

Ram Prakash and Another Vs. Sneh Lata Alias Malka and Another

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Court : Himachal Pradesh

Decided On : Jul-03-2012

Judge : Kuldeep Singh

Appeal No. : Cr. Revision Nos. 204 & 243 of 2011

Appellant : Ram Prakash and Another

Respondent : Sneh Lata Alias Malka and Another

Judgement :

Oral:

Kuldeep Singh, J.

1. This judgment shall dispose of Criminal Revision No.204 of 2011 and Criminal Revision No.243 of 2011 both having arisen out of order dated 08.07.2011 passed by learned Sessions Judge, Kangra at Dharamshala, in Criminal Appeal No. 71-P/X-2010. The facts are given from Criminal Revision No.204 of 2011.

2. The respondent had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, (for short 'Act') through Protection Officer against the petitioner. It has been alleged that marriage of respondent and petitioner was solemnized in 'Chamunda Mata' temple in June, 2002. The respondent was earlier married to Hem Raj and had two children from him. The petitioner contacted second marriage with respondent as his son was mentally

retarded. Initially, the petitioner and his family members treated respondent properly. The respondent by raising loan and doing labour work had constructed two rooms and was living with her children in those rooms from the year 2004 to March, 2009. The behaviour of petitioner after the year 2004 changed and he tried to oust the respondent from her house. The petitioner tried to persuade the respondent to live in a rented house. The electricity supply to her house was disconnected and she was forced to leave the house.

3. The petitioner had undertaken to construct two separate rooms for respondent and to pay Rs.700/- per month on the intervention of police at Baijnath, but he did not act upon his undertaking. The respondent moved an application for restoration of electricity meter, but that was objected by her mother-in-law Sarla Devi and Sister-in-law Raksha Devi, a dispute had arisen and the respondent was forced to take shelter in a house in the same village. Thereafter, the petitioner etc. locked her rooms and her articles as well as books of the children in those rooms.

4. The respondent filed a complaint to State Commission for Women which was referred to the Superintendent of Police, Kangra at Dharamshala. The complaint of the respondent was referred to Protection Officer, Baijnath. The Protection Officer on the basis of application moved by respondent as well as her complaint received from State Commission for Women through Superintendent of Police, Kangra at Dharamshala, prepared domestic violence report and filed the application before the Court. The respondent prayed for passing of protection order, residence order, restraining the petitioner from dispossessing her out of the shared house and allowing her to enter that portion of the shared house in which she was residing. She also prayed monetary relief amounting to Rs.3,000/- on account of loss due to destruction/damage or removal of property Rs.5,000/- per month for food, clothes, medication and other basic necessities, school fees and other expenses.

5. The application of the respondent was resisted by petitioner by filing reply. The objection of maintainability was taken. On merits, he denied domestic relationship with the respondent. He has stated that respondent is not his wife. The marriage of petitioner with Sanjana Devi was solemnized 25 years back and one child namely Mandip was born from that wedlock. Mandip was mentally retarded and

respondent was kept as domestic help on 01.06.2002 in order to look after his mentally retarded son and old age mother. The petitioner was married; therefore, there was no question of performing any marriage with respondent. The children of respondent namely Priya and Rahul were born to respondent from her husband late Hem Raj.

6. On 04.04.2009, respondent quarrelled with Sanjana Devi, wife of the petitioner, and Sarla Devi, mother of the petitioner, who reported the matter to the police at Baijnath. The respondent misbehaved with the mother of the petitioner on 09.07.2008 and the matter was reported to the police at Baijnath. The mother of the petitioner got issued legal notice to the respondent through her Advocate on 22.07.2008 requesting the respondent to vacate the house. The respondent instead of vacating the house got an electricity meter installed in her name. On this, sister of the petitioner, who is one of the owners of the premises, got a legal notice served upon the respondent as well as HPSEB to remove the electricity meter. The officials of the HPSEB after conducting proper inquiry removed the electricity meter from the premises.

7. Raksha Devi, sister of the petitioner, served notice dated 01.04.2009 on the respondent asking her to vacate the premises. The respondent did not vacate the premises. Raksha Devi filed suit No.61/2009 before Civil Judge, Baijnath. The respondent filed an application under Section 12 of the Act before Judicial Magistrate Ist Class, Baijnath, which was withdrawn by respondent on 10.07.2009. The submission was made for rejection of the application.

8. The rejoinder was filed. The learned Judicial Magistrate, formulated points for consideration and ultimately on 17.09.2010 answered point No.1 partly in affirmative and the application was partly allowed. The petitioner was restrained from committing any act of domestic violence against respondent. The petitioner was directed to hand over possession of one room in his house situated in Village Chakol with a further direction to provide the respondent free access to her personal effects. The respondent was awarded Rs.1,500/- per month as maintenance allowance to be paid by the petitioner from the date of application i.e. 16.12.2009.

9. The petitioner has assailed the order dated 17.09.2010 in appeal. The learned Sessions Judge on 08.07.2011 allowed the appeal partly. It has been held that respondent is not legally entitled to the reliefs granted by the trial Court. The reliefs granted by the trial Court in favour of respondent were set-aside. However, learned Sessions Judge granted lump sum palimony to respondent to the tune of 3,00,000/- to be paid by petitioner on the concept of equitable justice. The petitioner has filed Criminal Revision No. 204 of 2011 against order dated 08.07.2011 of the learned Sessions Judge, whereas, respondent has filed Criminal Revision No.243 of 2011 against the same order dated 08.07.2011.

10. Heard and perused the record. The learned counsel for the petitioner has submitted that learned Sessions Judge vide impugned order dated 08.07.2011 has set aside all reliefs granted by learned Judicial Magistrate on 17.09.2010, but still allowed 3,00,000/- to respondent in equity. He has submitted that there cannot be any equity in violation of law. The respondent has failed to make out a case for grant of any relief under the Act. The respondent has miserably failed to establish that she is the wife of petitioner. It has been submitted that respondent is not entitled to any amount as ordered by learned Sessions Judge on 08.07.2011.

11. The learned counsel for the respondent has submitted that it has been proved on record that respondent got married with petitioner and she lived with respondent as his wife, but even if, it is assumed that in presence of first living wife Sanjana of petitioner, the respondent cannot be considered legally wedded wife of petitioner, still respondent is entitled to relief granted by learned Sessions Judge in equity as well as in law. It has been established that respondent at least had live in relationship with the petitioner.

12. The pleaded case of the respondent is that marriage between respondent and petitioner was solemnized in 'Chamunda Mata' temple in June, 2002. The petitioner has denied any marriage with respondent. It is the case of the petitioner that respondent was engaged by him to look after his mentally retarded son Mandip and mother. It is also the case of the petitioner that he married with Sanjana, who is living and residing with him. CW-1 Sneha Lata has stated that she was married on 11.06.2002 with Ram Prakash in 'Chamunda' temple, her earlier

husband had died. She has two children. She has stated that petitioner was already married with Sanjana Devi.

13. There is no dispute between the parties that they are Hindus. The Section 11 of the Hindu Marriage Act, 1955, provides that any marriage solemnized after the commencement of the Hindu Marriage Act shall be null and void and may on a petition presented by either party thereto against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5. The Section 5 (i) of the Hindu Marriage Act, 1955, provides that marriage may be solemnized between any two Hindus if neither party has a spouse living at the time of the marriage. The respondent herself in her statement has admitted that at the time of her alleged marriage with petitioner, there was a subsisting marriage between petitioner and his wife Sanjana. Therefore, the marriage claimed by respondent with petitioner is no marriage in the eyes of law and such marriage is void under Section 5 read with Section 11 of the Hindu Marriage Act, 1955.

14. The 'domestic relationship' defined in Section 2(f) of the Act means a relationship between two persons who live or have , at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The point involved in the present case is that in case respondent is not a wife of the petitioner, whether she can be said to be living in 'domestic relationship' with the petitioner. In *D. Velusamy Versus D.Patchaiammal* (2010) 10 SCC 469, the Supreme Court has held as follows:-

31. In our opinion a relationship in the nature of marriage is akin to a common law marriage. Common law marriages require that although not being formally married:

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. In our opinion a relationship in the nature of marriage under the 2005 Act must also fulfil the above requirements, and in addition the parties must have lived together in a shared household as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a domestic relationship.

32. In our opinion not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a keep whom he maintains financially and uses mainly for sexual purpose and /or as a servant it would not, in our opinion, be a relationship in the nature of marriage.

33. No doubt the view we are taking would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression relationship in the nature of marriage and not live-in relationship. The Court in the garb of interpretation cannot change the language of the statute.

15. The learned counsel for the respondent has relied *Chanmuniya Versus Virendra Kumar Singh Kushwaha and another* (2011) 1 SCC 141, where the Supreme Court has held as follows:-

Most significantly, the Act gives a very wide interpretation to the term domestic relationship as to take it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage within the definition of domestic relationship under Section 2(f) of the Act. Therefore, women in live-in relationships are also entitled to all the reliefs given in the said Act.

In *Chanmuniya* (supra), the proceedings under Section 125 Cr.P.C. were involved. The Supreme Court after paragraph 38 of the report has observed that if monetary

relief and compensation can be awarded in case of live-in relationship under the Act of 2005. They should also be allowed in the proceedings under Section 125 Cr.P.C.

16. The present case is directly under the Act and not under Section 125 Cr.P.C. In *D. Velusamy (supra)*, the Supreme Court has held that relationship in the nature of marriage is akin to a common law marriage. Common law marriages require that although not being formally married: (a) The couple must hold themselves out to society as being akin to spouses (b) They must be of legal age to marry (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

17. In the present case, in presence of existing marriage of petitioner with Sanjana, it cannot be said that petitioner was qualified to enter into a legal marriage with respondent. Therefore, the respondent does not fulfill relationship in the nature of marriage with petitioner. The respondent has claimed relief under the Act which is a special statute. In order to get relief under the Act, the applicant must establish jurisdictional facts before any relief is granted under the Act. On the admission of respondent, she cannot be said to be the wife of petitioner nor it can be said that she had domestic relationship under the Act with the petitioner. Therefore, learned Sessions Judge has rightly declined her any relief under the Act by reversing the order dated 17.09.2010 of the Judicial Magistrate.

18. Once the learned Sessions Judge has declined any relief to the respondent under the Act, the next question is whether respondent in equity is entitled to relief as granted by learned Sessions Judge to respondent vide order dated 08.07.2011. The trial Court invoked the Act for granting relief to the respondent which was reversed by the learned Sessions Judge. The learned Sessions Judge has relied *Yogendra Pal and others Versus Municipality, Bhatinda* and another 1994(4) S.L.J. 3091 for granting relief to the respondent by invoking the principle that the Court is competent to mould the relief.

19. The moulding of the relief by the Court cannot be in conflict with law. The Act does not permit any relief to respondent. The Supreme Court in *D. Velusamy* has

observed that no doubt the view the Supreme Court had taken would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for the Court to legislate or amend the law. The Parliament has used the expression relationship in the nature of marriage and not live-in relationship. The Court in the garb of interpretation cannot change the language of the statute. 1994 (4) S.L.J. 3091 is not at all applicable in the facts and circumstances of the present case, that was a case under the Punjab Municipality Act where the Court observed that Court has power to mould the relief.

20. In view of above, the impugned order dated 08.07.2011 allowing equitable relief in favour of respondent by granting Rs.3,00,000/- to her to be paid by the petitioner is not sustainable. The Criminal Revision No.204 of 2011 is allowed. The order dated 08.07.2011 allowing Rs.3,00,000/- in favour of respondent is set-aside. The application filed by respondent in the trial Court under the Act is dismissed. The Criminal Revision No.243 of 2011 is dismissed with no order as to costs. The pending applications are also disposed of in view of disposal of revisions.

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