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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 341 OF 2014

Deepak @ Gajanan Ramrao Kanegaonkar,
Age 59 years, Occ. Service,
R/o. Room No. 1, Niltarang Building,
Near Hinduja Hospital, Mahim,
Mumbai … Applicant

Versus

1. The State of Maharashtra

2. Soniya Depak @ Gajanan Kanegaonkar,
   Age 35 years, Occ. Service,
   R/o. Shirsagar Apartment, 301,
   3rd Floor, Jambli Naka, Near Saint
   John School, Thane (W) … Respondents

Ms. Swapna Kode i/by Hrishikesh Mundergi for the applicant.

Mr. Omkar Warange i/by Ameya Tamhane for respondent no. 1.

Smt. G.P. Mulekar, A.P.P. for the State.

CORAM : M.L. TAHALIYANI, J.
DATED : JULY 01, 2015

ORAL JUDGMENT :

This revision application impugns the order passed by the learned Additional Sessions Judge, Thane in Criminal Appeal No.150/2013 dismissing the appeal of the applicant. The applicant was the original respondent before the Judicial Magistrate, First Class, Thane in O.M.A. No. 662 of 2009. The said application was filed before the Magistrate by respondent No. 2 Sonia Gajanan Kanegaonkar under section 12 of the

Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “Domestic Violence Act”).

2. Learned Magistrate while deciding the said application has passed the following order :

> “The application is partly allowed.
> 2. The opponent is hereby directed to pay Rs.7,000/- per month to the applicant for day to day expenses, household expenses and all other expenses including residential expenses.
> 3. The opponent is hereby directed to pay Rs.6,500/- each per moth for both daughter Tania and Antra day to day expenses, education expenses, residential expenses and all other expenses.
> 4. Copy of the order be sent to the concern protection officer and be given to the parties as per law.
> 5. Judgment dictated and pronounced in open court.”

3. The applicant filed an appeal against the judgment and order passed by the Magistrate. The said appeal has been dismissed.

4. The core issue before both the courts below was as to whether the applicant and respondent no. 2 had lived together for reasonably long period of time in a relationship which was in the nature of marriage. Learned Magistrate while framing the points for determination has framed following issues :

1. Whether the applicant and opponent had lived together for reasonably long period of time in a relationship which was in the nature of marriage?
2. Whether the Taniya and Antra begotten to the applicant from the non-applicant?

3. Whether the opponent committed Domestic Violence against the applicant and her children?
4. Whether applicant and her children are entitled to the relief under the Act as claimed for?
5. What order?

5. The points were answered in the affirmative on the basis of evidence of respondent no. 2. After having considered the facts of the case and law on the point learned Magistrate came to the same conclusion, that there was immense intimate relationship between the applicant and respondent no. 2 and that therefore it could be said that they had lived together in a relationship in the nature of marriage.

6. Learned Appellate court had also framed similar points for determination and came to the same conclusion.

7. During the course of hearing present application also, the core issue was whether there was sufficient material before the trial court to come to the conclusion that the respondent no. 2 and applicant had lived in the relationship in the nature of marriage.

8. At the outset it may be mentioned here that since this court is dealing with the revision application, findings given by the two courts below, cannot be disturbed unless the court finds something seriously wrong with the findings.

9. In this regard, it may be noted here that the person entitled for the relief under the Domestic Violence Act is defined as “aggrieved person” under section 2(a) of the Domestic Violence Act. Section 2(a) of the Act reads as

under :

> "(a) "aggrieved person" means any woman who is, or has been in domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent"

The "domestic relationship" has been defined in section 2(f) of the said Domestic Violence Act which reads as under :

> "(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 joint family"

The Word "respondent" has been defined under section 2Q of the said Act which reads thus :

> "(a) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act."

10. As such respondent No. 2 was under an obligation to prove that she had been living together with the applicant in relationship which was in the nature of marriage. While dealing with the similar issue in the case of **D. Velusamy Versus D. Patchaiammal**[1], the Hon'ble Supreme Court has observed 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.

1 (2010) 10 SC 469,

(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 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'.

32. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'

33. No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live in relationship'. The Court in the grab of interpretation cannot change the language of the statute."

11. Similar issue was raised before the Hon'ble Supreme Court in the matter of **Indra Sarma Vs. V.K.V. Sarma**[2]. Dealing with the live in relationship, the Hon'ble Supreme Court in the said judgment at paragraph Nos. 61, 62, 63 and 66 had observed as under

" 61. Such relationship, it may be noted, may endure for a long time and can result pattern of dependency and vulnerability, and increasing number of such

2 Criminal Appeal No. 2009 of 2013

relationships, calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship. Legislature, of course, cannot promote pre-marital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against. See S.Khushboo v. Kanniammal and another (2010) 5 SCC 600.

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.

63. We may now consider whether the tests, we have laid down, have been satisfied in the instant case. We have found that the appellant was not ignorant of the fact that the respondent was a married person with wife and two children, hence, was party to an adulterous and bigamous relationship. Admittedly, the relationship between the appellant and respondent was opposed by the wife of the respondent, so also by the parents of the appellant and her brother and sister and they knew that they could not have entered into a legal marriage or maintained a relationship in the nature of marriage. Parties never entertained any intention to rear children and on three occasions the pregnancy was terminated. Having children is a strong circumstance to indicate a relationship in the nature of marriage. No evidence has been adduced to show that the parties gave each other mutual support and companionship. No material has been produced to show that the parties have ever projected or conducted themselves as husband and wife and treated by friends, relatives and others, as if they are a married couple. On the other hand, it is the specific case of the appellant that the respondent had never held out to the public that she was his wife. No evidence of socialization in public has been produced. There is nothing to show that there was pooling of resources or financial arrangements between them. On the other hand, it is the specific case of the appellant that the respondent had never opened any joint account or

> executed any document in the joint name. Further, it was also submitted that the respondent never permitted to suffix his name after the name of the appellant. No evidence is forthcoming, in this case, to show that the respondent had caused any harm or injuries or endangered the health, safely, life, limb or well-being, or caused any physical or sexual abuse on the appellant, except that he did not maintain her or continued with the relationship.
>
> ALIENATION OF AFFECTION
> 64. ……
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> 65. ……
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> 66. We have, on facts, found that the appellant's status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation."(emphasis supplied)"

12. Keeping in view the definition of "aggrieved person", "domestic relationship" and the pronouncements made by the Hon'ble Supreme Court in the above stated two cases, let me now examine the evidence of respondent no. 2 and the applicant in the present application. Respondent no.2 in her evidence has stated that she developed relationship with applicant while she was working in his company namely Gandh-Sugandh. It is further stated that separate accommodation was made available to her by the applicant at Edward Nagar, Chunabhatti, Mumbai and that they had been staying there as husband and wife. She has conceived from the applicant and delivered a female child. It is stated by her that the applicant did not like birth of child and thereafter there used to be frequent quarrels. Respondent no.2 therefore shifted to Mumbra at the place of one Mr. Kapadia where she

was given separate room for herself. She had delivered the second child conceived from the applicant.

13. In the evidence of the applicant, it has come that respondent no. 2 was working in his company and that she was appointed by the wife of the applicant. The wife of the applicant was the Managing Director of the company known as Gandh-sugandh. As such, it is the contention of the applicant that respondent no.2 knew that the applicant was married and she also knew that the wife of the applicant was a Managing Director of the company. It is stated by the applicant that in fact respondent no.2 was introduced to the applicant by his own wife. As such the issue which needs to be examined is as to whether respondent no.2 knew that the applicant was married and that she maintained relationship with the applicant despite the knowledge that the applicant was a married person. Since this issue decides the whole area of dispute, it was necessary for me to examine the evidence of respondent no. 2 on this point very minutely.

14. I have carefully examined the evidence of respondent no. 2. Respondent no. 2 has schemingly kept silence as to whether she had made enquiries regarding the marital status of the applicant. It may be noted here that the applicant is at present 61 years old. He was about 46 to 47 years old when he allegedly developed relationship with respondent no. 2. Common sense therefore, required that respondent no. 2 should have made enquiries about the marital status of the applicant before entering into alleged marriage at Ganpati Temple. Since respondent no. 2 has maintained silence on very vital issue of marital status of the applicant and has also maintained silence about as to where the applicant was staying during the period when he was not staying with respondent no. 2, it can be safely inferred that respondent no. 2 knew that the applicant was married. Respondent no.2

maintained physical relationship with the applicant despite her knowledge that the applicant was a married person and that his wife was the Managing Director of the company. The evidence of applicant that he was introduced to respondent no. 2 by his wife has not been rebutted. It is brought to my notice that Exh. 62 is an appointment letter issued to respondent no.2 by the wife of the applicant.

15. The wife of the applicant has also been examined as witness on behalf of the applicant. She has categorically stated in her evidence in para 2 that respondent no. 2 was appointed by her on 13th March, 2000 as a Sales Girl in Gandh-sugandh. The learned counsel for respondent no. 2 before the trial court had tried to demolish the case of the applicant that respondent no. 2 was appointed by the wife of the applicant. Exh. 62 was shown to the witness (wife of the applicant) and she was asked whether there was signature of respondent no. 2 on the said appointment letter giving her acceptance for the job. It was suggested to her that this document Exh. 62 was prepared later on to support the case of the applicant. Even if it is assumed for the sake of argument that the document Exh. 62 was prepared latter on, the fact remains that respondent no.2 was employee of the applicant. The only question which remains for the scrutiny was whether respondent no. 2 knew the wife of the applicant. I had already stated that respondent no.2 willfully kept her silence on the vital issue in this regard while giving evidence. She has not stated whether she had made any enquiry about the marital status of the applicant before entering into marriage. It has come on record that the applicant had been staying with respondent no. 2 intermittently. Respondent no. 2 has not bothered to find out as to where the applicant had been staying during the period when he was not in the company of respondent no. 2. Material is sufficient enough to infer that respondent no. 2 knew that the applicant was a married person.

The facts of the present case in my opinion are similar to the case in the mater of Indra Sharma Vs. Shara (supra) decided by the Hon'ble Supreme Court. The Hon'ble Supreme Court has while dealing with the similar facts had come to the conclusion that the appellant was not ignorant of the fact that respondent was a married person having wife and two children and hence, was party to an adulterous and bigamous relationship.

16. In the present case, though it has come in the evidence of respondent no.2 that she had conceived and delivered two children out of the relationship with the applicant and though she has stated that they were posing themselves to be married couple, she has not been able to give a single instance where they have appeared as husband and wife in the society on any occasion of marriage or party. The bald statement on behalf of the respondent no. 2 that she had posed herself to be wife of the applicant and applicant had posed himself to be husband of respondent no.2 will not be sufficient to come to the conclusion that the relationship between the applicant and respondent no. 2 was in the nature of marriage.

17. It has come in the evidence of the wife of the applicant that she had later on came to know that respondent no. 2 had been blackmailing the applicant. As such wife of the applicant was opposed to the relationship of the applicant with respondent no. 2.

18. Over all view of the evidence of all the witnesses and silence on the part of respondent no.2 on vital facts of the case, clearly indicate that respondent no.2 knew that the applicant was a married person and he had children from his wife. Respondent no.2 also knew that the applicant had been staying with his wife. Despite that, she had maintained relationship with the applicant. In my opinion, the said relationship cannot be relationship

in the nature of marriage. Therefore, it cannot be said that respondent no.2 was "aggrieved person" within the meaning of Section 2(q) of the Act. She was obviously therefore, not entitled for any relief under Protection of Women from Domestic Violence Act, 2005. Learned Magistrate should have rejected her prayer. The appeal should have been dismissed by the appellate court. If respondent no.2 was not entitled for any relief under the Act, it follows that her children are also not entitled for the relief under the said Act. It is another thing that the children may be entitled for relief under section 125 of Code of Criminal Procedure.

19. With these observations, the application is allowed. The orders of the learned Magistrate being O.M.A. No. 662 of 2009 and Sessions Court being Criminal Appeal No. 250 of 2013 are set aside. Application accordingly stands disposed of.

(JUDGE)