

NS v MI
[2006] EWHC 1646 (Fam)

Family Division

Munby J

5 July 2006

*Marriage – Forced marriage – Duress – Reality of consent destroyed –
Procedure – Remedies*

The petitioner, having been born and brought up in England, was taken to Pakistan by her parents when she was 16 years old, supposedly for a 2-month holiday. In fact she was unable to make use of her return ticket and was stranded in a remote region of Pakistan for over a year, because her mother held her passport. Eventually it emerged that arrangements had already been made for the petitioner to marry a cousin from Pakistan, and she was placed under great family pressure to go ahead with the marriage. Ultimately she was told that the only way she would be able to return to England was to marry the cousin. After going through the ceremony of marriage she lived with the cousin, in his parents' home, for about a week, but the marriage was not consummated and she then returned to live with her own parents. Some months later she flew back to England, accompanied by her mother; she had no contact with the cousin following her return. The petitioner brought a suit for nullity, claiming that she had not validly consented to the marriage. The judge made an ex parte order giving the petitioner leave to serve the petition on the cousin in Pakistan and also granted an injunction forbidding the cousin from disclosing the papers to family members or anyone other than his own lawyers. For the protection of the petitioner, the judge directed her both to lodge her passport with her solicitors, and to attend the next hearing personally. The judge also gave her permission to disclose the papers to her local police 'in the event that she wishes to seek their protection and assistance'. Following personal service of the petition on the cousin in Pakistan the cousin initially stated his intention to defend the case, but later announced that he would not be making a complaint or a case; no answer had been filed and he did not appear at the hearing. There was no evidence from either of the petitioner's parents, who no longer opposed the suit for nullity.

Held – granting a decree of nullity on the basis that the purported marriage was voidable for duress –

(1) The threats and pressure to which the petitioner had been subjected over a period of many months were such as to destroy the reality of her consent and to overbear her will. She had met the test set out in *Hirani v Hirani* (see paras [27], [41]).

(2) While forced marriages were utterly unacceptable, arranged marriages were not merely to be supported, but were to be respected. The court must be alert to the possibility of forced marriage and robust in its response to it, but must always be equally careful not merely to distinguish between arranged marriage and forced marriage, but also to guard against the risk of stereotyping (see paras [2], [3], [37]).

(3) The court must not hesitate to use every weapon in its protective arsenal if faced with what was, or appeared to be, a case of forced marriage. If the victim of forced marriage were a child, the court would have recourse to the full breadth of the wardship jurisdiction; if the victim were a vulnerable adult, the court would have recourse to the closely comparable adult inherent jurisdiction (see paras [4], [5]).

(4) When the court was able to intervene in time, it would make orders restraining the celebration of the marriage and, where appropriate, preventing the victim from being taken abroad for the purpose of being married. When the victim had already been taken abroad, the court would make orders designed to ensure the victim's repatriation. After repatriation, further protective orders might be needed to prevent

further attempts at forced marriage or to protect the victim from the risk of victimisation or retaliation. Practical guidance on protective orders was contained in Hutchinson, Hayward and Gupta 'Forced Marriage Nullity Procedure in England and Wales' [2006] IFL 20, in particular a draft form of interim order (see paras [6], [12]).

(5) If the court could not intervene in time the court must attempt, wherever possible to remedy the consequences of such a gross transgression of an individual's integrity, the primary remedy being a suit for nullity, not a suit for divorce (see para [9]).

(6) It was important that public funding be made available so that such cases could be brought before the court. It was appropriate that such cases be heard in the High Court, but that did not mean that they needed to be commenced in or transferred to the Principal Registry; they could, and where this would be more convenient should, be commenced in a District Registry of the High Court and tried on circuit (see paras [11], [12]).

(7) Forced marriage almost invariably involved the commission of very serious criminal offences by those participating in the arrangements, including serious sexual offences if the marriage were consummated by force. Forced marriage would also expose the perpetrators to civil remedies for such torts as trespass to the person and false imprisonment (see paras [13], [14]).

Per curiam: a petitioner alleging forced marriage must establish her case of duress by oral evidence in open court. In the instant case this had not generated any difficulties, but there might be cases in which a petitioner would be reluctant to give evidence with members of her family present. In an appropriate case the court would do whatever it could to afford the petitioner proper protection, while, at the same time, safeguarding both the interests of the respondent and the wider public interest in the proper administration of justice. If special arrangements were to be sought, the court must be alerted to the issue in good time and before the day of the hearing (see para [38]).

Statutory provisions considered

Matrimonial Causes Act 1973, s 12(c)

Protection from Harassment Act 1997

Family Proceedings Rules 1991 (SI 1991/1247), r 2.28(1)

Cases referred to in judgment

Allcard v Skinner (1887) 36 ChD 145, [1888–90] All ER Rep 90, CA

H (Minors) (Sexual Abuse: Standard of Proof), Re [1996] AC 563, [1996] 2 WLR 8, [1996] 1 FLR 80, [1996] 1 All ER 1, HL

Hall v Hall (1868) LR 1 P&D 481, P&D

Hirani v Hirani (1983) 4 FLR 232, CA

K; A Local Authority v N and Others, Re [2005] EWHC 2956 (Fam), [2007] 1 FLR 399, FD

KR (Abduction: Forcible Removal by Parents), Re [1999] 2 FLR 542, [1999] 4 All ER 954, FD

M v B, A and S (by the Official Solicitor) [2005] EWHC 1681 (Fam), [2006] 1 FLR 117, FD

P v R (Forced Marriage: Annulment: Procedure) [2003] 1 FLR 661, FD

R v R (unreported) April 2005, FD

SA (Vulnerable Adult with Capacity: Marriage), Re [2005] EWHC 2942 (Fam), [2006] 1 FLR 867, FD

SK (An Adult) (Forced Marriage: Appropriate Relief), Re [2004] EWHC 3202 (Fam), [2006] 1 WLR 81, [2005] 3 All ER 421 sub nom *Re SK (Proposed Plaintiff) (An Adult by way of her Litigation Friend)* [2005] 2 FLR 230, FD

Scott (Falsely Called Sebright) v Sebright (1886) 12 PD 31, [1886–90] All ER Rep 363, PDAD

Sheffield City Council v E [2004] EWHC 2808 (Fam), [2005] Fam 326, [2005] 2 WLR 953, [2005] All ER (D) 192 (Jan), sub nom *Re E (an Alleged Patient)*; *Sheffield City Council v E and S* [2005] 1 FLR 965, FD

Singh v Kaur [1981] 11 Fam Law 152, CA

Singh v Singh [1971] P 226, [1971] 2 WLR 963, [1971] 2 All ER 828, CA

Szechter (orse Karsov) v Szechter [1971] P 286, [1971] 2 WLR 170, [1970] 3 All ER 905, PDAD

T (Adult: Refusal of Treatment), Re [1993] Fam 95, [1992] 3 WLR 782, [1992] 2 FLR 458, [1992] 4 All ER 649, CA

X City Council v MB [2006] EWHC 168 (Fam), [2006] 2 FLR 968, FD

Teertha Gupta for the petitioner

The respondent did not appear and was not represented

Cur adv vult

MUNBY J:

[1] This is a suit for nullity in a case where it is said that a purported marriage is voidable on the ground of duress. The petitioner asserts that she was forced into the marriage. I find that she was and that she is entitled to the decree of nullity she seeks.

Introduction

[2] Arranged marriages are perfectly lawful. As I emphasised in *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam), [2006] 1 FLR 867, at para [26], such marriages are not, of course, in any way to be condemned. On the contrary, as Singer J said in *Re SK (an Adult) (Forced Marriage: Appropriate Relief)* [2004] EWHC 3202 (Fam), [2006] 1 WLR 81, sub nom *Re SK (Proposed Plaintiff) (an Adult by way of her Litigation Friend)* [2005] 2 FLR 230, at para [7], arranged marriages are to be supported as a conventional concept in many societies. And for that very reason they are, I emphasise, not merely to be supported but to be respected.

[3] Forced marriages, in contrast, are utterly unacceptable. I repeat what I said in *Re K, A Local Authority v N* [2005] EWHC 2956, (Fam) [2007] 1 FLR 399, at para [85]:

‘Forced marriage is a gross abuse of human rights. It is a form of domestic violence that dehumanises people by denying them their right to choose how to live their lives. It is an appalling practice. As I said in *Singh v Entry Clearance Officer, New Delhi* [2004] EWCA Civ 1075, [2005] 1 FLR 308, at para [68]:

“forced marriages, whatever the social or cultural imperatives that may be said to justify what remains a distressingly widespread practice, are rightly considered to be as much beyond the pale as such barbarous practices as female genital mutilation and so-called ‘honour killings’.”

No social or cultural imperative can extenuate and no pretended recourse to religious belief can possibly justify forced marriage.’

[4] Forced marriage is intolerable. It is an abomination. And, as I also said in *Re K*, at paras [87]–[88], the court must bend all its powers to preventing it

