

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.129 OF 2017

Jayashri Samshuddin Talapdar .. Applicant
Versus
Samshuddin Karim Talapdar & Anr .. Respondents

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Mr.Suhas Inamdar for the applicant.
Mr.Shantaram A. Tarale for respondent no.1.
Mr.Rajan Saliv, APP for the State.

CORAM: SMT.BHARATI H. DANGRE, J

DATED : 5th APRIL 2018

JUDGMENT

1 The present revision application is filed by the applicant wife being aggrieved by the order of the Sessions Court at Solapur, thereby reversing the order passed by the Judicial Magistrate First Class, Solapur in Criminal Miscellaneous Application No.247 of 2010 dated 23rd July 2012. By the said order passed by the JMFC, an amount of maintenance to the tune of Rs.1,000/- and an amount towards the rent was directed to be paid to the applicant wife. The said order is being assailed by the applicant on the ground that the observations made by the Sessions Court based on the judgment in case of *Indra Sarma Vs.*

V.K.V. Sarma¹ do not take into consideration the true construction and interpretation of the term “domestic relationship” as contemplated under the Domestic Violence Act, 2005. According to the learned counsel, the parameters laid down in the case of **D.Velusamy Vs.D.Patchaiammal**² have not been applied in true sense and spirit, which has resulted into an erroneous order.

2 In order to appreciate the controversy in hand, it would be necessary to briefly refer to the facts. The petitioner before the Court has moved an application in the Court of Chief Judicial Magistrate under section 2, 12, 17, 18, 19, 20, 22 and 125 of the Code of Criminal Procedure, claiming maintenance from the respondent. The specific case of the applicant before the Court was that she was already married to one Parmeshwar Melage and the marriage was solemnized 20 years back. Out of the said wedlock, two sons and one daughter were born, but from the year 1994, her husband went absconding, and she is not knowing his whereabouts. It is her specific case that the respondent who belongs to Muslim religion is a trader, trading in vegetables, and she was vendor and carrying trading in vegetables to earn her livelihood for herself after she being rendered destitute by her

1 (2013)15 SCC 755

2 (2010) 10 SCC 469

husband, came in contact with him and from the year 1998, she is residing in a joint household along with the respondent. Her specific case before the JMFC was that the relationship between herself and the respondent was akin to a marriage and she was introduced in the society as the wife of the respondent - Shamshuddin Talapdar. It is her specific case that she continued to reside with him for last 15 years and she had enjoyed the status of 'wife' from the said respondent. It is also her specific case that there was also sharing in respect of the income and also in respect of the household expenses being incurred by the parties. She also specifically makes a statement that her children use to address the respondent as 'father'. However, subsequently, due to certain differences, she left the residential house of the respondent and started residing separately. At a subsequent point of time, she instituted the proceedings seeking an amount of maintenance and also claiming certain reliefs under Chapter IV under the Domestic Violence Act.

3 In furtherance of the said proceeding, which he initiated, she filed an affidavit before the Court categorically referring to the nature of relationship shared by her with the respondent. She also entered into the witness box, and she was

extensively cross-examined by the respondent. She also examined one Baban Bavdankar, a resident of Solapur, who happened to be in contact with the petitioner and respondent and he specifically stated that he was knowing the petitioner and respondent as husband and wife. However, in the cross-examination, he admits that when the parties had approached him for seeking his house on rent, they had informed him that they were husband and wife. Another witness examined by the applicant is Shivaji Shrihari Vyavhare, who is a distant relative of the applicant, was also subjected to extensive cross-examination. One Padmini Namdeo Chavan also came to be examined, who categorically stated that she was knowing the applicant since last 10 years, the applicant and the respondent were residing at Mohol for almost a period of three years and she referred to them as husband and wife. Though in the cross-examination, she categorically makes a statement that she is not aware whether they were really married.

The respondent husband also filed his affidavit in evidence before the Court, specifically denying the relationship as claimed by the applicant.

5 The Judicial Magistrate First Class, considered the evidence on record and on 23rd July 2012, after accepting the “Domestic relationship” between the applicant and the respondent, held the application preferred by the applicant to be maintainable under the provisions of Domestic Violence Act, and by taking into consideration the conduct of the respondent, and the factum of the applicant being rendered destitute, allowed the application of maintenance and directed the respondent to pay maintenance of Rs.1,000/- per month to the applicant along with a direction to pay an amount of Rs.800/- towards the rent from 13th July 2012. Further, expenses to the tune of Rs.500/- were also granted.

On an appeal being preferred by the respondent under Section 29 of the Domestic Violence Act, 2005, the Sessions Court at Solapur reversed the said order. The learned Sessions Judge, on consideration of the evidence brought on record, tried to make a distinction between a Relationship in a marriage and Relationship like a marriage. The learned Court specifically referred to the provisions contained in the Domestic Violence Act, and after relying on the judgment in case of **Indra Sarma** (supra) arrived at a conclusion that what is contemplated by enactment is “relationship in the nature of marriage”. However, it is not live-in

relationship which would attract the “relationship in the nature of marriage”. The learned Sessions Judge specifically referring to the testimony of the witnesses, who were examined on behalf of the applicant, arrived at a conclusion that the applicant had failed to prove that if there is any domestic relationship between her and the opponent. The Court specifically observed that in the cross-examination, the witnesses specifically stated that they were not aware of the exact relationship between the couple though they were portraying themselves as husband and wife. Another ground on which the learned Sessions Judge was impressed by the argument of the learned counsel for the applicant was that there was no possibility of marriage, nonetheless, a valid marriage between the applicant and the respondent, since the applicant had not obtained divorce from her first marriage and it was her case that her husband went absconding, and thereafter, she started living with the respondent. Certain portions of the cross-examination of the applicant reveal that an attempt was made to question the character of the applicant, were also taken into consideration by the learned Sessions Judge. By heavily relying upon the judgment in the case of *Indra Sarma* (supra), the learned Sessions Judge found that the relationship between the applicant and the respondent cannot be claimed to be a

“relationship in the nature of marriage” and in this backdrop, the provisions of Domestic Violence Act cannot be attracted. Resultantly, the appeal came to be allowed and the order passed by the JMFC was set aside.

3 It is this order which is impugned in the present Writ Petition. The learned counsel for the petitioner, after taking this Court strenuously through the evidence would point out to certain admissions in the evidence of the witnesses, and would specifically refer to that portion of the evidence of the witnesses from where it can be deductible that the parties were residing together for a considerable long period of time as 'husband and wife'. Per contra, the learned counsel for the respondent would submit that mere living together under a shared household is not the only test of determining whether the relationship between the parties was in the nature of marriage, and in terms of the judgment of the Apex Court, something more is required to establish that the relationship was like the one in the nature of marriage.

4 Perusal of the provisions of Protection of Women From Domestic Violence Act, 2005, would reveal that it is an enactment for effective protection of rights of women guaranteed

under the Constitution, who are victims of violence of any kind occurring in the family. The enactment aims at redressing and providing respite to an aggrieved person who is defined under Section 2(a) to mean a 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 by the respondent. The definition of “Domestic Violence” in Section 2(f) assumes significance. The domestic relationship is defined to be 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 the joint family. Further, the act also defines “shared household” in Section 2(s) to mean a household where a person aggrieved lives, or at any stage has lived in a domestic relationship either singly or along with the respondent and includes a household jointly shared by the aggrieved party in such capacity. The perusal of the provisions of the enactment and specifically, the provisions of Chapter IV which deals with the procedure for obtaining orders or reliefs would make it amply clear that the said legislation is a benevolent legislation aimed at protecting the women who are victims of violence. It is also pertinent to note that the term

'abuse' for which the protection can be sought under the provisions of the enactment have been construed to be operating in a wide compass to include physical and economic abuse. Taking into consideration the purpose of the enactment, no doubt the provisions contained in the enactment are to be liberally construed to achieve the object of ensuring the welfare of a woman for whom the Act is intended to grant certain protection in certain situation.

The term “relationship in the nature of marriage” assumes significance specifically in the backdrop of the definition of Domestic Violence under Section 3 of the Act. If the provisions of Section 3 are to be looked into, it aims at giving a broader meaning to the term “Domestic Violence” and not only physical abuse or sexual abuse, but even economic abuse has been covered within the term of “Domestic Violence”. Keeping this objective of the enactment in mind, the term “relationship in the nature of marriage” will have to be construed. It is settled position of law that a term used in a statute cannot be read in isolation and it should gain its meaning in reference to the context and the statute in which it is put to use. While construing a provision in a statute, the intention of the legislature is of a foremost importance and

while construing a term applied in the provision, the object and intention of the legislature should always be borne in mind.

5 Perusal of the facts in hand would reveal that it is the specific case of the applicant that from the year 1998, she is residing with the respondent in a shared household. On going through the examination-in-chief, which he has produced before the Court, it can be clearly seen that she has given the details of her relationship with the respondent and she makes a categorical statement that the respondent aided and assisted her in upbringing her children. She also gives the details of her residence with the respondent at different places from time to time. In order to support her contention that she was living with the respondent, she has examined independent witnesses. On perusal of the examination of the witnesses, it can be seen that though the witnesses have given the details about the factum that the applicant was known as a wife of the respondent, when put to cross-examination, they have categorically stated that they are not aware of the exact relationship between them. However, none of the witnesses have denied that they had resided together. In fact, Shri Baban N. Bavdankar specifically gives an admission in the cross-examination that when the couple had approached him,

seeking his premises to be sought on rent, he had gathered the information that they were husband and wife. Shivaji Vyavahare who is related to the applicant, in the examination-in-chief, gives an impression that his sister was living with the respondent on account of marriage. However, when cross-examined, he states that he was not aware whether the marriage had been solemnized. In any circumstances, none of the witnesses denies the factum of the applicant residing with the respondent for a considerable long period of time.

Though it is true that every live-in relationship will not be construed as a relationship in the nature of marriage. The Hon'ble Apex court in the case of *D.Velusamy Vs.D.Patchaiammal* (supra) has specifically referred to the parameters in the backdrop of which a relation will have to be tested. Their Lordships observation in para 31 of the judgment needs a reproduction.

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 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 married.

(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 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”.

It is on satisfaction of all these parameters a relationship can be described to be the one which is 'relationship in the nature of marriage' and which would claim protection under the provisions of enactment.

Applying the said parameters to the present case, it is apparent that the witnesses have categorically stated that the applicant and respondent have already held themselves out to the world as being husband and wife and that too, significantly, for a long period of time. The evidence of the witnesses is not shattered to the said effect, except stating that the exact relationship between the applicant and husband was not known. It was never the case of the applicant that she was married to the respondent.

The learned Sessions Judge has placed heavy reliance on the judgment in case of **Indra Sarma**. However, on perusal of the peculiar facts in **Indra Sarma** (supra) where the Hon'ble Apex Court arrived at a conclusion that the wife who was aware that the husband is already married, cannot be said to be in relationship in the nature of marriage, but she was only referred to as a concubine or a mistress. The Court arrived at such a conclusion on the basis of the peculiar facts involved in the case and specifically in the backdrop of its observation that in the said relationship before the court, there was no projection of relationship in public. Further, there is no evidence of mutual support and companionship and also no evidence is brought on record about the sharing of resources and rather the woman in the said proceedings was not even allowed to have access to his bank account nor there were any joint bank accounts though the claim was that they were living under the same roof. The law laid down by the Hon'ble Apex Court in the judgment of **Indra Sarma** can thus be distinguished and cannot cover the case in hand in the peculiar facts and circumstances involved. In the facts of this case, it can be seen that the applicant and respondent have held themselves to the world as husband and wife and not only that there was economic exchange between them and they were

carrying out the said business of trading. The applicant categorically had stated in her evidence that her children were residing in the same house and they referred to the respondent as 'father' and rather accepted him as their father. It is her categorical statement that he had in fact helped her in raising the children and sharing the household expenses. It is the specific case of the applicant that whatever money she had received from her father for the marriage of her daughter, she had shared with the respondent since they were sharing a common household and thus, in this background, she is left with no money and left to a stage of vagrancy. In this background, she approaches the Court and claims maintenance for herself, since her children are on their own and they are no more supporting her. The attempt made on the part of the respondent to bring on record that prior to her first marriage, the applicant was living in relationship with some other person and had in fact claimed maintenance from the said person to the tune of Rs.4,00,000/-, is of no assistance to the respondent since merely throwing a doubt on the character of a woman like the applicant would not make escape the liability, specifically when he has shared the same household with her and treated her like his wife for a period of approximately 15 years, which fact goes undisputed and has been corroborated by the witnesses.

6 In such circumstances, the parameters laid down in *Indra Sarma* cannot be made applicable to the present case in hand. Ultimately, the nature of relationship between the applicant and the respondent is a question of fact and degree and would have to be looked out from the said angle. In the subsequent judgment in case of *Krishna Bhattacharjee Vs. Sarathi Choudhary*¹ the Hon'ble Apex Court has reviewed the entire position of law and considering the fact that the 2005 Act is the beneficial and affirmative legislation for more effective protection of constitutional rights of women and for ensuring that they do not become victims of any domestic violence, has given wide interpretation to the term "Domestic Violence", and including within its ambit, the term "economic abuse". The Hon'ble Apex Court observed thus in para 3:

"3 Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts whereunder the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless and hapless "aggrieved person" under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and

1 (2016) 2 SCC 705

correct. The principle “justice to the cause is equivalent to the salt of ocean” should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence”

7 In such circumstances, the order passed by the Addl. Sessions Judge, Solapur is not sustainable. It is liable to be set aside. The order passed passed by the Judicial Magistrate First Class is restored and the applicant is held entitled for the maintenance in terms of the order passed by the Judicial Magistrate First Class.

8 Revision Application is allowed.

(BHARATI H. DANGRE, J)