

**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

happening. The court must not hesitate to use every weapon in its protective arsenal if faced with what is, or appears to be, a case of forced marriage.

[5] Where the victim is a child the court will have recourse to the full breadth of the wardship jurisdiction (as to which see in this context *Re KR (Abduction: Forcible Removal by Parents)* [1999] 2 FLR 542 and *Re K*). If the victim is a vulnerable adult the court will have recourse to the closely comparable adult inherent jurisdiction (as to which see in this context *Re SK (an Adult) (Forced Marriage: Appropriate Relief)*, *M v B, A and S (By the Official Solicitor)* [2005] EWHC 1681 (Fam), [2006] 1 FLR 117, *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam), [2006] 1 FLR 867, and *X City Council v MB* [2006] EWHC 168 (Fam), [2006] 2 FLR 968).

[6] Where the court is able to intervene in time it will make orders restraining the celebration of the marriage and, where appropriate, preventing the victim being taken abroad for the purpose of being married: see, for example, *M v B, A and S (By the Official Solicitor)*, *Re SA (Vulnerable Adult with Capacity: Marriage)*, *Re K* and *X City Council v MB*. Where the victim has already been taken abroad the court will make orders designed to ensure the victim's repatriation: see, for example, *Re KR (Abduction: Forcible Removal by Parents)* [1999] 2 FLR 542 and *Re SK (an Adult) (Forced Marriage: Appropriate Relief)*. After repatriation further protective orders may be needed to prevent further attempts at forced marriage or to protect the victim from the risk of victimisation or retaliation at the hands of her oppressors (see below).

[7] In *X City Council v MB* [2006] EWHC 168 (Fam), [2006] 2 FLR 968, at para [27] I commented that particularly in this kind of case one needs to bear in mind that prevention is better than cure. As Singer J pointed out in *Re SK*, at para [4], although a non-consensual marriage is voidable, that alone is plainly not an adequate remedy because, as he went on to observe, such a 'marriage' is 'nevertheless one which might engender irreparable and severe physical and emotional consequences for its victim'. So the protective jurisdiction is particularly important where the need is to take preventive steps in advance.

[8] The court's protective jurisdiction is also particularly important in this context because, sadly, it is precisely from those who ought to be their natural protectors – parents and other close relatives – that all too typically the victims of forced marriages need to be protected. The law must always be astute to protect the weak and helpless, not least in circumstances where, as often happens in such cases, the very people they need to be protected from are their own relatives.

[9] If the court cannot intervene in time to prevent what Singer J in *Re SK*, at para [5] aptly described as these 'gross transgressions of an individual's integrity', then, as he went on to say, the court must attempt, wherever possible, to remedy their consequences. The primary remedy is, of course, a suit for nullity. I emphasise: a suit for nullity, not a suit for divorce.

[10] As Coleridge J said in *P v R (Forced Marriage: Annulment: Procedure)* [2003] 1 FLR 661, at paras [17]–[18]:

[17] In cases where a forced marriage is alleged the proper course is for a petition under s 12(c) to be brought before the court. I am

informed by counsel for the petitioner that there is a real stigma attached to a woman in the petitioner's situation if merely a divorce decree is pronounced and it is desirable from all points of view that where a genuine case of forced marriage exists the court should, where appropriate, grant a decree of nullity and as far as possible remove any stigma that would otherwise attach to the fact that a person in the petitioner's situation has been married.

[18] It follows from that that those charged with the decision of whether or not public funds should be made available in these circumstances should be ready, in the right case, to grant public funding to enable such nullity proceedings to be brought. It is necessary for public funding to be made available so that these cases, which are now not rare, can be investigated by the court. They are of special significance in the community from which the petitioner originates and it is appropriate that they should be transferred to the High Court and investigated properly and fully in open court.'

[11] Those observations, made with the approbation of the then President of the Family Division, have my wholehearted support. They deserve a wider recognition and more vigorous implementation than I suspect they may hitherto have had. I agree entirely with Coleridge J that such cases should be transferred to the High Court, but I should add that this does not mean that they need to be commenced in or transferred to the Principal Registry. Cases such as this can, and where this is more convenient should, be commenced in a District Registry of the High Court and tried on circuit.

[12] Further steps may need to be taken in such cases. In the first place, as I have said, protective orders may be needed to prevent further attempts at forced marriage or to protect the victim from the risk of victimisation or retaliation at the hands of his or her oppressors. Practical guidance on the topic is to be found in a recent article written by acknowledged experts in this area which I commend to all practitioners: Hutchinson, Hayward and Gupta, 'Forced Marriage Nullity Procedure in England and Wales' [2006] IFL 20. This article deserves a wider exposure than I fear it has yet had. It contains a form of interim order the use of which, depending of course on the circumstances, may be appropriate in nullity cases arising out of forced marriages. The suggested draft is based on the order made by Bracewell J in *R v R* (unreported) April 2005 as refined in subsequent cases:

- '(i) Permission is granted for the petitioner to withhold her address.
- (ii) The matter is listed for a final hearing on [two months later]. In the event that the petitioner wishes to make any application for the papers to be disclosed to the Home Office, British Passport Agency and/or the relevant Chief Constable of Police, such application, be considered at the adjourned hearing.
- (iii) An injunction is made against the respondent prohibiting him from threatening or visiting violence upon the petitioner or attempting to contact her directly or indirectly in any way save through her solicitors.
- (iv) The respondent is forbidden (whether by himself or by instructing or encouraging his servants or agents or otherwise) from disclosing the

papers herein to the immediate or extended family members (or any other person, save for such lawyers as he may decide to consult).

(v) Permission is granted to serve proceedings outside the jurisdiction. Personal service of a facsimile copy of this order and these proceedings on the respondent is hereby deemed good service. The documents are to be translated into [...].

(vii) Permission is granted to the petitioner not to disclose her affidavit evidence to the respondent until further order on the basis that the order will be reviewed at the subsequent hearing and only in the event that the petition is defended.

(viii) An injunction is made against the petitioner's family prohibiting them from threatening or visiting violence upon the petitioner or attempting to contact her directly or indirectly in any way save through her solicitors (such injunctions to be served only if necessary and if so advised).'

As we shall shortly see, an order containing some of these provisions was in fact made in the present case by Wood J. I only add that I would hope that public funding is made readily available to those who need it, even after repatriation, in cases where continuing protective relief is required.

[13] The reference to the police in that draft form of order reminds us that forced marriage almost invariably involves the commission of very serious criminal offences by those who participate in the arrangements. Following extensive consultation, the government has decided not to invite Parliament to make a specific criminal offence of 'forcing someone to marry'. But as Chapter 1 of its consultation paper, 'Forced Marriage: A Wrong not a Right' (2005) spelt out, the criminal law already provides protection from and punishment for the crimes that may be committed when forcing someone into a marriage, whether in this country or abroad. Those who need further information should refer to the consultation paper. It suffices for present purposes to note that, depending on the circumstances, perpetrators and those who assist them may be guilty of such offences as kidnapping, child abduction, false imprisonment, assault, battery and other more serious offences of personal violence, threats to kill, various public order offences, harassment contrary to the Protection from Harassment Act 1997, child cruelty and blackmail. This list, it should be noted, is by no means exhaustive. Happily in the present case the petitioner was not forced to consummate the marriage. In that she was lucky, for it is a distressing feature of such cases that too often the marriage is consummated by force – by rape. In one case which came to my attention it appeared that the 'wife' had been repeatedly raped in the most degrading circumstances until she conceived – the 'husband's' motive apparently being to ensure that he would gain admission to this country without official challenge if accompanied by a pregnant wife. In such cases, as the consultation paper points out, those involved may be guilty not merely of rape – or of aiding and abetting rape – but also, depending upon the circumstances, of various other very serious sexual offences.

[14] Finally, it needs to be remembered that, quite apart from any criminal sanctions, forced marriage will also expose the perpetrators to civil remedies for such torts as trespass to the person and false imprisonment. Statutory damages may also be recoverable under the Protection from Harassment Act

1997. Mr Teertha Gupta who appeared before me on behalf of the petitioner helpfully brought to my attention the decision of Mr Recorder Timothy Scott QC in a county court case where he awarded £35,000 to a Sikh woman who was subjected to what the judge described as 'four months of hell' when she was 'deliberately targeted' by her mother-in-law following an arranged marriage which collapsed after only 4 months largely as a result of her mother-in-law's treatment of her.<sup>1</sup>

[15] Before turning to the facts of the particular case which is before me there is one final point I must emphasise. It is important to bear in mind what Singer J said in *Re SK*, at para [7]:

'I emphasise, as needs always to be emphasised, that there is a spectrum of forced marriage from physical force or fear of injury or death in their most literal form, through to the undue imposition of emotional pressure which is at the other end of the forced marriage range, and that a grey area then separates unacceptable forced marriage from marriages arranged traditionally which are in no way to be condemned, but rather supported as a conventional concept in many societies. Social expectations can of themselves impose emotional pressure and the grey area to which I have referred is where one may slip into the other: arranged may become forced but forced is always different from arranged.'

There is no doubt in the present case that the marriage was arranged. The question is whether the petitioner was forced to enter into it.

*The facts*

[16] The petitioner was born in February 1986 and the respondent husband in July 1986, so they were both only 17 years old when they were married in Pakistan on 27 September 2003. The petitioner was born and brought up in this country and lived at home, as she still does, with her parents. The husband, who was born and has always lived in Pakistan, is her first cousin, his father being the brother of the petitioner's mother. Until the events which I must shortly describe they had never met.

[17] The petitioner was taken to Pakistan by her parents in June 2002, shortly after her sixteenth birthday. She understood she was going on a holiday, and indeed believed that she would be returning on 15 August 2002. In fact she was kept in Pakistan until the marriage took place, as I have said, on 27 September 2003, and indeed for some time thereafter. Following the marriage – which has never been consummated – the petitioner lived in the respondent's house, or to be more accurate the house of the respondent's parents, for some 7 or 8 days, returning thereafter to live with her parents. She returned to this country with her mother in April 2004. Since her return she has had no contact with the respondent. Her petition is dated 16 January 2006.

[18] I think it convenient to set out in extenso the particulars under para 8 of the petition. Having asserted that the petitioner 'did not validly consent to the marriage', the petition gives the following particulars:

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<sup>1</sup> Editor's note: see *Singh v Bhakar* [2006] Fam Law 637.

- (a) In June 2002 the petitioner travelled to Pakistan for what she believed to be a holiday. She was persuaded to go and relax after her exams and was promised by her family that they were not sending her to Pakistan to be married. The petitioner therefore agreed on the basis that she would be returning on 15 August 2002, as her ticket stated.
- (b) The petitioner stayed with relatives and shortly after she arrived she realised that the reason she was in Pakistan was to be married. The petitioner's relatives started telling her that she would be staying until she was married. The petitioner asked her mother whether this was true and her mother refused to confirm or deny anything. The petitioner continued to tell her mother she wanted to return to the UK. Her mother refused telling her she must stay in Pakistan because her father would be joining them for a holiday. Every month she was told the same story until eventually her father arrived in February 2003, some 8 months later.
- (c) The petitioner continued to beg her parents to allow her to return to the UK. Eventually, the petitioner's mother told her that she was getting married to her cousin, being the son of her mother's brother.
- (d) On 12 June 2003 the petitioner's boyfriend arranged for his parents to visit her in Pakistan and ask for her hand in marriage. This caused a huge amount of tension in the family given that the petitioner's parents had arranged her marriage to another person. The petitioner came under emotional pressure from her family who blackmailed her by saying they would kill themselves if she did not marry the respondent.
- (e) The petitioner begged the respondent himself not to make her marry him and to let her go back to the UK. The respondent refused and said he wanted to marry her. He agreed that this was a ploy to get him to England. He then told her parents that she had been pleading to be released.
- (f) The petitioner's family told her the only way she would be returning to the UK would be if she married the respondent.
- (g) The wedding took place on 27 September 2003. Due to the pressure placed upon the petitioner and the threats made to her by her family, she had no choice but to proceed with the marriage.
- (h) At the time of the marriage the petitioner's will was overborne due to the duress placed upon her by her family.
- (i) The petitioner had no alternative but to live with the respondent after the marriage. The petitioner did not sign any documents until about 5 months later when she was forced to do so by her family. At the end of March 2004, the petitioner's mother planned to return to the UK. The petitioner persuaded her mother to allow her to return with her. The petitioner has refused to have contact with the respondent since and is seeking an Islamic divorce in Pakistan. The petitioner's parents accept her reasons for the nullity petition.

[19] The petitioner gave oral evidence before me, confirming and in some respects elaborating the facts as set out in the particulars. Importantly, she told me that although she has her own passport, it was kept by her mother at all times during her visit to Pakistan, being returned to her only after she had returned to this country. So the petitioner was in effect trapped in Pakistan.

*The litigation*

[20] The petition, as I have said, is dated 16 January 2006. Previously, on 13 January 2006, Wood J had made an ex parte order giving the petitioner leave to serve the petition on the respondent in Pakistan and granting an injunction forbidding the respondent:

‘(whether by himself or by instructing or encouraging his servants or agents or otherwise) from disclosing the papers herein to the immediate or extended family members or any other person, save for such lawyers as he may decide to consult.’

For the further protection of the petitioner, and to prevent her being removed from the country, Wood J also directed her to lodge her passport with her solicitors. He further directed that she was to attend the next hearing on 29 March 2006 personally. He also gave her permission to disclose the papers to her local police ‘in the event that she wishes to seek their protection and assistance’.

[21] Following personal service of the petition on him on 20 February 2006, the respondent served a signed but undated acknowledgement of service in which he stated his intention to defend the case. On 29 March 2006, Her Honour Judge Bevington made an order declaring that the respondent had until 5 April 2006 to file and serve his answer. That order having been served on him, the respondent’s response was to send the petitioner’s solicitors by fax an affidavit on 10 April 2006 and a further document on 26 April 2006. In the latter document the respondent states that: ‘I will not be making a complaint or a case’. In a statement dated 27 April 2006 which she subsequently verified on affirmation before me in the witness box the petitioner records that: ‘My mother has been in regular contact with the respondent who has indicated to her that he does not wish to defend the petition and agrees to an annulment of our marriage’.

[22] The respondent has not in fact filed an answer. Nor did he appear when the petition came on for hearing before me on 26 June 2006 in accordance with directions that Charles J had given on 27 April 2006. The petitioner, as I have said, gave evidence before me. There was no evidence from either her parents or the respondent.

[23] There is one other matter I should mention. During the earlier stages of the litigation the petitioner’s solicitors had appropriately been communicating with her at a confidential address, for she was, as I have said, living at home with her parents. During the course of the proceedings, as indeed she confirmed to me in the witness box, things became rather easier for her at home. Indeed, as she set out in the statement to which I have already referred:

‘Since issuing these proceedings for nullity my parents, who arranged my marriage to the respondent against my will, have overcome their initial objection to my obtaining an annulment and have expressed their support for me in this matter ... I have informed my solicitors that there is no longer any need to send any correspondence to the confidential address I had provided to them. My parents fully support me in my application for an annulment.’

It was in these circumstances, and because she needed her passport to travel to Dubai to attend the wedding of a close friend, that on 27 April 2006 Charles J directed that the petitioner’s passport was to be released to her by her solicitors.

[24] At the end of the hearing before me I announced that I accepted the petitioner’s evidence, that I was satisfied she had established her case and that I would accordingly grant her a decree nisi of nullity on the ground of duress. I said that I would put my reasons in writing. I now (5 July 2006) hand down this judgment in open court.

*The law*

[25] Section 12(c) of the Matrimonial Causes Act 1973 (the MCA 1973) provides that:

‘A marriage ... shall be voidable on the ... ground ... that either party to the marriage did not validly consent to it, whether in consequences of duress, mistake, unsoundness of mind or otherwise.’

[26] As will be seen there are two fundamentally different bases upon which a marriage may be voidable under s 12(c) of the MCA 1973. (I need not spend time considering what cases may fall within the words ‘or otherwise’.) The first is if there is ‘unsoundness of mind’, that is if one or other party lacks capacity to marry (as to which see *Sheffield City Council v E* [2004] EWHC 2808 (Fam), [2005] Fam 326, sub nom *Re E (an Alleged Patient)*; *Sheffield City Council v E and S* [2005] 1 FLR 965, and *X City Council v MB* [2006] EWHC 168 (Fam), [2006] 2 FLR 968). The other is if there is some vitiating feature – ‘duress’ or ‘mistake’ – nullifying the apparent consent of someone who has capacity. It is, of course, with this latter category that I am here concerned, for there is no question of the petitioner lacking capacity to marry. Specifically I am concerned with the question of duress.

[27] At one time it was held that a marriage was voidable on the ground of duress only if it could be shown that there was threat of immediate danger to life, limb or liberty: see *Szechter (orse Karsov) v Szechter* [1971] P 286, *Singh v Singh* [1971] P 226 and *Singh v Kaur* [1981] 11 Fam Law 152. But that is no longer the law, if it ever was. In *Hirani v Hirani* (1983) 4 FLR 232 the Court of Appeal reversed the refusal of the judge to grant a decree, precisely on the basis that he had erred in law in applying that test. Ormrod LJ, with whom Watkins LJ and French J agreed, explained the law as follows, at 234:

‘The crucial question in these cases, particularly where a marriage is involved, is whether the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual. It

seems to me that this case, on the facts, is a classic case of a young girl, wholly dependent on her parents, being forced into a marriage with a man she has never seen and whom her parents have never seen in order to prevent her (reasonably, from her parents' point of view) continuing in an association with a Muslim which they would regard with abhorrence. But it is as clear a case as one could want of the overbearing of the will of the petitioner and thus invalidating or vitiating her consent.'

[28] That was the test applied by Coleridge J in *P v R (Forced Marriage: Annulment: Procedure)* [2003] 1 FLR 661 where, on the facts of this case, as established by the sworn evidence of the petitioner and her supporting witnesses, he found, as he put it at para [14], that:

'the petitioner's consent was vitiated by the circumstances; in particular the force, both in the physical sense and in the sense that enormous emotional and other pressure was brought to bear upon her whilst she was in Pakistan.'

[29] I might add that this view of the law is to be found reflected in the older authorities. Thus in *Scott (Falsely Called Sebright) v Sebright* (1886) 12 PD 31, Butt J granted a nullity decree where the circumstances were, as he put it, at 31, such:

'that long before the ceremony was gone through the feelings of this young lady towards the respondent were such that of her free and unconstrained will she never would have married him; that she had been reduced by mental and bodily suffering to a state in which she was incapable of offering resistance to coercion and threats which in her normal condition she would have treated with the contempt she must have felt for the man who made use of them; and that, therefore, there never was any such consent on her part as the law requires for the making of a contract of marriage. Such being the case, I know of no consideration consistent with justice or with common sense which should induce me to hold this marriage binding.'

[30] There are many different ways of expressing the concept that what a person says may not be binding upon him or of describing how pressure, or whatever it is, may destroy the reality of consent and overbear the will. One well-known metaphor is illustrated by a passage from an American writer (Bishop, *Commentaries on the Law of Marriage and Divorce* (6th edn, 1881), vol 1, p 177, para 210) cited with approval by Sir Jocelyn Simon P in *Szechter (or se Karsov) v Szechter* [1971] P 286, at 297:

'Where a formal consent is brought about by force, menace, or duress – a yielding of the lips, not of the mind – it is of no legal effect. This rule, applicable to all contracts, finds no exception in marriage.'

This metaphor goes back a very long way for, as Staughton LJ observed in *Re T (Adult: Refusal of Treatment)* [1993] Fam 95, [1992] 2 FLR 458, at 121 and

478 respectively, it was originally a Greek poet who wrote ‘my tongue has sworn, but no oath binds my mind’ – the reference is to a line in Euripides’ *Hippolytus* which can perhaps be translated literally as ‘my tongue has sworn but my mind’ (that is, the mind as the seat of the mental faculties, perception, thought) ‘is unsworn’.

[31] To this I would add a number of subsidiary points.

[32] The first is that, as Sir Jocelyn Simon P pointed out in *Szechter (or se Karsov) v Szechter* [1971] P 286, at 297, although in the nature of things the source of the fear and the agent of duress will generally be the other party to the marriage, this is not necessarily so.

[33] The second is that there are, of course, many ways in which such duress or coercion may be brought to bear, a point illustrated by the well-known passage in the summing up of Sir JP Wilde to the jury in *Hall v Hall* (1868) LR 1 P&D 481, at 482. That was a probate case, but the point is equally applicable in the present context:

‘pressure of whatever character, whether acting on the fears or the hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as the testator has not the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort, these, if carried to a degree in which the free play of the testator’s judgment, discretion or wishes, is overborne, will constitute undue influence, though no force is either used or threatened. In a word, a testator may be led but not driven; and his will must be the offspring of his own volition, and not the record of some one else’s.’

[34] To this I would only add that, as Lindley LJ observed in a famous passage in *Allcard v Skinner* (1887) 36 ChD 145, at 183, ‘the influence of one mind over another is very subtle’. Moreover, one has to have regard to the relationship between the parties. As I remarked in *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam), [2006] 1 FLR 867, at para [78], where the influence is that of a parent or other close and dominating relative, and where the arguments and persuasion are based upon personal affection or duty, religious beliefs, powerful social or cultural conventions, or asserted social, familial or domestic obligations, the influence may, as Butler-Sloss LJ put it in *Re T (Adult: Refusal of Treatment)* [1993] Fam 95, [1992] 2 FLR 458, at 120, and 477 respectively be subtle, insidious, pervasive and powerful. In such cases, moreover, very little pressure may suffice to bring about the desired result.

[35] The third point is this. The test is a subjective, not an objective, one. As Butt J said in *Scott (Falsely Called Sebright) v Sebright* (1886) 12 PD 31, at 24:

‘It has sometimes been said that in order to avoid a contract entered into through fear, the fear must be such as would impel a person of ordinary courage and resolution to yield to it. I do not think that is an accurate statement of the law. Whenever from natural weakness of intellect or from fear – whether reasonably entertained or not – either party is

actually in a state of mental incompetence to resist pressure improperly brought to bear, there is no more consent than in the case of a person of stronger intellect and more robust courage yielding to a more serious danger.’

[36] The fourth point is that although the standard of proof is the ordinary civil standard of the balance of probability, due regard must of course be had to the principle expounded by Lord Nicholls of Birkenhead in the well-known passage in his speech in *Re H and Others (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, [1996] 1 FLR 80, at 586 and 95–96 respectively that the more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it. And the court must be careful to ensure, particularly perhaps where a nullity suit is undefended, that a proper case is being put forward and not one contrived to enable a spouse to escape from a perfectly lawful and proper marriage which has turned out to be irksome. As Butt J observed in *Scott (Falsely Called Sebright) v Sebright*, at 24, and if the language is slightly old-fashioned the point remains important at least in this context:

‘Public policy requires that marriages should not be lightly set aside, and there is in some cases the strongest temptation to the parties more immediately interested to act in collusion in obtaining a dissolution of the marriage tie. These reasons necessitate great care and circumspection on the part of the tribunal, but they in no wise alter the principle or the grounds on which this, like any other contract, may be avoided.’

[37] The fifth point is this. The court must be alert to the possibility of forced marriage – something more prevalent than some would care to admit – and robust in its response to it. But we must always equally be careful not merely to distinguish between arranged marriage and forced marriage but also to guard against the risk of stereotyping. As I said in *Re K*, at para [93]:

‘We must guard against the risk of stereotyping. We must be careful to ensure that our understandable concern to protect vulnerable children (or, indeed, vulnerable young adults) does not lead us to interfere inappropriately – and if inappropriately then unjustly – with families merely because they cleave, as this family does, to mores, to cultural beliefs, more or less different from what is familiar to those who view life from a purely Euro-centric perspective.’

[38] The sixth and final point is this. Rule 2.28(1) of the Family Proceedings Rules 1991 provides that the hearing of a nullity suit ‘shall be ... in open court’ and that, subject to certain exceptions, ‘any fact required to be proved by the evidence of witnesses at the trial ... shall be proved by the examination of the witnesses orally’. So in a case such as this the petitioner has to establish her case of duress by oral evidence in open court. In the present case there were no difficulties because, although I sat in open court, neither the respondent nor anyone else from either family was present – nor, indeed, was any member of the public – and the petitioner was entirely happy

to give evidence in the usual way. But as Mr Gupta pointed out, there may be cases of this kind where a petitioner will be reluctant to give evidence if, for example, members of her family are present. He suggested that in such cases the petitioner, like vulnerable witnesses in other forensic settings, should be able to give evidence from behind a screen or by video link. I can see the force in what Mr Gupta is saying and am sure that, in an appropriate case, the court would do whatever it could to afford the petitioner proper protection whilst at the same time safeguarding both the interests of the respondent and, indeed, the wider public interest in the proper administration of justice. I say no more on the point which, as I have said, did not in fact arise in the present case, save to emphasise one practical matter. If special arrangements are to be sought in any particular case, the court must be alerted to the issue in good time, and before the day of hearing, so that it can have a proper opportunity to consider whether the request should be granted and, if it is, adequate time in which to make the necessary practical arrangements.

#### *Discussion*

[39] I am entirely satisfied that the petition and other relevant documents in the case, all translated into Urdu in accordance with Wood J's order, have not merely been properly served on the respondent but have come to his actual attention, just as I am satisfied that he has, both informally and formally, stated his intention, notwithstanding what he said in his acknowledgement of service, *not* to defend the suit.

[40] I have carefully considered the petitioner's evidence, which I have no hesitation in accepting. It stands unchallenged, for neither the respondent nor the petitioner's own parents have sought to controvert any part of it – and this, moreover, in circumstances where it might be thought that if there was any basis of challenge to the petitioner's case they would have been anxious to defend themselves against such serious charges. Be that as it may, the petitioner's evidence before me was clear and carried conviction. In my judgment she has indeed made out her right to a decree of nullity on the basis of the duress to which, as I find, she was subjected.

[41] She was persuaded to go – lured – to Pakistan on a false pretence. She was kept in a remote part of Pakistan for many months and, despite begging her parents to be allowed to return to this country, she was subjected to unrelenting pressure, initially from her mother and subsequently also her father, as also from other members of the wider family. True it is that she was never subjected to direct physical violence, but it is clear, and I find, that she was subject to continued emotional pressure and moral blackmail, applied over many months. Deprived of her passport – her means of escape – she was told that the only way out was if she married the respondent. Until she agreed to do so, she was kept in Pakistan and told that she could not return to this country. Eventually, faced with these threats and this continuing pressure, she felt she had no choice but to succumb. She asserts that her will was overborne by duress. Insofar as this is an allegation of fact, I find the fact established. Insofar as this is an allegation of law, I find that she has indeed met the test set out in *Hirani v Hirani* (1983) 4 FLR 232. The threats and pressure to which she was subjected over this period of many months were such as to destroy the reality of her consent. Her will was overborne. Her lips may have spoken,

but not her mind. In my judgment she is not bound by the ceremony. She did not validly consent. She is entitled to the decree nisi of nullity which she seeks.

[42] Mr Gupta very properly asked the petitioner whether she wanted to take any steps either to involve the police or to pursue a claim for damages. She said that she did not, just as she told me that she did not any longer feel the need for any protective orders and did not wish to make any claim either for ancillary relief or for costs. Her only wish is to escape from a 'marriage' which is abhorrent to her. I can understand that. There is no need for me in the circumstances to take any further action. I merely grant her the decree she seeks.

*Conclusion*

[43] It was in these circumstances, and for these reasons, that at the end of the hearing on 26 June 2006 I granted the petitioner a decree nisi of nullity on the ground of duress.

*Order accordingly.*

Solicitors: *Dawson Cornwell* for the petitioner

PHILIPPA JOHNSON  
*Law Reporter*