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Chandra Babu vs Vidya Pushpan

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Court : Kerala

Decided On : Aug-05-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Crl.Rev.Pet/14/2023

Appellant : Chandra Babu

Respondent : Vidya Pushpan

Judgement :

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946 CRL.REV.PET NO. 14 OF 2023 AGAINST THE JUDGMENT DATED 05.11.2022 IN CRA NO.73 OF 2021 OF THE PRINCIPAL SESSIONS COURT, KOLLAM ARISING OUT OF THE JUDGMENT DATED 22.02.2021 IN MC NO.78 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, SASTHAMCOTTA REVISION PETITIONER/APPELLANT/RESPONDENT:

CHANDRA BABU PARASSERIL VEEDU, VADAKKUBHAGAM MURI, THEKKUMBHAGAM VILLAGE, KOLLAM, PIN - 689001. BY ADVS. JOHNSON GOMEZ S.BIJU (KIZHAKKANELA) SANJAY JOHNSON JOHN GOMEZ ARUN JOHNY DEEBU R. RESPONDENTS/RESPONDENTS/PETITIONER AND R3 & R4: 1 VIDYA PUSHPAN PARASSERIL VEEDU, VADAKKUMBHAGAM MURI, THEKKUMBHAGAM VILLAGE, KOLLAM, PIN - 689001. 2 SHAJI KUMAR PARASSERIL VEEDU, VADAKUMBHAAM MURI, THEKUMBHAGAM VILLAGE, KOLLAM, PIN - 689001. 3 RENUKA, PARASSERIL VEEDU, VADAUMBHAGAM MURI, THEKKUMBHAGAM VIILLAGE KOLLAM, PIN - 689001. 4 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031. R1 BY ADV.RESMI NANDANAN R1 BY ADV.P.SUJITH KUMAR R4 BY SMT.SEENA C., PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 29.07.2024, THE COURT ON 05.08.2024 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J. C.R. ---------- Dated this the 5th day of August, 2024

ORDER

The definition of domestic relationship in Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) crops up for interpretation yet again in this case.

2. At the time when they underwent a marriage

ceremony, the first marriage of both the petitioner and the 1 st respondent was subsisting. The trial court as well as the appellate court considered the question in the light of the law laid down by the Apex Court in Indra Sarma v. V.K.V.Sarma [(2013) 15 SCC 755] and held that dehors their first marriage, there existed a domestic relationship. Various reliefs were granted accordingly. The petitioner

challenges the said concurrent finding in this revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Code).

3. The Judicial Magistrate of the First Class,

Sasthamcotta initially as per its order dated 06.04.2018 allowed M.C.No.78 of 2013, which was filed by the 1 st respondent. The appeal preferred by the petitioner was dismissed. The matter was carried to this Court in revision by filing Crl.Revision Petition No.937 of 2019. This Court as per the order dated 21.10.2020 allowed that revision petition and remitted the matter to the learned Magistrate for a fresh consideration in the light of the law laid down by the Apex Court in Indra Sarma (supra). In obedience to the said direction, the learned Magistrate considered the matter afresh and allowed M.C.No.78 of 2013 as per the order dated 22.02.2021 granting most of the reliefs. The appellate court followed the suit and dismissed the appeal preferred by the petitioner as per the judgment dated 05.11.2022.

4. Heard the learned counsel for the petitioner, the learned counsel for the 1st respondent and the learned Public Prosecutor.

5. Evidence shows, a ceremony of marriage between

the petitioner and the 1st respondent took place on 23.08.2011 at Varkala Sivagiri Sarada Matt. Both of them had earlier married and their spouses alive. Their marriages were not dissolved on 23.08.2011. The marriage of the petitioner was dissolved on 23.09.2015. Ext.D2 is a certified copy of the

order dissolving the marriage. Marriage of the 1 st respondent

was dissolved on 17.07.2012. Ext.P7 is the certified copy of the order dissolving her marriage. On 23.08.2011 earlier marriages of the petitioner and the 1st respondent were subsisting. Therefore the question is whether, on account of the marriage ceremony on 23.08.2011 and subsequent cohabitation for a considerable period by the petitioner and the 1st respondent, which the petitioner does not admit there existed a domestic relationship answering to the definition contained in Section 2(f) of the PWDV Act.

6. The learned counsel for the petitioner places

reliance essentially on Velusamy D. v. D.Patchaiammal [(2010) 10 SCC 469] and Indra Sarma [2013) 15 SCC 755] in order to contend that the relationship between the petitioner and the 1st respondent did not create a domestic relationship. The learned counsel for the 1 st respondent, on the other hand, would submit that all the parameters laid down by the Apex Court in Indra Sarma (supra) are satisfied in this case, and therefore, the concurrent findings rendered by the courts below that the petitioner and the 1 st respondent were in a domestic relationship is not liable to be interfered with.

7. Section 2(f) of the PWDV Act is extracted below:

2(f) domestic relationship 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.

8. In Indra Sarma (supra) a few guidelines were

issued with a caveat that those were not exhaustive to decide existence or not of a domestic relationship. The observations contained in paragraph No.55 are extracted below: 55. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances,

> a live-in relationship will fall within the expression relationship in the nature of marriage under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships: 1) Duration of period of relationship:- Section 2(f) of the DV Act has used the expression at any point of time, which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) Shared household:- The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(3) Pooling of Resources and Financial Arrangements:-

Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements:- Entrusting the

responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship:- Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

(6) Children:- Having children is a strong indication of a

relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public:- Holding out to the public

and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties:- Common

intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

9. The learned Sessions Judge considered the evidence

tendered in this case and held that necessary parameters chosen from the said guidelines were proved to have existed in this case. The learned Sessions Judge, however, did not consider how the Apex Court dealt with the law in Velusamys case while laying down the said guidelines.

10. The Apex Court in Velusamy (supra) held that the

relationship in the nature of marriage was akin to a common law marriage. It was observed that for a common law marriage, even though there is no formal marriage, the following requirement should be satisfied: (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. (underline supplied) It was held that the term relationship in the nature of marriage in Section 2(f) of the PWDV Act must fulfill the above requirements.

11. The Apex Court in Indra Sarma (supra) after

referring to the observations in Velusamy (supra) observed that a woman, who is a party to the relationship, which does not satisfy the requirements of a common law marriage, would suffer social disadvantages and prejudices. Such a woman would suffer social ostracism through the denial of status of benefits, who cannot, of course enter into a relationship in the nature of marriage. Having had detailed discussion, the Apex Court expressed the anguish on the plight of such woman and observed as follows:

62. Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be

a relationship in the nature of a marriage.

12. The Apex Court thus recognised the law in

Velusamys case. Therefore, the parties to the relationship in the nature of marriage must be persons qualified to enter into a legal marriage, including being unmarried. Without considering that aspect of the matter, the courts below took the view that the parameters enlisted by the Apex court in Indra Sarma (supra) were satisfied in the case and therefore there was a domestic relationship. The said view is incorrect. Although the powers of this Court while exercising revisional jurisdiction are limited, the aforesaid wrong statement of law can certainly be interfered with. Accordingly, I hold that the concurrent findings rendered by the courts below in favour of the 1st respondent that she was in a domestic relationship with the petitioner and therefore she is entitled to get the reliefs under the PWDV Act is incorrect. M.C.No.78 of 2013 filed by the 1st respondent for the said purpose is liable only to be dismissed.

13. Therefore, the order of the learned Magistrate

allowing M.C.No.78 of 2013 and the judgment of the appellate court confirming the order of the learned Magistrate are set aside. The revision petition is allowed. M.C.No.78 of 2013 on the files of the Judicial Magistrate of the First Class, Sasthamcotta is dismissed. Sd/- P.G. AJITHKUMAR, JUDGE dkr APPENDIX OF CRL.REV.PET 14/2023 PETITIONER ANNEXURES ANNEXURE A1 A TRUE COPY OF THE JUDGEMENT DATED PETITION NO. 937 OF 2019 BY THIS HON'BLE COURT. ANNEXURE A2 A TRUE COPY OF THE ORDER DATED FIRST CLASS MAGISTRATE COURT, SASTHAMCOTTA ANNEXURE A3 A TRUE COPY OF THE JUDGEMENT DATED PRINCIPAL SESSIONS COURT, KOLLAM

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