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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th September, 2018

+ CRL. M.C. 4709/2016 & Crl.M.A. 19613/2016

AMAN NUGYAL

..... Petitioner

Through: Mr. G.S. Narula & Mr. M.
Sarwan, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for
the State.

Ms. Manika Tripathy, Mr.
Ashutosh Kaushik & Ms.
Raveena Tondon, Advs. along
with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the petition (CC No. 1544/3/2013) presented by the complainant under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short, the Domestic Violence Act), proceedings have been initiated against the petitioner in the court of Metropolitan Magistrate with prayer for various reliefs in the nature of protection order (under Section 18), residence order (under Section 19), monetary reliefs (under Section 20), custody order (under Section 21) and compensation (under Section 22).

2. The petitioner had questioned the maintainability of the said proceedings by pointing out that it is the admitted case of the second

respondent that they are not married to each other, the case having been founded on allegations of “live-in relationship”, his submission being that such relationship was not “in the nature of marriage”, he to the knowledge of the second respondent being married to another woman (named Anjali) at the relevant point of time. The Metropolitan Magistrate, by her order dated 17.11.2015, rejected the said contention to put an end to the proceedings observing that the submission raised mixed questions of law and fact. The petitioner thereafter moved the court of Sessions by criminal appeal (CA no. 223/2015) which was dismissed by order dated 23.11.2016.

3. He has come up to this Court invoking the inherent power and jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and Article 227 of the Constitution of India, to pray that the aforesaid orders of the courts below be set aside and the proceedings under the Domestic Violence Act taken out by the respondent be quashed.

4. The petition under the Domestic Violence Act was presented in February, 2013 by the second respondent. A little prior to that she had lodged a complaint with the local police in District Gurgaon, Haryana, no action having been taken thereupon. She approached the court of Additional Chief Judicial Magistrate (ACJM), Gurgaon, which court, after pre-summoning inquiry, had issued process against the petitioner for offences under Sections 376/403/417 of Indian Penal Code, 1860 (IPC). The matter arising out of the said proceedings eventually came up as sessions case no. 66/2014 before the Additional Sessions Judge, Gurgaon, the gravamen of charges laid against the petitioner therein

being that he had subjected the second respondent to sexual intercourse on the false promise of marriage and had thereby not only raped but cheated her. It is not disputed that the said sessions trial ended in judgment dated 12.07.2016 whereby the petitioner was acquitted with findings to the effect that the sexual relationship between the parties in a house in Gurgaon where they had lived together was consensual.

5. The case presented before the Metropolitan Magistrate, New Delhi, is founded primarily and essentially on the same set of facts as were the subject matter of the sessions case which ended with the judgment of acquittal on 23.11.2016. To put it simply, the second respondent has averred that both she and the petitioner, with failed first marriages, had come together and became physically and emotionally involved, having started living together in a house in Gurgaon since 24.04.2010. It is her admitted case that she was aware that the petitioner had a child (a daughter) from his first marriage, narrating their initial interaction since they having come to be acquainted with each other since 2006, upon being introduced by common friends in Mumbai.

6. She would claim that the petitioner had told her in December, 2008 that his wife had sent him a notice for divorce. She also alleged that in the first week of April, 2010, the petitioner had informed her that he had finally separated from his wife permanently through divorce by mutual consent in March, 2010. The second respondent has narrated that the parties were living together and moving around in manner “*akin to married life*”, even going out to various stations and

staying together. She alleged that the petitioner had proposed a formal marriage ceremony and prior to that he had put *sindoor* in her forehead in December, 2010 promising to enter into a formal ceremony in November, 2011.

7. According to her allegations, on 05.04.2011 the second respondent incidentally came across a copy of petition dated 25.03.2011 of first motion for divorce by mutual consent to be submitted by the petitioner and his wife and this discovery revealed to her that the information about he having taken divorce in March, 2010 was factually incorrect. As per the case set out in the Domestic Violence Act petition, the relationship between the parties soured, for some time, the petitioner having tendered profuse apologies to her and she eventually having calmed down and accepted the position agreeing to be patient till the divorce came through. It is clear from the facts narrated in the petition that the parties continued to live even thereafter, the relationship eventually coming to an end on 02.08.2011, when the petitioner left for Africa abandoning her.

8. The fact remains that throughout the period the parties lived together under the same roof in Gurgaon i.e. from August, 2010 to August, 2011, the petitioner was married to another woman (Anjali), their marriage having continued and subsisting that is to say, it having not been dissolved by a decree of divorce. Referring to this fact, the petitioner relied on the ruling of the Supreme Court in *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469 to argue that the petition under the Domestic Violence Act could not be maintained against him by the

second respondent. He also relies on another decision of the Supreme Court reported as *Indra Sarma vs. V.K. V. Sarma* (2013) 15 SCC 755.

9. *Per contra*, the second respondent argued that the petitioner having created the impression that his first marriage with Anjali had been dissolved by a decree of divorce by the Family Court in Mumbai, she had entered into the live-in relationship, the parties having cohabited with each other in a manner akin to wife and husband, and hence the rulings in *D. Velusamy* (supra) and *Indra Sarma* (supra) cannot apply, she having no other remedies in law for recompense other than under the Domestic Violence Act.

10. To maintain a case under the Domestic Violence Act, it is essential for the parties in question to be in a “domestic relationship” with each other. The said expression is defined by the law – by Section 2 (f) – 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.”

11. In *D. Velusamy* (supra) the expression “a relationship in the nature of marriage” came up for consideration, the Supreme Court ruled thus:-

“31. In our opinion a “relationship in the nature of marriage” is akin to a common law marriage. Common law marriages require that although not being formally married:

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

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

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

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

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”.

(emphasis supplied)

12. As is noticeable, it is a pre-requisite, amongst others, that the parties should be otherwise qualified to enter into a legal marriage with each other and this includes, the status of they being not married

to any other person. The factum of marriage of the petitioner was well-known to the second respondent before she entered into the live-in-relationship with him. Going by her own averments in the petition under Domestic Violence Act, she was, at the relevant point of time, thirty two years' old "dynamic woman" and "successful marketing and communications professional" employed with a multi-national corporation. She being highly educated, professionally qualified and competent person, she was assumably not gullible. She had a history of failed marriage of her own. She very well knew that in order to enter into a marital relationship with another person it was necessary that he also should not be married to another person. Knowledge of law that bigamous relationship will not be permitted will have to be attributed to her. This is why, she also concededly had made inquiries about the status of the efforts being made for the petitioner to secure divorce from his first wife. The averments about the notice received by the petitioner for divorce from his first wife demonstrate the fact that she was alive to dissolution of the first marriage of the petitioner being a prerequisite for her to take her relationship with the petitioner forward. Concededly, no divorce took place during the entire period she stayed with the petitioner under the same roof, may be in a manner akin to wife and husband. The plea that the petitioner had misled her by wrongly informing her about the divorce in March, 2011 cannot be used to skirt around the requirements of law to establish "domestic relationship as explained by the Supreme Court. The said ruling does not permit any such exception to be carved out.

13. In *Indra Sarma (supra)*, the Supreme Court reiterated the view in *D. Velusamy (supra)* and in the context of the facts of the said case recorded observations which are applicable to the case at hand and which read as under:-

“We are, therefore, of the view that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in relationships are not relationships in the nature of marriage. The appellant’s and the respondent’s relationship is, therefore, not a “relationship in the nature of marriage” because it has no inherent or essential characteristic of a marriage, but a relationship other than “in the nature of marriage” and the appellant’s status is lower than the status of a wife and that relationship would not fall within the definition of “domestic relationship” under Section 2 (f) of the DV Act...”

14. In the foregoing facts and circumstances, the contention of the petitioner must be accepted. The impugned orders are set aside. The relationship between the parties not being in the nature of domestic relationship within the meaning of expression used in Section 2(f) Domestic Violence Act, the petition before the court of Magistrate cannot be maintained, the proceedings arising therefrom against the petitioner are quashed.

15. The petition and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 12, 2018

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