

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:14720

RESERVED

Judgment reserved on 18.01.2024
Judgment delivered on 20.02.2024

Court No. – 27

Case :- APPLICATION U/S 482 No. - 12826 of 2023

Applicant :- Shashank Pandey And 2 Others

Opposite Party :- State Of U.P. Thru. The Addl. Civil Secy. Home
U.P. Lucknow And Another

Counsel for Applicant :- Shailendra Singh Rajawat, Saurabh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. The submissions of Sri Shailendra Singh Rajawat, the learned counsel for the applicants and Sri Anurag Verma, the learned AGA-I appearing for the State were heard on 18.01.2024 and judgment was reserved. Subsequently, on 02.02.2024 the opposite party no. 2 appeared in person and requested for being provided an opportunity to file objections against the application, which was granted. The opposite party no. 2 has filed objections without supplying a copy of the same to the applicant or his learned Counsel. Moreover, the objections filed by the opposite party no. 2 do not address the question which has been raised by means of the application under Section 482 Cr.P.C. For the aforesaid reasons, although the objections filed by the opposite party no.2 have been taken on record, the same are not being taken into consideration in this order.
2. By means of the instant application under Section 482 Cr.P.C., the applicants have assailed the legality and validity of the judgment and order dated 29.09.2022 passed by the Civil Judge (Jr. Div.)/FTC-I,

Pratapgarh in Complaint Case No. 1386 of 2021, under Sections 12 of the Protection of Women from Domestic Violence Act, 2005, (which will hereinafter be referred to as 'the DV Act') Police Station Kotwali Nagar, District Pratapgarh whereby an application dated 30.08.2022 filed by the applicants for dismissal of the complaint as not maintainable for the reason that the marriage between applicant no. 1 and opposite party no. 2 had been declared to be null and void by means of decree dated 26.03.2021, has been rejected.

3. Briefly stated, the facts of the case are that the applicant no. 1 got married to the opposite party no. 2 on 12.05.2018. The applicant no. 1 filed a Suit No. 238/2019, under Sections 11 & 12 of the Hindu Marriage Act, 1955 in the Court of Principal Judge, Family Court, Dehradun, which was decreed ex parte on 26.03.2021 and the marriage between the applicant no. 1 and opposite party no. 2 was declared to be null and void for the reason that the applicant no. 1 and opposite party no. 2 were sapindas and the marriage between them was prohibited under Section 5(v) of the Hindu Marriage Act, and that the opposite party no. 2 was suffering from bipolar disorder and the consent of applicant no. 1 was obtained by concealing this fact which made the marriage voidable. The judgment records that the opposite party no. 2 had put in appearance in the suit initially but she abstained from filing a written statement or appearing to defend the suit and therefore, the suit was proceeded with and decided ex parte. The opposite party no. 2 had filed a Maintenance Suit No. 148 of 2019, under Section 125 Cr.P.C., which was rejected by means of an order dated 18.04.2023 passed by the Additional Principal Judge, Family Court No. 1, Pratapgarh on the ground that the marriage between the parties having been declared null and void, the application was not maintainable. The opposite party no. 2 has filed an application under Section 12 of the DV Act in the Court of Civil Judge (Junior Division), Court No. 19, Pratapgarh on 11.09.2019. The applicants filed a written statement and objections against the interim relief application stating that the marriage had been declared to be null and void on 27.09.2021. Thereafter the applicants filed another application

for deciding the question of maintainability of the application under the DV Act. The said application has been rejected by the impugned order dated 29.09.2022.

4. While rejecting the question of maintainability raised by the applicants, the learned court has held that the complaint under Section 12 of the DV Act was filed on 11.09.2019 whereas the decree declaring the marriage to be null and void has been passed on 26.03.2021. Therefore, on the date of filing of the complaint, the marriage subsisted.
5. Sri. Shailendra Singh Rajawat, the learned counsel for the applicants has place reliance upon a judgment of Hon'ble Single Judge of Punjab and Haryana High Court in **Amit Agarwal v. Sanjay Aggarwal**, (2016) SCC OnLine P&H 4200, wherein it was held that the provisions of the DV Act can be invoked only when the domestic relationship is in existence. Where the domestic relationship ceases, the provisions under the DV Act cannot be invoked.
6. The learned counsel for the applicants has placed reliance on a decision of an Hon'ble Single Judge of Bombay High Court, Nagpur Bench in **Dhanraj v. Shalini**, (2017) SCC OnLine Bom 7671, wherein it was held that where Family Court declared the marriage as null and void and the order was affirmed by the High Court in an appeal, there exists no relationship between petitioner and respondent no. 1 as husband and wife from the date of the order of the Family Court.
7. The learned Counsel for the applicant also relied upon the following passage from the decision of the Hon'ble Supreme Court in **Inderjit Singh Grewal v. State of Punjab**, (2011) 12 SCC 588: -

“33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an

offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.”

8. Before proceeding any further, it would be appropriate to have a look at the relevant provisions of the DV Act. Section 2 (a) of the DV Act defines “aggrieved person” as follows: -

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

9. Section 2 (क) of the Hindi version of the DV Act defines ‘aggrieved person’ in the following words: -

“व्यथित व्यक्ति” से कोई ऐसी महिला अभिप्रेत है जो प्रत्यर्थी की घरेलू नातेदारी में है या रही है और जिसका अभिकथन है कि वह प्रत्यर्थी द्वारा किसी घरेलू हिंसा का शिकार रही है”

10. The term “domestic relationship” is defined in Section 2 (f) of the DV Act as follows: -

(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;

11. Section 2 (च) of the Hindi version of the DV Act defines the term “domestic relationship” in the following words: -

“घरेलू नातेदारी” से ऐसे दो व्यक्तियों के बीच नातेदारी अभिप्रेत है जो साझी गृहस्थी में एक साथ रहते हैं या किसी समय पर एक साथ रह चुके हैं, जब वे, समरक्तता, विवाह द्वारा या विवाह, दत्तक ग्रहण की प्रकृति की किसी नातेदारी द्वारा संबंधित हैं या एक अविभक्त कुटुम्ब के रूप में एक साथ रहने वाले कुटुम्ब के सदस्य हैं”

12. When we read the aforesaid definitions given in the English and the Hindi version together, it becomes clear that the legislature has provided that any woman who has in the past lived in a domestic relation with the respondent, is included in the definition of an aggrieved person. Domestic relation includes a relationship by marriage or through a relationship in the nature of marriage.

13. Section 12 (1) of the DV Act provides that: -

“12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act :”

14. In **D. Velusamy v. D. Patchaiammal**, (2010) 10 SCC 469 relied upon by the learned Counsel for the applicant, the Hon’ble Supreme Court held that: -

“19. Having noted the relevant provisions in the Protection of Women from Domestic Violence Act, 2005, we may point out that the expression “domestic relationship” includes not only the relationship of marriage but also a relationship “in the nature of marriage”. The question, therefore, arises as to what is the meaning of the expression “a relationship in the nature of marriage”. Unfortunately, this expression has not been defined in the Act. Since there is no direct decision of this Court on the interpretation of this expression we think it necessary to interpret it because a large number of cases will be coming up before the courts in our country on this point, and hence an authoritative decision is required.

20. In our opinion Parliament by the aforesaid Act has drawn a distinction between the relationship of marriage and a relationship in the nature of marriage, and has provided that in either case the person who enters into either relationship is entitled to the benefit of the Act.

21. It seems to us that in the aforesaid Act of 2005 Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe. It has been commented upon by this Court in S. Khushboo v. Kanniammal (2010) 5 SCC 600 vide para 31.

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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:

(i) The couple must hold themselves out to society as being akin to spouses.

(ii) They must be of legal age to marry.

(iii) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(iv) 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”.

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 garb of interpretation cannot change the language of the statute.”

15. Thus it is apparent that in **D. Velusamy** (Supra), the Hon’ble Supreme Court has dealt with the question regarding the conditions in which a live-in relationship would fall within the purview of the term ‘relationship in the nature of marriage’. The question of the effect of a marriage being declared to be null and void after the parties had solemnized the marriage and had lived together as husband and wife in a shared household, was not decided in **D. Velusamy**.
16. **Dhanraj v. Shalini**, (Supra) relied upon by the learned counsel for the applicant, had been decided by following the decision of Hon’ble Supreme Court in **D. Velusamy** (Supra) and the question of the effect of a marriage being declared to be null and void after the parties had solemnized the marriage and had lived together as husband and wife in a shared household, was not decided in it.
17. In **Rajnesh v. Neha**, (2021) 2 SCC 324, the Hon’ble Supreme Court referred to the earlier decision in **D. Velusamy** (Supra) and held that:

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“41. The DV Act stands on a separate footing from the laws discussed hereinabove. The DV Act provides relief to an aggrieved woman who is subjected to “domestic violence”. The “aggrieved person” has been defined by Section 2(a) to mean any woman who is, or has been, in a domestic relationship with the respondent, and alleges to have been subjected to any act of domestic violence. Section 2(f) defines “domestic relationship” to include 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.”

18. The question of the effect of a marriage being declared to be null and void after the parties had solemnized the marriage and had lived together as husband and wife in a shared household, was not decided in **Rajnesh versus Neha** also.
19. In **Inderjit Singh Grewal** (Supra), the appellant and Respondent 2 got married on 23.09.1998 and from the said wedlock a son was born on 05.10.1999. They filed a suit under Section 13-B of the Hindu Marriage Act, 1955 for dissolution of marriage by mutual consent, which was decreed on 20.03.2008. On 04.05.2009 the respondent 2 filed a complaint before the Senior Superintendent of Police, Ludhiana against the appellant on 04.05.2009 under the provisions of the DV Act alleging that the decree of divorce obtained by them was a sham transaction. Even after getting divorce, both of them had been living together as husband and wife. She was forced to leave the matrimonial home. A Superintendent of Police conducted inquiry and found that the parties had been living separately after divorce and no case was made out against the appellant. The Respondent 2 subsequently filed a complaint under the DV Act on 12.06.2009. The appellant filed an application under Section 482 Cr.P.C. for quashing the complaint. In the meanwhile, the Respondent 2 filed a civil suit on 17.07.2009 seeking a declaration that the decree of divorce had been obtained by fraud and it was null and void and the said suit was pending. Respondent 2 also filed an application under the Guardians and Wards Act, 1890 for grant of custody and guardianship of the child and the same was also pending. Respondent 2 also lodged an FIR under Sections 406, 498-A, 376 and 120-B of the IPC against the

appellant, his mother and sister. The High Court dismissed the application filed by the appellant. In appeal, the Hon'ble Supreme Court held that: -

“17. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law as fraud unravels everything. “Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law.” It is trite that “fraud and justice never dwell together” (fraus et jus nunquam cohabitant). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. “Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine.” An act of fraud on court is always viewed seriously. (Vide Meghmala v. G. Narasimha Reddy² (2010) 8 SCC383, para 34.)

* * *

*22. Respondent 2 herself had been a party to the fraud committed by the appellant upon the civil court for getting the decree of divorce as alleged by her in the impugned complaint. Thus, according to her own admission she herself is an abettor to the crime. A person alleging his own infamy cannot be heard at any forum as explained by the legal maxim *allegans suam turpitudinem non est audiendus*. No one should have an advantage from his own wrong (*commondu ex injuria sua nemo habere debet*). No action arises from an immoral cause (*ex turpi causa non oritur actio*). Damage suffered by consent is not a cause of action (*volenti non fit injuria*). The statements/allegations made by Respondent 2 patently and latently involve her in the alleged fraud committed upon the court. Thus, she made herself disentitled for any equitable relief”.*

20. The conclusion drawn in para 33 of the judgment relied upon by the learned Counsel for the applicant was in light of the aforesaid peculiar facts and circumstances of the case, which are in no way similar to the facts of the present case and, therefore, the judgment in the case of **Inderjit Singh Grewal** (Supra) is of no avail to the applicant.
21. In **Dhanraj v. Shalini**, (2017) SCC OnLine Bom 7671, the parties were married to each other, their marriage was declared as null and void by the competent Court, which order had attained finality as appeal before Division Bench of this Court came to be dismissed. A

Single Judge Bench of the Bombay High Court held that from the date of the order of the Family Court, the relationship between the parties as husband and wife ceased to exist. After referring to the decision in **D. Velusamy** (Supra), the Bombay High Court allowed the Writ Petition and set aside the order allowing application under Section 12 of the DV Act, without deciding as to whether the parties having undergone the ceremonies of a Hindu Marriage can be treated as having been in a live-in relationship in case their marriage is annulled subsequently.

22. In **Amrendra Pratap Singh v. Tej Bahadur Prajapati**, (2004) 10 SCC 65, the following well settled principle of precedents was reiterated: -

“A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement.”

23. In **State of Orissa v. Mohd. Illiyas**, (2006) 1 SCC 275, it was held that: -

*“A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge’s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa v. Sudhansu Sekhar Misra* and *Union of India v. Dhanwanti Devi*.) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an*

Act of Parliament. In Quinn v. Leathem the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.”

24. The question of the effect of a marriage being declared to be null and void after the parties had solemnized the marriage and had lived together as husband and wife in a shared household, was not decided in none of the cases cited by the learned Counsel for the applicant and, therefore, those precedents are not relevant for deciding this question.
25. In **Amit Agarwal v. Sanjay Aggarwal**, (2016) SCC OnLine P&H 4200, a Single Judge Bench of Punjab and Haryana High Court held that answer to the question whether aggrieved person would even mean a ‘divorced woman’, lies in the definition provided in Section 2(a), which says that “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”. The Punjab and Haryana High Court held that: -

“19. The use of the word is any woman ‘who is’ or ‘has been’. Both the expressions are in the present tense. The legislature has not used the word ‘who was’ or ‘had been’. This means the domestic relationship has to be in the present and not in the past. The definition requires that on the date Act come into force, the woman should be in domestic relationship.”

26. However, the Punjab and Haryana High Court omitted to notice that the Hindi version of the DV Act which has been quoted above and which makes it clear that an aggrieved person will include a woman who has lived in the past in a domestic relationship with the respondent. Therefore, I am not persuaded to follow the interpretation of the term “aggrieved person” made by the Punjab and Haryana High Court.
27. In **Prabha Tyagi v. Kamlesh Devi**, (2022) 8 SCC 90, the Hon’ble Supreme Court decided the question whether, such a domestic relationship should be subsisting between the aggrieved person and

the respondent against whom relief is claimed at the time of claiming the relief. Before answering the question, the Hon'ble Supreme Court analyzed the relationships noted in the DV Act as under: -

“59.1. Any relationship by consanguinity is a lifelong relationship.

59.2. Marriage is also a lifelong relationship unless a separation by a decree of divorce is ordered by a competent authority of law.

(i) If there is judicial separation ordered by a court of law, that does not put an end to marriage and hence the domestic relationship continues between the spouses even though they may not be actually living together.

(ii) In the event of a divorce, marriage would no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during marriage or even subsequent to a divorce decree being passed but relatable to the period of domestic relationship, the provisions of this DV Act would come to the rescue of such a divorced woman also.

*(iii) That is why, the expression “domestic relationship” has been defined in an expansive manner to mean **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 marriage. We have also interpreted the word “live” or “lived” in the context of right to reside in sub-section (1) of Section 17. The right to live in the shared household, even when the domestic relationship may have been severed for instance when a woman has been widowed owing to the death of her husband, entitles her to have remedies under the DV Act.*

*(iv) **Therefore, even when the marital ties cease and there is no subsisting domestic relationship between the aggrieved woman and the respondent against whom relief is claimed but the acts of domestic violence are related to the period of domestic relationship, even in such circumstances, the aggrieved woman who was subjected to domestic violence has remedies under the DV Act.***

59.3. Even in the case of relationship in the nature of marriage, during which period the woman suffered domestic violence and is thus an aggrieved person can seek remedies subsequent to the cessation of the relationship, the only precondition is that the allegation of domestic violence must relate to the period of the subsistence of relationship in the nature of marriage.

59.4. In the same way, when a girl child is fostered by family members living together as a joint family as interpreted above and lives or at any point of time has lived together in a shared household or has the right to reside in the shared household being a member living together as a joint family and has been

ousted in any way or has been a victim of domestic violence has remedies under the DV Act.”

The Hon’ble Supreme Court answered the question in the following words: -

60. In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in praesenti but also a past domestic relationship. Therefore, Parliament has intentionally used the expression “domestic relationship” to mean a relationship between two persons who not only live together in the shared household but also between two persons who “have at any point of time lived together” in a shared household.”

28. In view of the above discussion, I am of the considered view that any woman, who has in the past lived in a domestic relation with the respondent, is included in the definition of an aggrieved person and domestic relation includes a relationship by marriage or through a relationship in the nature of marriage.
29. As per the opposite party no. 2 – complainant, she got married to the applicant on 12.05.2018. A Suit filed by the applicant under Sections 11 & 12 of the Hindu Marriage Act, 1955 was decreed ex parte on 26.03.2021 by the Family Court, Dehradun and the marriage between the applicant no. 1 and opposite party no. 2 was declared to be null and void for the reasons that the applicant no. 1 and opposite party no. 2 were sapindas and the marriage between them was prohibited under Section 5(v) of the Hindu Marriage Act, and that the opposite party no. 2 was suffering from bipolar disorder and the consent of applicant no. 1 was obtained by concealing this fact which made the marriage voidable. Since that judgment is not under challenge in these proceedings, I am refraining from making any observation regarding that judgment.
30. The applicant does not dispute that he got married to the opposite party no. 2 and having been married to the applicant, the opposite party no. 2 had lived in a domestic relationship with the applicant, before they started living separately. They had been related by

marriage till the marriage was declared to be null and void. Even though the marriage has subsequently been declared to be null and void, when the relationship between the applicant and the opposite party no. 2 subsisted, it was a relationship in the nature of marriage. Therefore, the opposite party no. 2 is an aggrieved person within the meaning of the Act she has a right to present an application under Section 12 of the DV Act.

31. I find no force in the preliminary objection raised by the applicant against maintainability of the application under Section 12 of the DV Act. The impugned order in no way defeats the ends of justice and there is no merit in the application under Section 482 filed by the applicant.
32. Accordingly, the application under Section 482 Cr.P.C. is **dismissed**.

(Subhash Vidyarthi J)

Order Date : 20.02.2024
Pradeep/-