita Jha is declared null and void under Section 12 (1) (c) of the Hindu Marriage Act, 1955.** Parties are left to bear their own cost. Decree sheet be drawn up accordingly. File be consigned to the Record Room.”

4. Upon due consideration, this Court is of the view that the present case squarely attracts the provision of Section 12(1)(c) of the Act, which stipulates as under:

**“12. Voidable marriages. - (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely: -**

(a) that the marriage has not been consummated owing to the impotence of the respondent; or



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(b) that the marriage is in contravention of the condition specified in Clause (ii) of Section 5; or

**(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under Section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or to any material fact or circumstances concerning the respondent);** or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.”

*(emphasis supplied)*

5. Section 12(1)(c) of the Act contemplates annulment of a marriage on the ground of fraud “...as to any material fact or circumstance concerning the respondent”. The issue that arises for determination is whether the absence of uterus is a “material fact or circumstance” sufficient to render the marriage as between the parties voidable and whether there was any concealment of the same by the Party of such a “material fact or circumstance” leading to a conclusion that it amounted to obtaining consent by playing a fraud on the party. Both would need to be established.

6. It is well settled that the expression “fraud” occurring in this provision is to be understood in the matrimonial context, distinct from its meaning under the **India Contract Act, 1872**<sup>4</sup>.

7. In the process of matrimonial negotiations, minor exaggerations or omissions are often made and by themselves do not constitute fraud. The Court is required to assess whether the concealment pertains to a fact so essential that it strikes at the very foundation of the marital relationship and materially impairs the fulfilment of its obligations. Concealment or misrepresentation of trivial particulars would not suffice; however, non-disclosure of a circumstance that

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<sup>4</sup> Contract Act



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fundamentally affects the prospects of a normal and happy married life would amount to fraud within the meaning of Section 12(1)(c).

8. The principles governing the scope and meaning of ‘fraud’ in the matrimonial context, as distinct from its interpretation under the Contract Act, stand crystallized in a catena of decisions. In this context, this Court’s judgment in *Asseem Aggarwal v. Ashi Kumar*<sup>5</sup>, is particularly instructive, and reads as follows: –

“25. Clause (c) of Section 12(1) of the Act of 1955 provides that the marriage may be annulled by a decree of nullity if, (i) the consent of the petitioner is obtained by “force” or by “fraud”; (ii) such “force” or “fraud” must be as to the “nature of the ceremony” or as to “any material fact or circumstance” concerning the respondent.

26. The term ‘Fraud’ in the context of Section 12(1)(c) was interpreted by the Bombay High Court in the case of *Raghunath Gopal Daftardar v. Vijaya Raghunatha Gopal Daftarda*, 1971 SCC OnLine Bom 52. It culled out a distinction between the term ‘fraud’ as appearing in Section 17 of the Indian Contract Act, 1872 and in Section 12 of Hindu Marriage Act, 1955 by observing that marriage under Hindu Law is treated as a Samskara or a sacrament and not a mere civil contract. The term “fraud” as used in the Hindu Marriage Act, 1955 is not a “fraud” in any general way and that every misrepresentation or concealment would not be fraudulent. If the consent given by parties is a real consent to the solemnization of marriage, then the same cannot be circumvented by alleging fraud.

27. Similarly, in the case of *Harbhajan Singh v. Shrimati Brij Balab*, 1963 SCC OnLine Punj 139, it was observed that ‘fraud’ as a ground for annulment of marriage under the Hindu law is limited to those cases where the consent for marriage was obtained by some deception. It could not have been the intention of the legislature to include every misrepresentation that can be alleged, as a ground for dissolving a marriage.

28. Thus, under the Hindu Law, not every misrepresentation or concealment of a fact shall amount to “fraud” as envisaged under Section 12(1)(c) for annulment of a marriage. The fraud must be material as to the nature of ceremony or to any material fact or circumstance concerning the respondent and thus, at this point it is pertinent to consider what would tantamount to a material fact.”

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<sup>5</sup> 2023 SCC OnLine Del 5007.



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9. In *Jasbeer v. Nishta Dawar*<sup>6</sup>, this Court, while relying upon the decision of the Madras High Court in *Sujatha v. Hariharan*<sup>7</sup>, made certain significant observations in reference to “Fraud” under Section 12(1)(c) of the Act. The pertinent extracts from *Jasbeer (supra)* are reproduced herein below:

“17. In *Sujatha v. Hariharan*, (1995) 2 Mad LJ 327 DB, of Madras High Court observed that to constitute a “fraud” under Section 12(1)(c) of the HMA there must be an abuse of confidential position, some intentional imposition or some deliberate concealment of material facts which are the fundamental basis of the marriage contract.”

18. The meaning of material fact or circumstances concerning the respondent was examined in the case of *Pradeep s/o Namdeo-rao Ambhore vs. Pallavi Pradeep Ambhore 2017 (6) Mh.L.J.*, where the moot question was whether the concealment of the wife suffering from sickle cell anemia, amounted to material fact or circumstance. It was observed that while it is difficult to define with certainty what amounts to a material fact, it is safe to say that a fact or circumstance which is of such a nature that was likely to interfere with the marital life of the parties, then it is material fact or circumstance. Such a material fact or circumstance must be in respect of a person or the character of the person and it is immaterial whether it is curable or not. Further, a fact crucial to the extent that if disclosed would result in either of the parties not consenting to the marriage, would also be termed as a material fact.”

*(emphasis supplied)*

10. A perusal of the relevant portion of the Impugned Judgment would clearly reveal that the learned District Judge has examined painstaking the evidence led by the parties as well as the various contentions that was canvassed, and thereafter, come to a categorical conclusion that the Appellant was in fact guilty of having concealed, from the Respondent, the fact of her not having a uterus. The learned District Judge also notes that the absence of her uterus would indeed constitute a “*material fact or circumstance*” concerning the

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<sup>6</sup> 2023 SCC OnLine Del 5905

<sup>7</sup> 1995 (II) M.L.J. 327 (DB).



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Respondent and the concealing of which would render the same voidable under Section 12 (1)(c) of the Act.

11. In *Pradeep v. Pallavi Pradeep Ambhore*<sup>8</sup>, the Bombay High Court, while relying upon the decision in *P. v. K.*<sup>9</sup>, made certain significant observations in reference to “Fraud” as contemplated under Section 12(1)(c) of the Act, particularly in the context where concealment of a serious medical condition such as prolapse or absence of uterus was held to constitute suppression of a material fact and that goes to the root of the marital relationship. The pertinent extracts from *Pradeep (supra)* are reproduced herein below:

“12. What can be gathered from the aforesaid decisions is that a fact or circumstance which would materially interfere with a happy marital life would be a ‘material fact’ as also a fact which if disclosed would have resulted in the husband or the wife not agreeing or consenting to the marriage would also be a ‘material fact’. In our view, it cannot be said that only such facts and circumstances which would materially interfere with a happy marital life would only be material facts. A fact, though it may not seriously interfere with the marital life of the party but, would be of such a nature, which if disclosed, would result in either of the party not consenting for the marriage, would also be a ‘material fact’. **In the cases which we have referred to hereinabove, a decree of annulment of marriage is granted where the spouse suffered from epilepsy, the uterus was not in place, the wife had never got the menses, the husband had disclosed inflated income or misrepresented about his job, the wife suffered from chronic periodontitis, etc. In all the aforesaid cases, it is held that the wrongful disclosure of a material fact or the concealment of a material fact like the ones which are referred in those cases, would result in the annulment of the marriage under Section 12(1)(c) of the Act.**”

*(emphasis supplied)*

12. While examining the record, we note that, the Appellant’s testimony is riddled with material contradictions regarding her

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<sup>8</sup> MANU/MH/0859/2017.

<sup>9</sup> AIR 1982 BOM 400



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medical condition, particularly the absence of a uterus, and her knowledge thereof. On the one hand, she sought to portray herself as capable of conceiving, even alleging pregnancy and miscarriage, whereas, in her cross-examination, she categorically admitted that she never had a uterus. This fundamental inconsistency, coupled with her belated and unsubstantiated versions about alleged surgical removal and stitch marks, destroys her credibility.

13. The Appellant's repeated denials, followed by subsequent admissions, coupled with the mutually destructive stands taken in her written statement, examination-in-chief, and cross-examination, lead us to conclude that the Appellant was playing a cat and mouse game and tried to concoct different versions of an unexisting state of affairs. This, in our view, establishes that she was fully aware of her medical condition but chose to suppress it.

14. Such deliberate concealment of a condition that strikes at the very root of matrimonial life constitutes the core ground for our affirmation of the findings of the learned District Judge, who rightly held the Appellant guilty of practicing fraud upon the Respondent. The learned District Judge rightly concluded that the Appellant had changed her version on several factual aspects, leading to the inescapable conclusion that her conduct lacked *bonafides*.

15. The material contradictions in the pleadings and assertions of the Appellant are duly noted by the learned District Court in paragraphs 17 and 32, as extracted hereinabove, of the Impugned Judgment. This Court finds no reason to depart from the well-considered findings of the learned District Judge. The omission in the present case cannot be characterized as trivial or inadvertent; rather, it



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was a deliberate concealment of a fact, that goes to the very root of the institution of marriage.

16. Procreation forms a genuine expectation of a spouse, being an integral aspect of marital life alongside companionship and emotional support. The inability to conceive, arising from the absence of a uterus, strikes at the heart of marital obligations and expectations and cannot, therefore, be treated as immaterial. It is well-recognized that marriage encompasses procreation and companionship, as observed by the Hon'ble Supreme Court in *Pinakin Mahipatray Rawal vs State of Gujarat*<sup>10</sup>. The relevant excerpt of the said judgment reads as follows:

“18. Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on.”

17. The learned District Judge also examined whether, after the discovery of fraud, the Respondent had, with his consent, continued to live with the Appellant as husband and wife. We concur with the findings of the learned District Judge that the mere fact that the parties resided under the same roof after the discovery of fraud cannot, in law, be treated as a resumption of marital cohabitation. Cohabitation necessarily implies a conscious and mutual intention of both spouses to restore normalcy in their marital relationship, which was evidently absent in the present case. Consequently, the bar under Section 12(2)(a)(ii) of the Act is not attracted.

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<sup>10</sup> (2013) 10 SCC 48



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18. On this point, the Bombay High Court in *Pooja v. Shrikant Rameshwarrao Kale*<sup>11</sup>, made relevant observations and upon which we place concurrence. Relevant portion of the said judgment reads as under:

“29. Section 12(1)(c) of the Act of 1955 provides ground for decree for annulment of the marriage in cases, where consent has been obtained by force or by suppressing material fact. However, Section 12(2)(ii) of the Act of 1955 is a rider on Section 12(1)(c) of the Act of 1955. If after the force is removed or fraud is discovered, the petitioner continues to live with the other party with his full consent as husband and wife, the petition for annulment of the marriage cannot be entertained.

30. The husband has come up with a case that he came to know about the disease in first week of the August 2017 and also pleaded that in June 2017 he had been to Hyderabad with the wife. Therefore, from the sequence of the paragraphs in the petition, it cannot be said that they went to Hyderabad after the husband got knowledge of the disease. Rather, the cross examination of the wife also shows that they had been to Hyderabad before August 2017. It is matter of record that the husband came to know about the disease in first week of August 2017, whereas the wife resided at the house of the husband till 16/08/2017.

31. The expression used in Section 12(2)(ii) of the Act of 1955 that the petitioner has with his full consent, lived with the other party to marriage as husband emphasizes living as husband with full consent for whatever period it may be, provided the alleged fraud is condoned. If the husband or the wife, as the case may be, overlooks the alleged fraud and condones it, with the result of reconciliation, whatever may be the period, the petitioner can be said to have lived with full consent with the other party to the marriage as husband or wife, as the case may be. In other words, the condition laid down in Section 12(2)(a)(ii) of the Act of 1955 does not depend upon the lapse of any time after the discovery of the alleged fraud. In fact, if the fraud is condoned and there is a reconciliation, such a reconciliation may be called with full consent.

32. The case in hand does not show any reconciliation, rather, the husband has come up with case of the non-consummation of marriage. Mere staying at the husband's house for more than a week after the husband got knowledge of the disease, does not amount to condonation of the non- disclosure of material fact. Therefore, bar under Section 12(2)(ii) of the Act of 1955 will not be applicable to the case in hand.”

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<sup>11</sup> 2024:BHC-NAG:1601-DB



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*(emphasis supplied)*

19. We also stand fortified in our conclusion in the fact that the pleadings of the Appellant before the learned District Judge are wholly vague, and contain no categorical assertion of her alleged ignorance regarding the absence of a uterus. We concur with the view of the learned District Judge, as recorded in paragraph 22 of the Impugned Judgment, that it is difficult to accept that a 24-year-old woman residing in a metropolitan city like Delhi could have remained unaware of the complete absence of menstruation.

20. It is a matter of settled medical knowledge that menstruation is nothing but the shedding of the uterine lining, “endometrium” and without a place for the endometrium to develop and thereafter shed, the biological phenomenon of menstruation cannot occur. It is also a well known fact that in several parts of India, Menarche is an occasion to celebrate. It is difficult for this Court to comprehend the contention of the Respondent, that till the age of 24, when she got married, she believed that she had a uterus. This Court finds it hard to believe that till the age of 24 she never sought to question the absence of menstruation when in all likelihood, most women, from nearabout the time when they are teenagers would experience Menarche. The report of the Doctor states that she lacked a uterus and thereby she would not have experienced the natural phenomenon of menstruation.

21. We also take note of the discussion and findings of the learned District Judge regarding the manner in which the Appellant sought to canvass a whole new version that she discovered certain stitches near her navel and assumed that the Respondent might have caused the removal of her uterus. This contention which is taken in the Appeal



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was neither raised in the Written Statement nor in the Affidavit of evidence filed by the Respondent herein. This claim surfaced during the cross examination of the Respondent, by way of a suggestion. We do not find it necessary to enter into further details of the evidence, which has already been meticulously examined and addressed by the learned District Judge in the Impugned Judgment. The fact that the Appellant chose to continuously spin a new version at various points of time leads us to conclude that there is, in fact, no merit in the Appeal.

22. Resultantly, we are of the considered opinion that the learned District Judge, upon a scrupulous and comprehensive appreciation of the material on record, has rightly and judiciously held that the marriage, in the facts and circumstances of the present case, deserves to be declared a nullity under Section 12(1)(c) of the Act. Consequently, the present appeal stands dismissed.

23. The present appeal, along with pending application(s), if any, is accordingly disposed of in the above terms.

24. No order as to costs.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**AUGUST 27, 2025/v/sm/kr**