

***Kreet v Sampir* [2011] FamCA 22 (18 January 2011); (2011) 252 FLR 234; (2011) 44 Fam LR 405 – Family Court of Australia**

‘Forced marriage’ – ‘Marriage occurring in a country other than australia’ – ‘Nullity application’

Proceedings: Nullity application.

Facts: Ms Kreet (the wife), an Australian born woman, married Mr Sampir (the husband) on June 2009 in India. She travelled to India with her parents believing she was going to marry her Australian boyfriend, Mr U. Upon arrival, her parents confiscated her passport and was introduced to Mr Sampir. Her father told her that he would have Mr U’s sisters and mother kidnapped and raped if she refused to marry Mr Sampir. Under duress, the wife married Mr Sampir and submitted his Australian visa application to the authorities. She returned to Australia, resumed her relationship with Mr U and withdraw her sponsorship of the respondent’s visa application. She obtained an indefinite Intervention Order against her father.

Issue/s: Whether the marriage was void?

Reasoning/Decision: Section 23B(1)(d) of the *Marriage Act 1961* (Cth) states that a marriage is void if ‘the consent of either parties is not real consent because: (i) it was obtained by duress or fraud; (ii) that party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or (iii) that party is mentally incapable of understanding the nature and effect of the marriage ceremony’.

While the legislation does not define duress in the context of a marriage, Cronin J found that ‘there was no reason to give it any other meaning than that which is normally known to the law. It must be oppression or coercion to such a degree that consent vanishes: *In the Marriage of S* (1980) FLC 90-820’ (see [39]).

Cronin J was satisfied that ‘the wife’s physical state at the time of the ceremony was such that she was physically and mentally overborne. Her consent was not real because it was obtained by duress’ (see [43]).