

V.K.V. Sarma Vs. Ms. Indra Sarma

V.K.V. Sarma Vs. Ms. Indra Sarma

SooperKanoon Citation : sooperkanoon.com/934898

Court : Karnataka

Decided On : Aug-12-2011

Judge : V. Jagannathan

Appeal No. : CRL.R.P.No. 856 of 2010

Appellant : V.K.V. Sarma

Respondent : Ms. Indra Sarma

Advocate for Def. : Sri. Manivannan

Advocate for Pet/Ap. : For the Petitioner: Sunil S Rao, For M/s. Guruganesh Associates, Advocates. For the Respondent: Manivannan, Advocate.

Judgement :

(Prayer: This CRL.RP filed U/S. 397 Cr.P.C. Praying to set aside the order dated 10.6.2010 passed in CRL.A.No. 674/2009, by the P.O. FTC-II, Bangalore City, Annexure-A. and order dated 21.7.2009, passed in CRL.MISC. No. 692/2007, by the III ADDL., CMM, Bangalore City, At Annexure-B.)

1. The petitioner is before this court aggrieved by the trial court allowing the application filed by the respondent u/s 12 of the Protection of Women from Domestic Violence Act, 2005 ('the Act' for short) and the said order of the trial court being confirmed by the lower appellate court.

2. The brief facts are, the respondent filed a petition u/s 12 of the Act and sought, among other things, a direction to the petitioner to pay her maintenance of Rs. 18,000/- per month and in the petition it was stated by her that, she had a live-in-relationship with the petitioner despite the petitioner having wife and two children and on account of the companionship the respondent had with the petitioner, petitioner even took certain amount from the respondent by stating that he would buy a site in her name and the respondent, who was at that time working as a Consultant for many Companies including Nice Company, however, was not taken care of by the petitioner herein and she was ill-treated and harassed by the petitioner. Though the petitioner herein is well placed having 3 acres of land and a house at Nagarbavi apart from carrying on the business of Beauty Parlor and having number of vehicles and earning more than Rs. 1,50,000/- per month, the petitioner did not take care of the respondent herein and therefore she was constrained to file the petition u/s 12 of the Act.

3. The petitioner herein contested the said application before the trial court and contended that the petitioner never asked the respondent to leave her job and the respondent started staying in a separate house since 1993 and the petitioner herein did not force the respondent to undergo abortion nor he took any money from her and he also denied the income from various business alleged by the respondent is not legally wedded wife of the petitioner and therefore the petition be rejected.

4. The trial court after considering the stand of the parties, ultimately allowed the petition by directing the petitioner herein to pay Rs. 18,000/- per month as maintenance from the date of the petition.

5. On appeal being filed by the petitioner herein, the learned Judge of the lower appellate court dismissed the appeal by confirming the order of the trial court.

6. I have heard the learned counsel Sri. Sunil S. Rao for the petitioner and Sri. Manivannan for the respondent and perused the orders of the court below.

7. Submission of the learned counsel for the petitioner is that, though the respondent was aware of the petitioner being a married person having wife and

two children, yet she developed a relationship with the petitioner and that continued for several years. Nevertheless, it is his submission that, the relationship between the parties does not come within the definition of 'domestic relationship' as defined u/s 2 (f) of the Act.

8. Further submission made is that, the Apex Court in the case of Velusamy Vs D. Patchaimmal 2010 AIR SCW 6731 has explained the expression 'relationship in the nature of marriage' as the one which satisfies the requirements that are mentioned in para. 33 of the judgment. Therefore, it is argued that, when the petitioner and the respondent were not otherwise qualified to enter into a legal marriage, the question of the relationship between the parties falling within the expression 'a relationship in the nature of marriage' does not arise. Therefore, the courts below were in error in allowing the petition filed by the respondent.

9. On the other hand, submission of Sri. Manivannan learned counsel for the respondent is that, the respondent had developed a relationship with the petitioner and the couple lived together for several years and the respondent also underwent abortion and apart from that, she also had several complications and had to undergo surgery and she had put her entire hope on the relationship that she had with the petitioner and now the petitioner has left the respondent in lurch for her to suffer physically, mentally and financially. Therefore, the courts below were justified in allowing the petition filed by the respondent.

10. Learned counsel for the respondent further argued that the Act is meant to take care of the interest of women in general and therefore the Act does not confine itself to 'relationship in the nature of marriage' and therefore even a live-in relationship is covered by the expression 'domestic relationship'. Hence, having regard to the object with which the Act has been passed and the expression 'aggrieved person' in Section 2 (a) also including any woman, it is therefore not necessary that the respondent will have to be a woman who would be like a wife and therefore by giving a beneficial interpretation to the expression woman and also to the expression live-in relationship, the courts below have allowed the petition filed by the respondent. Under the said circumstances, the present petition be dismissed as otherwise the respondent would be deprived of the maintenance

amount despite she having had live-in relationship with the petitioner for several years and having given herself to the petitioner in every respect. Therefore, in the interest of the respondent and her future, the order passed by the courts below be sustained.

11. In the light of the aforesaid contentions put forward and having gone through the orders passed by the courts below and the stand taken by the parties, it is not in dispute that the petitioner is a married man having wife and two children. It is also an admitted fact that the respondent and the petitioner lived together and the relationship was one of the 'live-in relationship'. In order to attract the definition of 'domestic relationship', the respondent will have to satisfy the ingredients of the said expression. Section 2 (f) of the defines domestic relationship as to mean the following;

"2 (f) 'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in 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."

12. It is therefore clear from the aforesaid expression that, 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.

13. The Apex Court in the case of Velusamy Vs Patchaiammal (AIR SCW 6731) has interpreted the expression 'a relationship in the nature of a marriage' thus at para.33;

"33. 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 fulfill 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'.

14. The Apex Court therefore went on to observe at para.34 that, live-in relationships will amount to a relationship in the nature of marriage to get the benefit of Act of 2005 and to get such benefit, conditions mentioned in para. 34 must be satisfied and this has to be proved by evidence.

15, Further, the Apex Court observed that the aforesaid view would take out many women who have had a live-in relationship from the benefit of the Act, but then it is not for the court to legislate or amend the law and the Parliament has used the expression 'relationship in the nature of marriage' and not 'live-in relationship'.

16. Having regard to the aforesaid law laid down by the Apex Court and the interpretation given to the 'domestic relationship'. It is unfortunate that, in the instant case, the relationship that the respondent had with the petitioner does not come within the ambit of 'relationship in the nature of marriage'. As such, the courts below were in error in allowing the petition filed by the respondent for maintenance as the view taken is contrary to the law laid down by the Apex Court in the aforementioned Velusamy's Case.

17. Under the above circumstances, this petition requires to be allowed and it is allowed and consequently, the judgments of the courts below stand set aside.

18. Though this court has allowed the petition and set aside the orders of the courts below, yet, the result of this petition however shall not come in the way of the parties settling their differences amicably.

19. At this stage, learned counsel for the respondent sought permission to approach the Apex Court. The submission of the learned counsel for the petitioner is that, this is not a fit case to grant leave to approach the Apex Court.

20. Having thus heard both sides and the Apex Court having laid down the law in clear terms in the aforementioned Velusamy's case. I do not see any case being made out for this court to grant leave as sought for by the learned counsel for the respondent. Prayer of the learned counsel for the respondent is rejected.

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