

**IN THE FAMILY DIVISION OF THE HIGH COURT
APPELLATE JURISDICTION**

CASE NUMBER:	11/SUV/0330
BETWEEN:	Sonam
AND:	Pritesh
Appearances:	Mr. Mukesh Nand for the Applicant. No appearance of Respondent.
Date/Place of judgment:	Friday, 02nd September, 2011 at Suva
Judgment of:	The Hon. Justice Anjala Wati.
Coram:	The Hon. Justice Anjala Wati.
Category:	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymised Case Citation:	Sonam v. Pritesh - Fiji Family High Court Case Number: II/SUV/0330.

JUDGMENT OF THE COURT

Catchwords

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by wife on the ground that she did not provide her real consent to the marriage because her consent was obtained under duress by her parents - duress established - application allowed with no order for costs.

Legislation

Family Law Act No. 18 of 2003.

Cases/Texts Referred To

Scott (falsely called Sebright) v. Sebright (1886) 12 P. D. 2.

Cooper (falsely called Crane) v. Crane [1891] P. 369.

Szechter (orse. Karsov) v. Szechter [1971] P. 286.

Re Meyer [1971] P. 29S.

Hirani v. Hirani (1982) 4 Fam. L. R. (Eng.). 232.

In the Marriage of S (1980) 42 F.L.R. 94.

In the Marriage of Teves and Campomayor (1994) 122 F. L. R. 172.

Dickey, A, "Family Law" 4th Edition (2002) Lawbook Co. Sydney.

**IN THE FAMILY DIVISION OF THE HIGH COURT
AT SUVA**

ORIGINAL JURISDICTION

The Application

1. This is an application by the wife to have her marriage solemnised at Tavua town in 2010 nullified on the ground that she did not provide her real consent to the marriage as the same was obtained under duress.

The Response

2. The husband was served with the application but he did not file any response nor did he appear in court to defend the matter.

The Law

3. Section 32 (1) of the *Family Law Act No. 18 of 2003* states that a party can apply for an order for nullity of the marriage on the grounds that the marriage is void. There are certain grounds under which a marriage can be held to be void. In this case one particular ground is alleged which is pursuant to the first limb of section 32 (2) (d) (i). I will have to state the law in respect of the ground alleged.
4. The first limb of section 32 (2) (d) (i) of the *Family Law Act No. 18 of 2003* states that a marriage is void if the consent of either party to the marriage is not a real consent because it was obtained by duress.
5. Duress has been defined as follows:-
 - *State of mental incompetence, whether through natural weakness of intellect or from fear (whether reasonably held or not) that a party is unable to resist pressure*

improperly brought to bear: (Scott (falsely called Sebright) v. Sebright (1886) 12 P.D. 21.)

- *A person's mind is so perturbed by terror that he or she does not understand what he/she was doing or alternatively if he/she understood what he/she was doing then their powers of volition had been so paralysed that he/she succumbed to another's will: (Cooper (falsely called Crane) v. Crane [1891] P. 369.)*
- *If there is a threat of immediate danger to life, limb or liberty: (Szechter (or. Karsov) v. Szechter [1971] P. 286.)*
- *If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty: (Re Meyer [1971] P. 298 at pp. 306 and 307.)*
- *If the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual: (Hirani v. Hirani (1982) 4. Fam. L.R. (Eng.). 232.)*
- *If one is caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious commitment and a culture that demands filial obedience. If these matters operate and a party has no consenting will then there is duress: (In the Marriage of S (1980) 42 F.L.R 94.)*
- *Duress does not necessary need to involve a direct threat of physical violence as long as there is sufficient oppression from whatever source, acting upon a party to vitiate the reality of their consent. It must be duress at the time of the marriage ceremony and not duress at some time earlier unless the effect of this continues to overbear the will of a party to a marriage ceremony at the time of the ceremony itself: (In the Marriage of Teves and Campomayor (1994) 122 F. L. R 172.*

The Evidence

6. The wife gave the following evidence:-

- *She had initially signed a notice of intention to marry, however, her intention was to marry in future and not on the date they actually got married which seemed too early for her as she had not got to know the respondent well. The respondent had also*

agreed to do an engagement on the same day and the civil marriage later.

- A day before, the respondent rang at her home and spoke to her father and told him that he was not going to attend the engagement on the following day unless she agreed to have a legal ceremony done on that day instead of just an engagement.*
- She was unaware that her father has acceded to the respondent's demand and on the date of marriage she was surprised when she was told to sign the marriage form.*
- She had no intention of getting married and raised objections with her parents who pressured her to sign the marriage form as they said there will be a lot of shame and embarrassment if she refused to sign the form.*
- She made it clear to her parents and the respondent that she was not ready to get legally married and the only reason why she was signing the marriage form was to save her parents from embarrassment and humiliation from the family members.*
- After the civil ceremony, she told her parents that she was still was not happy or comfortable with the civil ceremony as she did not know the respondent well enough to get civilly married to him.*
- She only agreed to the civil marriage because she had to consider her family's reputation. As a girl, she did not want her family to be shamed because the respondent did not turn up for the engagement.*
- The whole family as well as her reputation would have been ruined had she not signed the marriage form given to her at that time. She has been brought up with the religious beliefs and customs and she had to consider all these instead of her happiness.*
- When her family realized that she was truly not happy with the whole civil marriage done without her true consent, her father advised her to think about her happiness and not that of the family as she was also entitled to be happy with her choices in life, and to do what she could to have this marriage annulled.*

7. The wife's father gave the following evidence:-

- His daughter was introduced to the respondent by his family members with the intention of marriage after they got to know and understand each other.*

- *They had initially signed a notice of intention to marry with the understanding that she would get civilly married at a later date after getting to know the respondent better. The family therefore arranged for an engagement on a particular date and the civil and religious marriage to follow later. The respondent had agreed to the engagement.*
- *A day before marriage, the respondent rang at his place and spoke to him and told him that he was not going to attend the engagement on the following day unless his daughter agreed to have a legal ceremony done on that day instead of just an engagement.*
- *He had to agree to his demands as all his family members had begun arriving and the respondent not turning up to the engagement would have ruined his daughter's and his family's reputation.*
- *His daughter had no intention of getting married and raised objections with them. He advised his daughter on the impact of the respondent not turning up for the engagement and of what the other family members would think and that his reputation as a learned priest would also come into consideration so he pressured her to sign the marriage form as it would cause lots of shame and embarrassment if she refused to sign the form.*
- *The daughter had made it clear to them and the respondent that she was not ready to get legally married and the only reason she was signing the marriage form was to save the family from embarrassment and humiliation from the family members and society.*
- *That even after the civil ceremony, his daughter told him that she was still not happy or comfortable with the civil ceremony as she did not know the respondent well enough to get civilly married to him which was why she had requested for an engagement so that she could get to know him whilst engaged and if she was comfortable with him she would get legally married and if she was not, then the engagement could be broken off without any harm to anyone's reputation.*
- *The daughter was pressured into considering the whole family's as well her*

reputation before she could refuse to sign the marriage form. Being a girl, brought up with the religious beliefs and customs, she had to consider all these before her happiness.

- *When he realized that his daughter was not happy with the whole civil marriage done without her true consent, he advised her not to think about the family happiness as she was also entitled to be happy with her choices hi life and to do what she could to have this marriage annulled.*

The Determination

8. It is very clear from the evidence of the wife and her father that the wife only wanted the engagement to take place after which she wanted to get to know the respondent husband. The date for the engagement was fixed and all the family members were notified of the engagement. Then befell the disaster on the family when the respondent husband reneged on the agreement and insisted to have a legal marriage on the day which was only scheduled for the engagement. The father of the wife did not want the engagement to be cancelled as it was just scheduled for the day after and he feared the humiliation and embarrassment that his daughter and family would suffer. He thus insisted that the daughter got married to the respondent on the day of the engagement. Being a priest and upholding the custom meant a lot to him so he had to ask his daughter to forego her happiness and do as the respondent asked them to do so that the family could avoid humiliation.
9. The wife did not want the family to suffer the embarrassment and although she could have retaliated, she did not because she was caught in a psychological prison of family loyalty, parental concern, religious commitment and a culture that demanded filial obedience. For these matters, she succumbed to the will of her parents and gave consent to get married. That consent was not her real consent but a consent that was overborne by the will of her parents for the fear that her reputation and the family's reputation would be shattered. The consent that she provided, thus, was not her true consent. It is immaterial that the wife did sign a notice of intention to marry but she did not want to get marry at the time of her civil marriage.

Final Orders

10. For the above reasons, I grant an order that the marriage solemnised between the parties be nullified and the registry must raise the necessary certificates to this effect.
11. There shall be no order as to costs.

ANJALA WATI

Judge
02.09.2011