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Court : Mumbai Nagpur

Decided On : Jan-27-2015

Judge : S.B. Shukre

Appeal No. : Criminal Writ Petition No. 773 of 2014

Appellant : Narayan Jangluji Thool and Others

Respondent : Mala

Judgement :

Oral Judgment:

1. Heard.

2. Rule, made returnable forthwith. Heard finally by consent of the parties.

3. By this petition, the petitioners are seeking quashing and setting aside of the complaint filed under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act, 2005") by the respondent together with order dated 24/7/2014 passed by the learned Judicial Magistrate, First Class, Yavatmal granting interim maintenance to the respondent.

4. According to learned Counsel for the petitioners, the respondent has nowhere averred in the petition that she has been living or at any point of time before filing of the application under the Act, 2005 was living with petitioner No.1 in a

relationship arising from marriage or that was similar to a marriage. He also submits that even otherwise, the respondent could not have entered in such a relationship, called the domestic relationship under Section 2 of the Act, 2005 as it is an admitted fact that the respondent is a married woman and her marriage still subsists. In support, he places reliance upon the cases of *Durgesh Yuvraj Rahangdale Vs. Rajni Krushnadatta Ukey* - 2014(1) ABR (Cri) 339 and *Indra Sarma Vs. V.K.V. Sarma*-2014 (1) ABR 615.

5. Learned Counsel for the respondent has strongly opposed the petition. He submits that these are all factual aspects of the case, which can be decided only after detailed evidence is available and, therefore, this objection should be left for it's appropriate consideration by the trial Court. He submits that whether the respondent was in domestic relationship or not with petitioner No.1 can be appropriately decided in the light of the contentions and evidence brought on record only by the trial Court. Therefore, he submits that this petition may be dismissed.

6. In the case of *Durgesh Yuvraj Rahangdale* (supra), Division Bench of this Court, following the law laid down by the Hon'ble Apex Court in the case of *D. Velusamy Vs. D. Patchaiammal* - AIR 2011 SC 479, has held that all live-in-relationships do not amount to relationships in the nature of marriage so as to get the benefit of the Act, 2005. It further held that it is necessary for the applicant and the non-applicant to live in such a way that they are treated by the society at large as husband and wife and not only that they should also otherwise be qualified to enter into a legal marriage, with both of them being of legal age to marry, both of them being unmarried at the time when they enter into a relationship which is akin to a marriage and so on.

7. It is thus clear that in order to attract the provisions of the Act, 2005, the applicant must not only show existence of a live-in-relationship with the non-applicant which is akin to a marriage which is visible from the fact that applicant and non-applicant are living together by holding out as husband and wife, and should also show that they are otherwise legally qualified to marry.

8. In the case of Indra Sarma (supra), the Hon'ble Apex Court clarified the issue as to whether or not a concubine or a mistress, who is living together with a man for a considerably long period of time, would be entitled to derive benefits of the provisions of the Act, 2005 by contending that she is in "domestic relationship" with that man. The Hon'ble Apex Court has held that even though long standing relationship as a concubine deserves some protection in order to provide her financial stability, her such relationship not being in the nature of marriage cannot be termed as domestic relationship as contemplated by the Act, 2005. Hon'ble Apex Court has categorically held that the provisions of the Act, 2005 do not take care of such a relationship because the definition of Section 2(f) of the Act, 2005 is restricted and exhaustive. Hon'ble Apex Court has also expressed a view that perhaps this definition may call for an amendment.

9. So, it is crystal clear that a woman, who is married, cannot enter into a domestic relationship as contemplated under Section 2(f) of the Act, 2005 and even if she establishes a long standing relationship with a man as his concubine or mistress, she would not be entitled for protection under the provisions of the Act, 2005.

10. Having considered the legal position settled by the Hon'ble Apex Court in the above referred cases and also by the Division Bench of this Court, now, it will be necessary for us to examine the case of the respondent.

11. It is clear from the averments made in the application itself that the respondent has never claimed to be living together with the petitioner and has also not claimed that at any point of time before filing of the application, she had lived together with the petitioner. Living together with another person in a shared household is an essential ingredient of the domestic relationship as contemplated under Section 2(f) of the Act, 2005. That apart, the applicant should also have lived in a shared house hold with a man in a relationship which is akin to a marriage, if she is claiming herself to be wife or marriage partner. Then, if she is already a married woman, she cannot enter into domestic relationship with a man. It is an admitted position in the instant case that the respondent is a married woman, who has not obtained any legal divorce from her husband Chandan. Therefore, by accepting the case of the respondent as it is, I am of the view that the proceedings initiated

under Section 12 of the Act, 2005 cannot be sustained in law.

12. Of course, learned Counsel for the respondent submits that Section 2(f) of the Act, 2005 does not require that a woman should be a wife and it is enough that she is living with a man in relationship, which is similar that of a marriage. He is right. But there is a rider to it. She should be unmarried and be otherwise qualified to marry. I have already found from the admitted position that the respondent is a married woman, whose marriage with her husband Chandan is still subsisting and this being the position, her relationship whatever it might be with the petitioner, cannot be termed as domestic relationship under Section 2(f) of the Act, 2005.

13. In the circumstances, I am of the view that the case of the respondent is completely out of the purview of the Act, 2005 and, therefore, if the proceedings are allowed to be continued, it would be nothing but abuse of the process of law. The petition, therefore, deserves to be allowed.

The petition is allowed.

Impugned order dated 24/7/2014 is hereby quashed and set aside.

The complaint filed being Domestic Violence Case No.1 of 2014 is quashed and set aside.

Rule is made absolute accordingly.

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