16. The Additional Director noticed that allotment of Sarmukh Singh (then respondent) at his Second Major Portion also did not include in it a large part of his own Major Portion. He consequently ordered that the *taks* of the parties at the second Major Portion be amalgamated into one pool and partitioned afresh by a line drawn from the West to the East and in this way an area measuring 2—16 standard Kanals be given to Bhag Singh towards the North and the remaining out of this pool to Sarmukh Singh towards the South. According to this arrangement both the parties would be receiving land near their own wells and most of the area in their own Major Portions formerly belonging to them, would be included in their new allotments. Nothing could be fairer and more equitable. Even if this order amounted to an amendment of the scheme *pro tanto,* the Additional Director was fully competent to do so. In any case, there was no equity in favour of Sarmukh Singh.

(19) For the foregoing reasons, we would allow these appeals and dismiss both the writ petitions Nos. 2505 and 553 of 1964, leaving the parties to bear their own costs throughout.

N. K. S.

APPELLATE CIVIL

Before Man Mohan Singh Gujral, J.

CHANCHAL KUMARI,—*Appellant*

versus

KEWAL KRISHAN,—*Respondent.*

First Appeal From Order No. 48-M of 1966.

January 6, 1972.

Hindu Marriage Act (XXV of 1955)—Section 12(1)(a)—Consummation of marriage—Emission of semen in the wifes body—Whether necessary.

Held, that the expression "consummation" means *vera capula* or conjunction of bodies which is achieved as soon as full entry and penetration has been made. What follows goes merely to the likelihood or otherwise of conception. Having regard to this meaning of the expression "consummation" the potency in the case of males means the power of erection of the male organ and its full penetration. The discharge of semen in the wife's body is not necessary for a complete coitus and the consummation of marriage.

(Paras 7 and 9)

First Appeal from the order of Shri A. D. Koshal, District Judge, Amritsar, dated 28th February, 1966, dismissing the petition and leaving the parties to bear their own costs.

Bhagirath Dass, Advocate with S. K. Hiraji and B. K. Jhingan, Advocates, for the appellants.

M. S. Sethi, Advocate for the respondent.

JUDGMENT

GUJRAL, J.—(1) This is a wife's appeal against the order of the District Judge, Amritsar, whereby her petition under section 12(1)(a) of the Hindu Marriage Act for annulment of her marriage with the respondent, Kewal Krishan, was dismissed. Chanchal Kumari appellant and Kewal Krishan respondent were married on 9th October, 1965. The present petition for the annulment of the marriage on the ground that the respondent was impotent at the time of the marriage and continued to be so till the institution of the proceedings, was filled on 31st December, 1965. In the petition it was alleged that though after the marriage the parties lived together on two occasions there was no consummation of marriage as the respondent was impotent and incapable of performing sexual intercourse. The petition was contested by the husband who pleaded that there had been consummation of the marriage and that the parties had been living together happily. The allegation of impotency was denied. It was, however, added that inability to produce children could not be termed as impotency. The pleadings of the parties and their statements, which were recorded before the framing of the issues, gave rise to the following issue:—

> "Whether the respondent was impotent at the time of the marriage and continued to be until the institution of these proceedings ?

(2) On a consideration of the evidence led by the parties the learned trial Court came to the conclusion that the respondent had a normal male organ and had been having sexual intercourse with his wife every day during the period of their stay together. From the failure of the husband, however, to subject himself to a test for ascertaining as to whether he could produce semen, an inference was drawn that if such an examination had been held the respondent would not have been able to produce healthy semen or for that matter

any semen. Having found these facts the learned trial Court further came to the conclusion that the respondent was not impotent within the meaning of section 12(1)(a) of the Hindu Marriage Act as he was able to perform sexual intercourse even though no healthy semen could be discharged by him.

(3) The above findings of the learned trial Court have not been assailed before me and the only argument advanced on behalf of the appellant is that in the absence of discharge of healthy semen in the case of a male, coitus cannot be considered normal and that such an incomplete coitus would not amount to consummation of marriage. Support for this argument was mainly sought from *Gudivada Venkateswararao* v. *Shrimati Gudivada Nagamani* (1), *Jagdish Kumar* v. *Shrimati Sita Devi* (2) and *Yuvraj, Digvijay Singh* v. *Yuvrani Pratap Kumari* (3). I proceed to examine these cases.

(4) In *Yuvraj Digvijay Singh's case* (3) *supra*, while interpreting clause (a) of section 12(1) of the Hindu Marriage Act, it was observed by Vaidilingam, J., that a party may be considered impotent if his or her mental or physical condition makes consummation of marriage a practical impossibility. In this case it was not considered whether emission of semen was necessary for the consummation of marriage and the appellant's contention that consummation was only possible if there was emission of semen in the body of the wife, therefore, does not find support from the observations of the Supreme Court in *Yuvraj Digvijay Singh's* case.

(5) In *Gudivada Venkataswararao's* case (1), it was found as a fact that there had been no sexual intercourse between the parties and that the husband had been trying to avoid the company of his wife. In view of these findings, the conclusion reached was that the marriage could not be consummated because of the impotency of the husband. No support is, therefore, available to the appellant's contention from this case either.

(6) Reference was also made before me to the following observations in *T. Rangaswami* v. *T. Aravindammal* (4):—

> "Potency in case of males means power of erection of the male organ 'plus' discharge of healthy semen containing living spermatozoa....."

(1) A.I.R. 1962 A.P. 151.
(2) A.I.R. 1963 Pb. 114.
(3) A.I.R. 1970 S.C. 137.
(4) A.I.R. 1957 Mad. 243.

The above observations occur in a case which related to the impotency of the wife and not to that of the husband. As the question which arises in the present case, namely, whether consummation is only possible if besides there being penetration by the husband there is also emission of semen in the wife's body, was not before the learned Judges who decided *T. Rangaswami's* case, the ratio of decision in that case also does not advance the argument convassed before me on behalf of the appellant.

6. *In Jagdish Kumar* v. *Smt. Sita Devi* (2), it was found that the husband was wholly unable to perform the act of sexual intercourse even though he had full opportunity to do so and that non-consummation of the marriage was due to the husband's refusal arising from his incapacity. It is again not a case where the husband could perform sexual intercourse but there was no discharge of semen. This case is also, therefore, of not much help to the appellant's case and in fact some of the observations support the view taken by the learned trial Court. The following observations may be read with advantage :—

> "From the conduct of the husband and his own admissions made before Dr. Diesh and to his wife which I unreservedly accept, it is a fair inference that the non-consummation of the marriage was due to the husband's knowing refusal arising from incapacity, nervousness or hysteria. If he had made an attempt and failed, something may have been said for the appellant, but not having attempted sexual intercourse at all with his wife, I feel bound to say that he demonstrated his impotency qua the respondent. Mr. Hardy for the appellant brought to my notice the decision of Commissioner Bush James in *R.* v. *R.* (5), where it was held that when a husband was able to effect erection and a full penetration, the consummation was complete, although he was never able to produce the emission into the wife's body. This case is plainly distinguishable because the husband there had failed in his atttempt. In the present instance, the husband, for reasons best known to himself, never dared to make an attempt to perform his normal marital duty towards his wife. It may be that there is conflict in medical testimony but the wide meaning given to the concept of impotency in the various authorities, to

(5) (1952) 1 All. E. R. 1194.

which reference has been made, leads to the irresistible conclusion that sexual intercourse was a practical impossibility for the husband so far as his wife was concerned. A decree for nullity has been rightly granted and I would accordingly dismiss this appeal with costs."

(7) In *R's* case (5) supra to which reference has been made in the above observation the facts found were that the husband was able to get erection and to penetrate the wife fully. He could maintain that state for four or five minutes but was unable to secure emission of semen. On these facts marriage was sought to be avoided for the reason that the marriage had never been consummated and that the husband was at the time of the marriage and eversince then incapable of consummating the same. In this case Commissioner Bush James, while considering the meaning of the word 'consummation', noticed that procreation of children was not the principal end of marriage and accepted the view of Lord Jowitt in *Baxter* v. *Baxter* (6), which emphasised the "irrelevance of procreation as an end in marriage". The expression 'consummation' was interpreted to mean "vera copula or conjunction of the bodies". The view expressed in *White* v. *White* (7), "that a true conjunction is achieved as soon as full entry and penetration has been achieved and what follows goes merely to the likelihood or otherwise of conception" was quoted with approval. It was also observed that 'vera copula' consisted of erection and penetration.

(8) Though in *R's case* a distinction was sought to be drawn between cases where emission was not at all possible and those where there was withdrawal of emission in what was known as coitus interruptus, but some of the observations in the latter class of cases *Baxter* v. *Baxter* (6) and *White* v. *White* (7) were accepted as in those cases consummation was considered to have been achieved even though there was no emission in the body of the wife and it was held that conjunction of the bodies or 'erectio' and 'intromissio' was equivalent to consummation. Marriage was held to have been consummated even though the husband was unable to secure emission of the semen or the wife was unable to enjoy an orgasm.

(9) Having regard to the meaning of the expression 'consummation' it would be proper to conclude that potency in the case of

(6) (1947) 2 All. E. R. 886.

(7) (1948) 2 All. E. R. 151.

males would mean the power of erection of the male organ and its full penetration and that the discharge of semen in the wife's body was not necessary for a complete coitus.

(10) Consequently there was no basis for holding that the husband was impotent at the time of the marriage and continued to be so till the institution of the proceedings and in this view of the matter I find no merit in the appeal and dismiss the same. The parties are, however, left to bear their own costs.

N. K. S.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

RAM SARUP BAWA,—*Petitioner.*

Versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 1406 of 1971.

January 6, 1972.

Municipal Election Rules (1952)—*Rule* 68—*Inquiry under—Nature of—Whether quasi-judicial—Rules of natural justice—Whether apply thereto.*

Held, that rule 68 of Municipal Election Rules, 1952 is not intended to give unbridled, arbitrary or despotic power to the State Government to proceed in any manner it chooses while acting *suo motu* to direct an inquiry into the conduct of any election or to set aside an election on grounds other than those specified in Rule 63. Before proceeding under rule 68, it has first to be satisfied that there is reason to suspect that corrupt practice or material irregularity has been committed though it is its own satisfaction. As soon as the State Government is satisfied that an inquiry into an election is necessary it can act on its own and direct an inquiry. There are no rules in regard to an inquiry ordered under rule 68 but a plain reading of this rule leads to an irresistible conclusion that the obvious intention of the rule making authority is that the procedure adopted by a person directed to hold an inquiry under the rule must in substance conform to what is required, when an election is challenged by an election petition. An inquiry under