

Nilesh Gangaram Nalavade & Anr .. Petitioners
Versus
Dhanlaxmi Gangaram Nalavade
and anr .. Respondents

CORAM: SMT. BHARATI H.DANGRE, J.

DATED : 5th SEPTEMBER, 2018

ORAL JUDGMENT:-

1 The present Criminal Writ Petition is filed by two
brothers who are sons of one Shri Gangaram Nalavade who is
alleged to be the husband of the respondent no.1 Smt.
Dhanlaxmi Gangaram Nalawade and the father of Kalpesh i.e
respondent no.2. The petitioners have invoked the jurisdiction
of this Court being aggrieved by the order dated 9th January

2017 passed by the learned Sessions Judge, Raigad at Alibag in Criminal Appeal No.59 of 2008 and also the judgment and order dated 24th July 2008 passed by the Judicial Magistrate First Class, Raigad in Criminal Miscellaneous Application No.115 of 2007. The Courts have recorded a concurrent finding in favour of the respondent no.1 and the petitioners are aggrieved by the said finding. For effective adjudication of the writ petition, it would be necessary to delve into certain factual aspects.

The respondent no.1 Smt.Dhanlaxmi Nalawade approached the Judicial Magistrate First Class, Raigad by filing an application under Section 12 of the Domestic Violence Act, 2005. In the said application, it was alleged by her that she was married to one Shri Gangaram Nalawade on 18th December 1995 as per the Hindu Rites and Customs. It was also specifically alleged by her that the said marriage was registered in the Registrar's office at Alibag on 19th December 1995. It was stated by her that she was married earlier, however, in the year 1992, her husband was killed in a dacoity which took place in Titwala, and from the said marriage, she had one

daughter. She alleged that the said Gangaram was a Police Officer and he was investigating the crime in relation to the dacoity and therefore, she came in contact with him and love blossomed between the two. It was informed by him that he was single and was not married and therefore, he put up a proposal for marriage before her which was accepted by her. It was also specifically stated by her that Gangaram also accepted the daughter of the respondent no.1 who was, at that time, three years. It is then specifically stated by her that she was residing with Shri Gangaram in Alibag and a son was born out of the said wedlock in the year 1996 who was named as Kalpesh. It is her further case that in the year 2005, a decision was taken by the said Gangaram and respondent to purchase one House No.854 belonging to Vikas Janardhan Naik in Alibag and the price of the said house, at the relevant time, was Rs.20 lakhs. It is specifically stated by her that she arranged for the amount of Rs.10 lakhs by selling her jewellery and by obtaining certain loan and that is how the said House No.854 at Alibag came to be purchased and the respondent along with Shri Gangaram started residing in the said house since February

2006. It is the specific case that Shri Gangaram subsequently suffered from cancer and he expired on 8th March 2007. A specific case is set out by the Respondent no.2 in the application that she continued to stay in the said house along with Shri Gangaram and her two children. She has specifically set out a case in the application that she was the wife of Gangaram and at the relevant time of marriage, she was not aware that Gangaram was already married and it was only during his illness, it is dawned upon her that Gangaram was already married and he is having two children from the said marriage.

The application then proceeds to state that after the demise of Gangaram, the present petitioner nos.1 and 2 attempted to evict her from the said house which is known as “Kalpesh Niwas” and it is further alleged that she was subjected to violence in respect of which she preferred a complaint with the respective police station and the proceedings under Section 145 of the Code of Criminal Procedure were instituted and which are pending before the Competent Court.

4 On the said application filed by the respondent no.1, the present petitioners filed their response. While opposing the said application, the foremost ground which is raised by the petitioners is that the respondent no.1 was not legally married wife of Shri Gangaram. It was categorically replied to by stating that the House No.854 at Alibag was purchased by a registered sale deed dated 23th June 2006 and it was purchased in the name of Gangaram as well as his second son Nilesh. The relationship of the respondent no.1 with Shri Gangaram was specifically denied and it is stated that she was wrongfully availing the status of second wife of Gangaram and she had failed to tender any documentary evidence to establish the said fact. It is also stated that in the Marriage Register her name is recorded as Seema Dattatraya Alshi and her address is shown as “House No.202, Badlapur, Taluka Ulhasnagar, District Thane, and it is mentioned that she is unmarried. The claim of the applicant before the Magistrate is therefore, contested by the Petitioners vehemently and the relationship of their father deceased Gangaram with the respondent no.1 is denied.

The Chief Judicial Magistrate, First Class, Raigad, Alibag proceeded to decide the said application and on consideration of the entire evidence produced before him, passed an order on 24th June 2008. During the course of the proceedings, he framed the issue as to whether the domestic relationship is established between the deceased Gangaram and the applicant before the Court. In order to answer the said issue, the learned Chief Judicial Magistrate referred to the documentary evidence which were brought on record by the applicant before the Court. The first document on which reliance was placed was certificate of Registration of Marriage dated 18th December 2006 which was exhibited as "Exhibit 29". Another document which was produced before the Court was a Joint Account in the Bank of India, Branch at Alibag which was in the joint name of Gangaram and Respondent no.1. She produced the extracts of the said bank account and this was exhibited as Exhibit-31. Another document on which reliance was placed by the applicant was her Declaration as a family pension holder, and a certificate from the Accountant General to the effect that she was receiving pension on the demise of said Gangaram who

was a government servant. The attempt of the applicant before the Court was to demonstrate that there was a marital relationship between the deceased and the applicant. Another document which was relied upon was a certificate of the school where the name of the son of the respondent no.1 was recorded as “Kalpesh Gangaram Nalawade”. On the basis of the said documents, the Chief Judicial Magistrate concluded that since the applicant was in receipt of pension on account of the demise of deceased Gangaram, in form of a family pension, it is clear that the relationship between the deceased Gangaram and the applicant was like that of a marriage. The Court, therefore, concluded that the proceedings filed by the applicant under the Domestic Violence Act would fall within the purview of Section 2(f) and is therefore, liable to be entertained since the Act permitted the complaints to be entertained from an aggrieved person who is in the relationship of marriage or in the relationship like marriage. Therefore, conclusively, it was recorded that the applicant was in a relationship like marriage with deceased Gangaram and on 24th July 2008, the Chief Judicial Magistrate, Alibag passed an injunction order

restraining the present petitioners from interfering with her possession of the Kalpesh Niwas at Alibag. Further, the direction was also issued to pay compensation of Rs.2,000/- to the applicant.

5 Being aggrieved by the said decision, an Appeal was preferred by the present petitioners to the Court of Addl. Sessions Judge. The Addl. Sessions Judge reconsidered the issue as to whether there was domestic relationship between the applicant and deceased Gangaram and he answered the said issue in the affirmative. On the basis of the documents which were produced before the Court below, the Court conclusively held that the respondent no.1 married with deceased Gangaram and the suit property was purchased at the said relevant time when the relationship was subsisting. It is also recorded by the said Court that the petitioner no.1 Nilesch and the deceased Gangaram are the joint owners of the suit bungalow by virtue of a sale deed, but as far as the possession is concerned, there is no positive evidence brought on record by the applicants that they were, at any point of time, residing in

the said bungalow with deceased Gangaram. Resultantly, by an order dated 9th January 2017, the Criminal Appeal filed by the present petitioner came to be dismissed.

6 Being aggrieved by the concurrent finding of the Courts below, the present writ petition is being filed. In support of the petition, I have heard the learned counsel Shri Dalvi, appearing for the petitioner. The learned counsel would vehemently submit that the findings recorded by the Courts below are erroneous and they are amiss the basic premise as to whether the relationship between the deceased father Gangaram and the respondent no.1 can be said to be “a Domestic relationship”. Shri Dalvi would invite attention of this Court to Section 2(f) of the Domestic Violence Act of 2005. He would submit that the relationship should be either in the nature of consanguinity, marriage or a relationship should be in the nature of marriage, in order to attract the conspectus of the Domestic Violence Act, 2005. His specific submission is that Shri Gangaram was already legally married and there was no divorce/dissolution of his first marriage and subsisting the first

marriage, even if assuming for a moment, that Gangaram had married the respondent no.1, the marriage was void in its inception and it had no legal sanctity in the eyes of law. He would submit that if such a marriage is not a valid marriage, then any relationship which the respondent no.1 is attempting to canvass or put forth is a void relationship and no benefit could be drawn out of it, nonetheless the benefits flowing from the provisions of Domestic Violence Act 2005. He would place heavy reliance on the judgment of the Hon'ble Apex Court in case of *D. Velusawmy Vs. D. Patchaiammal*¹. He would specifically invite attention of this Court to the observation of the Hon'ble Apex Court specifically made in paragraph 33 of the said judgment. This submission Mr.Dalvi has made in alternative that if at all the relationship is said to be falling under the umbrella of 'relationship in the nature of marriage' and this would be without prejudice to his submission that there was no marriage performed by their father with the respondent no.1. He would rely upon paragraph 36 of the judgment where the Hon'ble Apex Court has held that for

¹ 2010(7) SCC 321

establishing that the relationship is in the nature of marriage, there are certain ingredients which are required to be complied with and one of them has been specifically highlighted by the Hon'ble Apex Court to be a qualification that "the parties must be otherwise qualified to enter into a legal marriage including unmarried". He would thus submit that the pre-qualification for recognizing any relationship in the nature of marriage, is the qualification of the parties to enter into a legal marriage. Deriving benefit of the said finding recorded by the Hon'ble Apex Court, Shri Dalvi would submit that their father Gangaram was already married and their mother Vatsala was alive when the alleged second marriage was performed by the father with the present respondent no.1 and it is the specific submission of Shri Dalvi that their mother also died on the same day as their father died i.e. 8th March 2007. He would thus submit that there is no question of the said relationship of marriage being a valid marriage in existence nor it can be termed as 'the relationship in the nature of marriage' in view of the fact that the father who continued to be legally married to Vatsala, was not legally competent to enter into a second

marriage and if it is done, then the marriage is void *ab initio*. He would also rely upon the judgment of the Hon'ble Apex Court in case of *Indra Sarma Vs. V.K.V.Sarma*², where the Hon'ble Apex Court has drawn a fair distinction between a “live-in relationship” and “relationship in the nature of marriage” and has cautioned that every live-in relationship is not a relationship in the nature of marriage and he would invite our attention to paragraph no.59 of the order of the Hon'ble Apex Court which reads to the following effect :

“59. We may note that, in the instant case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is that of a concubine or a mistress, who cannot enter into relationship in the nature of a marriage. The long-standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserves protection because that woman might not be financially independent, but we are afraid that the DV Act does not take care of such relationships which may perhaps call for an amendment of the definition of Section 2(f) of the DV ACT, which is restrictive and exhaustive.

² 15 SCC 755

He would also place reliance on a judgment of this Court delivered by the learned Single Judge at Aurangabad in Criminal Revision Application No.82 of 2017 in case of ***Reshma Begum w/o Gajanfar Kazi Vs. State of Maharashtra and anr.*** He would submit that the learned Single Judge, relying upon the judgment of the Hon'ble Apex Court in case of ***D.Velusamy Vs. D. Patchaiammal*** (supra) has concluded that there could not be a valid marriage in existence and he would submit that the learned Single Judge by relying upon the qualifications which have been laid down by the Hon'ble Apex Court in D.Velusamy's case has categorically held that while the first marriage was in subsistence, there could not have been solemnization of the second marriage and on the basis of the factual matrix involved in the said matter, he would submit that the learned Single Judge had concluded that the relationship does not fall into the category of "domestic relationship" as defined in Section 2(f) of the Domestic Violence Act, 2005.

7 On the basis of the aforesaid authoritative pronouncements, it is the specific submission of the learned

counsel Shri Dalvi that the Courts below committed a gross error in granting recognition to the relationship of the respondent no.1 with their deceased father Gangaram and have wrongly invoked the provisions of the Domestic Violence Act, 2005 to grant protection in favour of respondent no.1, specifically when the property in question i.e. House at Alibag stands in the name of the deceased and the petitioner no.1 Nilesh jointly, and since they are the co-owners of the property, a stranger like the respondent no.1 could not deprive them of this property which is purchased by their father from his own earnings.

Per contra, learned counsel Shri Khandeparkar appearing for the respondent nos.1 and 2 would submit that the Addl. Sessions Judge has rightly appreciated the conspectus of the Domestic Violence Act and has taken recourse to Section 2(f) of the said Act which defines the term “domestic relationship”. The learned counsel would submit that the purpose of the Enactment being to effectively protect the rights of women, it should be construed in a broader perspective and in this background, he would submit that the definition of the

term “domestic relationship” under Section 2(f) intended to cover a wider range of relationship which are not merely in the nature of relationship by consanguinity or by marriage, but also “a relationship in the nature of marriage”. He would submit that the entire Act will have to be interpreted and applied by taking into consideration the object which is sought to be achieved by the said Enactment. Shri Khandeparkar would submit that if the Enactment is a piece of beneficial legislation, the widest possible meaning should be given to the terms employed in it and therefore, the respondent no.1 is covered within the meaning of the term “domestic relationship” as defined in Section 2(f). He would submit that it is so worded in order to bring within its sweep and umbrella, the type of relationship where the women are mislead into a marriage and then any benefit is sought to be denied on the specious ground that there is no valid relationship. The learned counsel would invite my attention to the specific statement made in the complaint by the respondent no.1 that an impression was given by the deceased Gangaram that he was single and she had not concealed the fact that she was already married and having one

daughter. On the contrary, the deceased Gangaram had given an impression that he is ready to enter into a relationship with her, he being single and also agreed to take up the responsibility of the three year old daughter. The learned counsel would thus submit that it is precisely for such type of relationship which have been entered, like the one where the woman has been roped into a relationship on the basis of misrepresentation, the provisions of the Domestic Violence Act, 2005 can be invoked and applied since it aims to grant protection to such type of women. He would also place reliance on the same judgment on which the learned counsel Shri Dalvi has placed reliance i.e. the judgment of the Hon'ble Apex Court in case of D.Velusamy (supra). Learned counsel would specifically submit that the Hon'ble Apex Court was aware of the distinction between the term "marriage" and the term "relationship like marriage". The "relationship like marriage" in terms of the Apex Court, according to him, is something which is akin to a common law marriage and he would submit that though their Lordships never intended to recognize all live-in relationship as relationship in the nature of

marriage to bring it within the purview of Act of 2005, he would submit that the whole judgment is focused on the point that only those relationships which are in the nature of marriage, are to be recognized within the scope and meaning of Section 2(f). He would also submit that as far as the judgment of the Hon'ble Apex Court in ***Indra Sarma*** case is concerned, it lays down a proposition of law that the relationship to qualify as relationship in the nature of marriage, should have some inherent or essential characteristics of a marriage, though not a marriage which is legally recognized. He would submit that the Hon'ble Apex Court in the said judgment has set out the characteristics of a *defacto* relationship and of a *defacto* partner which would include and cover certain important elements i.e. the dependency on each other, the commitment towards each other whether the parties jointly owned any property, whether the parties jointly owned any bank account, whether the parties shared a sexual relationship, whether the relationship is or was exclusive. He would thus emphasize that for a relationship to be recognized as a relationship in the nature of marriage, the parties must have held to the whole world that they are

husband and wife and the commitments and the obligation arising out of a marriage are satisfied by the parties in an relationship which is not necessarily a marriage, but “relationship in the nature of marriage”.

Learned counsel Shri Khandeparkar would submit that the respondent no.1 has adduced sufficient evidence before the Courts below to establish that the relationship is in the nature of marriage and he would submit that this includes the marriage registration as well as the joint account being opened in the Alibag Branch, meaning thereby that they shared an economic relationship as between husband and wife. He would further submit that the son born out of the relationship has been named after the deceased and his name has been so recorded in the school records. Till his demise, the respondent no.1 was staying in the house at Alibag along with two children out of which one is born out of the wedlock. He would thus submit that the relationship which was shared by the respondent no.1 with the deceased was one of exclusion and she was residing along with Gangaram at Alibag and at the relevant time, she was not aware about the existing marriage of

Gangaram and about the two children i.e. the petitioners being his children out of the first marriage.

Learned counsel would thus submit that the Courts below have rightly invoked and applied provisions of Domestic Violence Act 2005, in order to come to the rescue of the applicant who squarely falls within the meaning and purport of the said Enactment and has extended the protection which she has sought by invoking the jurisdiction of the said Court by making an application under Section 12 of the Act.

8 I have carefully perused the copy of the writ petition along with its annexures and I have also considered the submissions advanced by learned counsel for the parties. The gamut of the matter revolves around the relationship shared by the respondent no.1 with the deceased Gangaram i.e. the father of the petitioner. Though at one point of time, it appears that it is the relationship which is of marriage since the respondent no.1 has produced on record the certificate of registration of marriage, the fact cannot be overlooked that the deceased was already having a subsisting marriage at the time when he

entered into the wedlock with the respondent no.1 on 18th December 1995. The marriage of deceased Gangaram with his first wife was not dissolved and was a subsisting marriage and as far as the provisions of Hindu Marriage Act are concerned, the second marriage which the deceased Gangaram entered into with the respondent no.1 may be construed as a void marriage. However, it is seen that the marriage being void under the provisions of Hindu Marriage Act, being not in conformity with Section 5 of the said Enactment is a distinct aspect. The aspect which falls for consideration in the present writ petition is whether the respondent no.1 who entered into a marital relationship on a premise that the deceased Gangaram was single, whether she is entitled to invoke the provisions of the Domestic Violence Act, 2005.

9 The Domestic Violence Act of 2005 is a beneficial piece of legislation enacted in the backdrop of the Vienna Accord of 1994 and Beijing Declaration and Platform for Action (1995). It is enacted in the wake of United Nations Committee on Convention on Elimination of All Forms of Discrimination

Against Women in its general recommendations where the women were sought to be protected against violence of any kind and specially the violence occurring in the family. The said Enactment itself intends to provide effective protection of rights of women guaranteed under the Constitution who are the victims of violence of any kind which is occurring within the family. The perusal of the statement of objects and reasons of the said Enactment would reveal that the phenomenon of domestic violence is widely prevalent, but it is largely invisible in the public domain. The Enactment was, therefore, intended to prevent the abuse of such women who have been in relation with the abuser, where both the parties have lived together in a shared household and are related by consanguinity, marriage or poor relationship in the nature of marriage or adoption.

In order to effectively attain the object of the said enactment, it proceeded to define and assign a definite meaning to some terms. Section 3 of the said enactment, though does not contain a definition of domestic violence, but it recognizes certain acts, omission or commission or conduct of the respondent which would constitute Domestic Violence. The

perspective of the Enactment intends to cover not only physical and mental abuse of the woman but also sexual, verbal and economic abuse. The said enactment defines the term “domestic relationship” in Section 2(f). The said definition is worded as under :

2(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;

9 The Act of 2005 then defines the term “Domestic Violence” as to have the same meaning as assigned in Section 3. Another term which needs reproduction is the term “shared household(s)” which reads thus :-

2(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly

or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

10 Perusal of the definition clauses under the Enactment of 2005 would reveal that the term “Domestic Relationship” has been assigned a wider connotation. It is not merely restricted to a relationship of a marriage but it also covers a “relationship in the nature of marriage”. If any two persons who, either live or have lived, at any point of time, in a shared household on account of such a relationship, then it falls within the purview of domestic relationship. There is certainty about the proposition that if there is a 'marriage' between the parties, then the relationship, nonetheless would fall within the purview of Section 2(f). The moot question is when the relationship is in the nature of marriage, then what are the characteristics of this relationship as distinguished from marriage.

It is no doubt true that the Hindu Marriage Act specifically prohibits entering into a relationship either in form of a marriage or in any other form during subsistence of a valid marriage and prohibits such type of relationship. The second marriage performed during the subsistence of the marriage, needless to state, would amount to be a void marriage. Further, any other relationship which is maintained during the subsistence of the first marriage would be referred to as an adulterous relationship and is aptly dealt under the provisions of Indian Penal Code.

However, when the legislature introduced a term “relationship in the nature of marriage” as distinct from the relationship of marriage, it intended to give a definite and an assigned meaning to the said term. So something which could not have been covered by relationship of marriage, will have to be construed in the relationship in the nature of marriage. The said term will, of course, have to be construed in the backdrop of the intention of the legislature which can be assimilated from the object of the Act. By taking into consideration the statement of objects and reasons as well as the preamble of the

Enactment, throwing light on the objective with which the enactment was made, the terms defined and used in the said Enactment will have to be construed. While construing the provision or a term used in a statute, intention of a legislature will have to be kept in mind. In the backdrop of the object sought to be achieved, it will have to be examined what is the connotation “relationship in the nature of marriage”.

The Hon'ble Apex Court in case of **Indra Sarma** (supra) has specifically dealt with the said issue and after referring the *defacto* relationship as is prevalent in the United Kingdom as well as under the various enactments, has dealt and applied the expression “couple relationship” as used in the said enactment. It also referred to the defacto relationship as is prevalent in North-South-West Australia under the Property (Relationship) Act 1984. On the basis of the said terminology used in the countries other than India, the Hon'ble Apex Court then proceeded to deal and construe the connotation in the Indian context.

In paragraph 55, 56 and 65 of the said judgment, the Hon'ble Apex Court has observed thus :

55. *We have already stated, when we examine whether a relationship will fall within the expression “relationship in the nature of marriage” within the meaning of Section 2(f) of the DV Act, we should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. We cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the test judicially evolved.*

56. *We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression “relationship in the nature of marriage” under Section 2(f) of the D.V. Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships:*

56.1 Duration of period of relationship – *Section 2(f) of the DV Act has used the expression “at any point of time”, which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.*

56.2 Shared household _ *The expression has been defined under Section 2(s) of the DV Act and, hence, needs no further elaboration.*

56.3 Pooling of resources and financial arrangements : *Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long-term investments in business, shares in separate and joint names, so as to have a long-standing relationship, may be a guiding factor.*

56.4 Domestic arrangements – *Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.*

56.5 Sexual relationship – *Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.*

56.6 Children – *Having children is a strong indication of a relationship in the nature of marriage. The parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.*

56.7 Socialisation in public – *Holding out to the public and socialising with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.*

56.8 Intention and conduct of the parties – *Common intention of the parties as to what their relationship is to be and to involve, and as to their*

respective roles and responsibilities, primarily determines the nature of that relationship.

65. 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, safety, 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.

What has thus been highlighted by the Hon'ble Apex Court in paragraph 65 is a relationship which is not exactly a relationship in marriage, but when the parties have held themselves to be husband and wife, and as to how they have projected themselves in the society, that has been considered to be an important test in determining whether the relationship is in the nature of marriage.

11 Applying the said principle as set out in the Hon'ble Apex Court, it will have to be seen whether in the present case, the relationship between the deceased Gangaram and respondent no.1 would fall within the parameters of paragraph 65 of the said judgment as laid down by the Hon'ble Apex Court. Sufficient evidence has been brought on record by the respondent no.1. The evidence that has been tendered before the Court includes an evidence of a joint account being opened

by the deceased Gangaram along with the respondent no.1. This conclusively leads to a fact that they shared an economic relationship. The applicant, in her application, has categorically stated that at the time when the deceased Gangaram was posted in Alibag, they came in contact and they started residing in Alibag after the marriage was solemnized and continued to stay there along with her two children. The specific case set out by the applicant in her application is that she was being treated by Gangaram as her wife and this is apparent from the fact that while admitting their son who is born out of the wedlock, in the school the name of Gangaram has been affixed to his name in the capacity of a father. The relationship of the respondent no.1 with Gangaram was, therefore, like that of husband-wife and not only this, at the time of his retirement, Gangaram had nominated the respondent no.1 as his wife.

12 During the course of hearing of the matter, the learned counsel has tendered on record a document to demonstrate that the said pension which is sanctioned in favour

of respondent no.1 is withdrawn in the year 2007. In any contingency, this fact will not materially affect the relationship between the respondent no.1 and the deceased. The deceased Gangaram was a Government servant and therefore, he is governed by the Maharashtra Civil Service Pension Rules. Under the said Rules, there is a provision contained in Rule 115 for nomination and a government servant, during his life time, is authorized to make a nomination in favour of a person who would receive the pension/gratuity after his demise and subsequent thereto, the pension become applicable. Rule 116 of the Family Pension Rules, 1964 recognizes only the widow of such a deceased government servant to be entitled for a pension. No doubt, sub-rule (6) of Rule 116 contains a provision for division of the amount of pension if there are more than one widow. In any contingency, if it is to be construed that the provisions are applicable only to a legally wedded wife, in this case, however, it is not relevant whether the present respondent no.1 is a wife because she though claims to have been married, could not have been entitled to be considered as a legally wedded wife, since the first marriage of

deceased Gangaram was subsisting. It is perhaps for this reason that the pensionary benefits which are conferred upon her are withdrawn by the competent authority i.e. Accountant General and she is deprived of the said pension as she not being widow of Gangaram.

The benefit of the pension can be only granted in favour of a legally wedded wife and the judgment on which Shri Dalvi himself has placed reliance in case of ***Draupada @ Draupadi Jaydeo Pawar Vs. Indubai d/o Kashinath Shivram Chavan***³ delivered by the learned Single Judge of this Court is in relation to a void marriage and the benefits of pension derivable under the Maharashtra Pension Rules and specifically Rule 116(6). The authorities may be justified in withdrawing the said pensionary benefits, but what is important at the present point is that deceased Gangaram himself nominated the respondent no.1 as his wife, meaning thereby that he was holding the respondent no.1 as his wife and not only to himself but to the world, since he had nominated her as his wife. In such circumstances, if the relationship of the respondent no.1

3 2017(1) ALL MR 197

with the deceased is of such nature that they shared a common household, shared an economic relationship which is very apparent that the house is purchased from investment being made by the respondent no.1, as she had categorically stated in her complaint that she had purchased the said house by selling her ornaments and mortgaging Kisan Vikas Patra in favour of her son, the sharing of the finances between the respondent no.1 and the deceased is very apparent. The respondent no.1, in her application before the Magistrate, has not stated that she had any other source of income or she was earning her living by indulging into any job or occupation. It is thus clear that she was dependent for financial purpose on deceased Gangaram. In such circumstances, the relationship of the respondent no.1 with the deceased Gangaram satisfies the test of “relationship in the nature of marriage” and is characterized by the sharing of finances, sharing of a household, rearing a child who is born out of the wedlock and in such circumstances, merely because the respondent no.1 is not legally entitled to be married with the deceased Gangaram, subsistence of his first marriage cannot be said to be a ground to deprive her of the benefits of flowing

from Domestic Violence Act, 2005. Rather, this is the very purpose of the enactment, which intends to cover such relationship which are not necessarily arising out of a marriage, but are in the nature of marriage. The Courts below have rightly construed the provisions of the Domestic Violence Act and has extended the benefit of the provisions of the enactment in favour of the respondent no.1.

No illegality or perversity can be found in the said orders which are impugned in the present writ petition.

The writ petition being without any merit and substance, therefore, deserves to be dismissed.

(SMT.BHARATI H. DANGRE)

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