

Sumit Lal Vs. State and anr.

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Court : Delhi

Decided On : Mar-01-2013

Judge : G.P. Mittal

Appellant : Sumit Lal

Respondent : State and anr.

Advocate for Def. : Ms. Rajdipa Behura

Advocate for Pet/Ap. : Mr. Anil Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

1. t March, 2013 + CRL. M.C. 130/2012 SUMIT LAL Petitioner Through: Mr. Anil Sharma, Adv. versus STATE & ANR. Through: Respondents Ms. Rajdipa Behura, APP for the State. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL
JUDGMENT G. P. MITTAL, J.

(ORAL) 1. The Petitioner invokes the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for setting aside of the order dated 08.11.2011 passed by the learned Additional Sessions Judge (ASJ) whereby she dismissed the Appeal against the order dated 08.07.2011 passed by the learned Metropolitan Magistrate (MM) whereby the Petitioner was directed to pay maintenance of `1500/- per month to the Respondent.

2. The facts leading to filing of the Petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) are that the Respondent claimed to have married the Petitioner on 04.01.1997 at the Methodist Church, Idgah, Delhi according to Christian rites and customs. In the Petition, it was averred that the Respondent and the Petitioner lived as husband and wife since the year 1997 upto 2008. The Respondent alleged certain acts of violence and harassment at the hands of the Petitioner, particularly in October, 1998 and in November, 2001. According to the Respondent, the Petitioner started administering slipping pills to her and compelled her to have sexual relations with his (Petitioners) friends for his financial benefits. This was objected to by the Respondent. The Respondent alleged that the Petitioner contracted a second marriage with a lady named Pearl on 28.01.2008.

3. In reply to the Petition, the allegations of any marriage with the Respondent as also the allegations with regard to her ill-treatment, administering any pills, etc. were controverted by the Respondent.

4. By order dated 08.07.2011, the learned MM held that there was a relationship in the nature of marriage between the parties. The learned MM further held that the Petitioner was working as a driver with Queen Mary School and thus directed the Petitioner to pay maintenance @ 1500/- per month to the Respondent. The Petitioner challenged the order by preferring an Appeal under Section 29 of the D.V. Act before the learned ASJ.

The Petitioner relied on some evidence recorded in the proceedings under Section 125 Cr.P.C. of CW-1 and CW-2 to contend that Respondent was not legally married to the Petitioner. The learned ASJ while dismissing the Appeal held as under:9. Some photographs in the trial court has also been filed by the respondent which clearly shows that it is not that appellant had no relationship with the respondent. Rather they lived as husband and wife since 1997 to 2008. Moreover in the present case, even the police examined certain witnesses and prepared a status report which also establishes the relationship of appellant with the respondent and therefore the domestic relationship between the parties stands established in trial court.

10. Regarding status report or income or earning capacities of the parties, trial court has rightly held that the respondent is without work and she is not doing any private job for earning her livelihood and thereafter she is entitled for maintenance. On the other hand, appellant is a driver by profession as stated by himself and in such circumstances if the trial court has presumed the income of appellant not to be less than 5000/- per month then no infirmity or illegality has been committed by the trial court. The amount of `1500/- per month granted as maintenance to the respondent is not on the higher side. Now a days in city like Delhi for taking a room on rent and thereafter for the expenses of food and clothing of a person, amount of `1500/- per month granted as maintenance to the respondent is not on the higher side. As such, there is no infirmity or illegality in the order dated 8.7.2011 passed by the Ld.MM. Same is therefore upheld and present revision filed by the appellant is dismissed..

5. The learned counsel for the Petitioner urges that since there was no relationship in the nature of marriage, the learned MM committed illegality in granting maintenance to the Respondent. The learned ASJ also erred in not reversing the order passed by the learned MM. The learned counsel for the Petitioner urges that since the Petitioner failed to establish that there was a relationship in the nature of marriage, the learned MM ought to have waited for the evidence to be recorded to pass an order under Section 20 of the D.V. Act.

6. Referring to D.Velusamy v. D. Patchaiammal, (2010) 10 SCC 46.and Adil & Ors. v. State & Anr. 2010 (119) DRJ 297.the learned counsel for the Petitioner argues that simply because the Respondent had some photographs with the Petitioner, it would not establish that there was a relationship in the nature of marriage between the parties. In D.Velusamy, the Supreme Court held that merely spending weekends together or a one night stand would not make it a domestic relationship. Para 31 of the judgment reads as under: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. (See Common Law Marriage in Wikipedia on Google.) 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.

7. Similarly, in Adil & Ors. it was held that there has to be domestic relationship between the person aggrieved and the Respondent to invoke the provisions of D.V. Act.

8. There is no dispute about the proposition of law as laid down in D. Velusamy and Adil & Ors. However, in the instant case, the learned MM as also the learned ASJ found that there were number of photographs placed before the Trial Court and there were statements of witnesses recorded by the police who stated about the relationship between the parties as husband and wife or that they lived as husband and wife. The impugned order was passed only as an interim arrangement on a prima facie view of the matter.

9. In the circumstances, it cannot be said that the impugned order dated 08.07.2011 was illegal or that the learned ASJ erred in not reversing the order passed by the learned MM.

10. In view of the consistent finding on the domestic relationship reached by the learned MM and the learned ASJ, I am not inclined to interfere with the orders dated 08.07.2011 and 08.11.2011 passed by the learned MM and learned ASJ respectively. It has to be kept in mind that the inherent powers of the Court under Section 482 of the Cr.P.C. have to be used sparingly and in exceptional cases in order to prevent abuse of the process of the Court, which is not the case here.

11. In the circumstances, no interference is called for in the impugned order; the Petition is accordingly dismissed.

12. Crl.M.A.488/2012 also stands disposed of. G.P. MITTAL, J.

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