SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Chandra Babu vs Vidya Pushpan

Chandra Babu vs Vidya Pushpan

SooperKanoon Citation : sooperkanoon.com/1798233

Court : Kerala

Decided On : Oct-21-2020

Judge : Honourable Mr. Justice Alexander Thomas

Appeal No. : Crl.Rev.Pet/937/2019

Appellant : Chandra Babu

Respondent : Vidya Pushpan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS WEDNESDAY, THE 21ST DAY OF OCTOBER 2020 / 29TH ASWINA, 1942 Crl.Rev.Pet.No.937 OF 2019 AGAINST THE JUDGMENT IN CRA 42/2018 DATED 12-02-2019 ON THE FILE OF THE IIND ADDITIONAL SESSIONS JUDGE,KOLLAM AGAINST THE ORDER IN MC 78/2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS, SASTHAMKOTTA REVISION PETITIONER/APPELLANT & RESPONDENTS 3&4/RESPONDENT 1,3 & 4: 1 CHANDRA BABU PARASSERIL VEEDU, VADAKKUBHAGAM MURI, THEKKUMBHAGAM VILLAGE, KOLLAM 2 SHAJIKUMAR PARASSERIL VEEDU, VADAKKUBHAGAM MURI, THEKKUMBHAGAM VILLAGE, KOLLAM 3 RENUKA PARASSERIL

VEEDU, VADAKKUBHAGAM MURI, THEKKUMBHAGAM VILLAGE, KOLLAM BY ADVS. SRI.JOHNSON GOMEZ SRI.M.R.SUDHEENDRAN SRI.C.UNNIKRISHNAN (KOLLAM) RESPONDENTS/R1/PETITIONER & STATE: 1 VIDYA PUSHPAN PARASSERIL VEEDU, VADAKKUBHAGAM MURI, THEKKUMBHAGAM VILLAGE, KOLLAM - 689 001 2 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031 R1 BY ADV. SRI.T.M.RAMAN KARTHA SRI.B.JAYASURYA, PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21.10.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ALEXANDER THOMAS, J.

========== ==========

Dated this the 21st day of October, 2020

ORDER

The prayer in the above Crl.Revision Petition filed under Sec.397 read with Sec.401 of the Cr.P.C is as follows : .....to call for and examine the records of the courts below, set aside the judgment in Crl.Appeal No.42/2018 on the file of the II

Additional Sessions Judge, Kollam dated 12.02.2019 and the Order

in the MC No.78/2013 on the file of the Judicial First Class Magistrate Court, Sasthamcotta and dismiss the MC No.78/2013.

2. Heard Sri.Johnson Gomez, learned counsel appearing for the

revision petitioners, Sri.T.M.Raman Kartha, learned counsel appearing for the contesting respondent No.1 and Sri.B.Jayasurya, learned Public Prosecutor appearing for the 2nd respondent-State of Kerala.

3. The contesting respondent No.1 herein had filed

M.C.No.78/2013 before the Judicial First Class Magistrates Court-I, Sasthamkotta claiming various reliefs under the provisions of the Protection of Women from Domestic Violence Act, 2005 including claims for grant of maintenance, protection order and residence order. The revision petitioners herein are the three respondents in the said M.C.

The case of the 1st respondent was to the effect that she had married the 1st revision petitioner and that he and the other two revision petitioners have committed domestic violence on her within the meaning of the abovesaid Act and that therefore, she is entitled for the abovesaid reliefs

sought for the Domestic Violence Act. The learned Magistrate has rendered Annexure-A1 final order dated 06.04.2018 granting the main reliefs of maintenance as well as alternate accommodation to be provided by the 1st revision petitioner and that the revision petitioners are also restrained from committing mental and physical violence on her, etc.

4. Being aggrieved by the impugned Annexure-A1 final order

dated 06.04.2018 rendered by the Judicial First Class Magistrates Court, Sasthamkotta in M.C.No.78/2013, the revision petitioners herein have preferred Crl.Appeal No.42/2018 before the II nd Additional Sessions Court, Kollam under Sec.29 of the DV Act. The Sessions Court has passed the impugned Annexure-A2 judgment dated 12.02.2019 dismissing Crl.Appeal No.42/2018 and thereby confirming the findings and orders of the learned Magistrate granted as per the impugned

Annexure-A1 final order dated 06.04.2018. Being aggrieved by the abovesaid impugned Annexure-A1 final order rendered by the learned Magistrate and the impugned Annexure-A2 judgment rendered by the Sessions Court concerned, the revision petitioners herein have approached this Court by filing the aforecaptioned revision petition as aforestated.

5. Both sides have been heard in extenso. Apart from various

other contentions, two main contentions have been urged by Sri.Johnson Gomez, learned counsel appearing for the revision petitioner. The first contention is that the specific case put up by the respondent herein as the petitioner in M.C.No.78/2013 is that the marriage between the 1st petitioner herein and the 1st respondent was legally solemnized on 23.08.2011 at Varkala Sivagiri Sarada Math and that the 1st petitioner herein and the 1st respondent herein are thus husband and wife on account of the said legally solemnized marriage. But after appreciating the evidence, the learned Magistrate has rightly found in the impugned Annexure-A1 final order that the abovesaid alleged marriage is not legally valid since at the time of the solemnization of the alleged marriage, both parties are already married and had not secured the dissolution of their respective first marriages and that this factual aspect was known to both of them, more particularly, the 1 st respondent herein. Hence, it is contended by the learned counsel for the revision petitioners that in the light of this crucial fact finding made by the learned Magistrate, since the 1st respondent herein had specifically taken up the plea that it was a legally solemnized marriage, then it is not later open to

the 1st respondent herein to take up the plea that though it was not a legally solemnized marriage, the said parties were living in a domestic relationship, which is akin to a marriage and that the 1st respondent herein is estopped from taking his contention.

6. The second main contention urged by the learned counsel

appearing for the petitioner is that it is by now well settled by a series of rulings of the Apex Court and various High Courts, including the decision rendered by the Apex Court in the celebrated case in Indira Sarma v. V.K.V.Sarma [(2013) 15 SCC 755] that all live-in relationships are not relationships in the nature of marriage, as understood in Sec.2(f) of the DV Act (which deals with the definition of domestic relationship) and that a relationship to qualify as a relationship in the nature of marriage, as understood in Sec.2(f) of the DV Act should have some inherent or essential characteristics of a

marriage, though not a marriage legally recognized. After noticing relevant provisions under various foreign statutes, guideline has been laid down by the

Apex Court in Indira Sarmas case (supra) [(2013) 15 SCC 755] for testing, as to under what circumstances a live-in relationship would fall within the relationship in the nature of marriage, as defined in the Sec.2(f) of the DV Act. In the said decision it was found by the Apex Court on facts, that the alleged live-in relationship between

the appellant therein (unmarried woman) and the respondent therein (married male) was not a relationship in the nature of marriage under Sec.2(f) of the DV Act and hence non-maintenance of appellant therein by the respondent therein after he left her, would not amount to domestic violence under Sec.3 of the DV Act. Further it was held that if any direction is given to the respondent to pay maintenance or monetary consideration to the appellant therein, that would be at the cost of the legally wedded wife and children of the respondent therein, especially when they had opposed that relationship and have a cause of action against the appellant therein for alienating the companionship and affection of the husband/parent, which is an intentional tort. The Apex Court found that the appellant therein had entered into live-in relationship with the respondent with the full knowledge that he was married with wife and two children and the said marriage of the respondent therein was subsisting during the live-in relationship of the parties. The Apex Court held that the status of the appellant therein can at best be described only as that of a concubine or mistress and there is also no need to rebut the presumption of marriage raised from long cohabitation of the parties, which was approximately 14 years in that case, as the applicant woman was aware of the marital status of the respondent therein prior to the commencement of the relationship. The

Apex Court has held various tests to determine, as to whether a live-in relationship would amount to a relationship in the nature of marriage as defined in Sec.2(f) of the DV Act and it was held that those parameters and tests are also not satisfied in such a case. The Apex Court has also dealt with a live-in relationship, which are not in the nature of marriage and it was held that a live-in relationship between two heterosexual consenting adults, does not amount to any offence even though it may be perceived as immoral and that under the DV Act, 2005, the Parliament has recognized a relationship in the nature of marriage, as defined in Sec.2(f) of the

said Act and not a live-in relationship simpliciter. It will be profitable to refer to paragraph No.40 of the abovesaid judgment of the Apex Court in Indira Sarma's case (supra) [(2013) 15 SCC 755], which reads as follows :

> 40. We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes domestic violence, have a common sense/balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the nature of marriage. Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression relationship in the nature of marriage, of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression in the nature of marriage. Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are
>
> taken advantage of and essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in para 38.1(a) and para 38.4 (d) supra. Women, who fall under categories (b) and (c) (paras 38.2 and 38.3), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), refereed to in para 38.2 of the

judgment.

7. The Apex Court in paragraph Nos.56.1 to 56.8 of Indira

Sarma's case (supra) has dealt with the various tests and parameters to be satisfied, inorder that a live-in relationship should fulfill the requirements of a relationship in the nature of marriage, as defined in Sec.2(f) of the DV Act and it will be profitable to refer to paragraph Nos. 56.1 to 56.8 of Indira Sarma's case (supra), which reads as follows :

> 56.1. 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. 56.2. Shared household.- The expression has been defined under Section 2(s) of the DV Act and, hence, needs no further elaboration. 56.3. 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. 56.4. 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. 56.5. 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. 56.6. Children.- Having children is a strong indication of a relationship in the nature of marriage. The parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication. 56.7. Socialisation in public.- Holding out to the public and socialising 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. 56.8. Intention and conduct of the parties.-

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

8. Based on the abovesaid judgment rendered by the Apex Court

in the celebrated Indira Sarma's case (supra) [(2013) 15 SCC 755], the learned counsel for the petitioner has made elaborate submissions in support of his contention that since the 1st respondent herein was fully aware that she herself has married and her marriage was never dissolved during the live-in relationship with the 1st revision petitioner and that the 1st respondent herein also knew that the 1 st revision petitioner was already married and that he was never divorced and that therefore, the so called live-in relationship alleged by the 1st respondent in the instant case would not satisfy the definition of a relationship in the nature of marriage as understood in Sec.2(f) of the Act and that therefore, there is no question of invoking the plea of domestic violence as understood in

Sec.3 of the Act.

9. After hearing both sides, it is seen that the abovesaid crucial

contentions raised by the petitioners are not seen seriously addressed or considered by both the courts below. Therefore, without getting into the merits of the controversy in any manner, this Court is of the considered view that the non-consideration of the abovesaid crucial and relevant aspects urged by the petitioners by both the learned Magistrate and by the learned Appellate Sessions Court concerned in the rendering of the impugned Annexure-A1 final order in the M.C and Annexure-A2

judgment in the Crl.Appeal, would vitiate the said judicial decision

making process and that therefore, the matter would require serious re-consideration at the hands of the court below concerned and hence, it would warrant a remit for such re-consideration. In that view of the matter, it is ordered

that the impugned Annexure-A1 final order dated 06.04.2018 rendered by the Judicial First Class Magistrate's Court, Sasthamkotta in M.C.No.78/2013 and the impugned Annexure-A2

judgment dated 12.02.2019 rendered by the II nd Additional Sessions

Court, Kollam in Crl.Appeal No.42/2018 will stand set aside. Consequently, it is ordered that M.C.No.78/2013 will stand remitted to the Judicial First Class Magistrate's Court, Sasthamkotta, for consideration and decision based on the evidence already on record. The

learned Magistrate will afford reasonable opportunity of being heard to the 1st respondent herein as well as to the revision petitioners herein and then will advert to the various aspects of the case, including the abovesaid crucial contentions and also may consider, as to the applicability of the dictum laid down by the Apex Court in Indira Sarma's case (supra) [(2013) 15 SCC 755] to the facts of this case, after due appreciation of the evidence on record. Final orders afresh shall be duly rendered by the learned Magistrate in M.C.No.78/2013, without much delay, preferably within a period of two months, at any rate, within an outer time limit of three months from the date of production of a certified copy of this order. It is made clear that this Court has not entered into the merits of the controversy and it is for the learned Magistrate to consider meticulously the rival contentions and should also advert to the crucial contentions referred to hereinabove, more particularly, the applicability of the dictum laid down by the Apex Court in Indira Sarma's case (supra) [(2013) 15 SCC 755] to the facts and circumstances of this case. The learned advocate appearing for the 1 st respondent herein as well as the learned Advocate appearing for the revision petitioners herein shall enter appearance before the Judicial First Class Magistrate's Court, Sasthamkotta, who is dealing with M.C.No.78/2013 at 11 a.m. on 03/12/2020. On the said day, the learned Magistrate may take into account the convenience of both sides and then fix up a date for final hearing of the matter and then may pass final orders in the matter afresh, without much delay and within the

abovesaid time limit, as ordered hereinabove. Since the parties already represented through their learned advocates, there is no necessity for the parties concerned to personally appear before the learned Magistrate. The learned counsel for the revision petitioners have submitted that certain amounts have already been deposited by the revision petitioners before the

learned Magistrate in compliance with the requirements of the interim order

dated 15.10.2019 rendered by this Court in this Crl.Revision Petition and that in view of the setting aside of the impugned orders, this Court may direct the learned Magistrate to release the said amounts to the revision petitioners herein. The said plea of the revision petitioners is opposed by the learned counsel for the 1st respondent herein. After passing final orders in the abovesaid M.C, the learned Magistrate may release the amounts to the party concerned depending upon the final outcome in the M.C.

10. The Registry will forward a copy of this order to the Judicial First Class Magistrate's Court, Sasthamkotta, who is dealing with M.C.No.78/2013, for necessary information and further action. With these observations and directions, the above Criminal Revision Petition will stand disposed of. Sd/- ALEXANDER THOMAS JUDGE vgd

APPENDIX PETITIONER'S/S EXHIBITS: ANNEXURE A1 TRUE COPY OF THE ORDER IN MC 78/2013 IN THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, SASTHAMCOTTA ANNEXURE A2 CERTIFIED COPY OF THE JUDGMENT DATED 12.02.2019 IN CRIMINAL APPEAL NO.42/2018 ON THE FILE OF THE IIND ADDITIONAL SESSIONS JUDGE, KOLLAM ANNEXURE A3 ORIGINAL COPY OF RECEIPT NO.0987825 DATED

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com