

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1174 of 2017

1. Rakesh Kumar S/o Late Laxmi Prasad Kushwaha, Aged About 27 Years, R/o Village Amhar, Police Station Patna, Tahsil Baikunthpur District Koriya Chhattisgarh, Chhattisgarh
2. Rukmani Wd/o Late Laxmi Prasad Kushwaha, Aged About 48 Years, Occupation House Wife, R/o Village Amhar, Police Station Patna, Tahsil Baikunthpur District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Revisioners/Non-applicants

Versus

- Sunaina D/o Chandrika Prasad Kushwaha, Aged About 20 Years, R/o Village Chhindiya, Police Station Patna, Tahsil Baikunthpur, District Koriya Chhattisgarh, Chhattisgarh

-----Respondent/applicant

For Revisioners/petitioners	: Shri Ashok Kumar Shukla, Advocate
For Respondent	: Shri Anil Gulati, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

21/10/2019

1. This revision has been brought challenging the order dated 20-11-2017 passed by the Additional Sessions Judge (FTC) Baikunthpur, District Koriya in Criminal Appeal No.16/2016 upholding the order of the JMFC, dated 30-01-2016 in D.V. Case No.51/2014 passed granting maintenance of Rs.1000/- and house rent of Rs.500/- in favour of the respondent.
2. It is submitted by learned counsel for the revisioners/petitioners that firstly no marriage was performed of petitioner No.1 with the respondent validly and secondly there had never been any cohabitation of such

description between petitioner No.1 and the respondent so as to show that there had been domestic relationship as it is defined in Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (in short 'the Act, 2005'). Therefore, the respondent had no entitlement for maintenance and neither for any other relief.

3. It is also submitted that the respondent had prosecuted the petitioners for offences under Section 498A and 323 of the IPC in which the petitioners have been acquitted for the offence under Section 498A of the IPC. Apart from that, petitioner No.1 was already married on the date when the alleged marriage was performed. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Indra Sarma Vs. V.V.K. Sarma**, (2013) 15 SCC 755 and It is submitted that live-in relationship has been defined by Hon'ble the Supreme Court and the relationship between petitioner and respondent No.2 is very clearly not made out. Reliance has also been placed on the judgment of Hon'ble the Supreme Court in the matter of **Manmohan Attavar Vs. Neelam Manmohan Attavar**, (2017) 8 SCC 550. It is further submitted that the marriage of the petitioner No.1 with the respondent could not have been legally performed only for the reason that the respondent was just 14 years of age on the alleged date of marriage which she has admitted in her statement before the Court. Therefore, the orders passed by the Courts below are totally erroneous and against Law, which are liable to be set aside.
4. In reply learned counsel for the respondent submits that there is evidence present given by Mithala Prasad (AW-2) that he had performed the marriage of petitioner No.1 with the respondent, therefore, the marriage between the respondent and petitioner No.1

was approved, which was proved domestic relationship. Therefore, there is no error in the orders passed by the Courts below.

5. A petition under Section 12 of the Act, 2005 was brought by the respondent praying that her marriage was performed with petitioner No.1 on 28-05-2010. Subsequent to which, because of the torture given and the cruel treatment the respondent had to leave her matrimonial home and file complaints against the petitioners. The application was filed praying for grant of maintenance.
6. The petitioners/non-applicants denied all the averments in the application and submitted that on the alleged date of marriage age of the respondent was only 14 years, therefore, no legal marriage could have been performed and without there being valid marriage the respondent is not entitled for claiming maintenance.
7. The Court of the JMFC Baikunthpur, District Koriya enquired into the matter and passed order dated 30-01-2016 by allowing the application of the respondent and granting monthly maintenance of Rs.1000/- along with Rs.500/- monthly for house rent which has been confirmed in the appeal by the appellate Court order dated 20-11-2017.
8. On perusing the evidence of the respondent/AW-1, it is found that she has stated about performance of marriage on 28-05-2010 in her examination-in-chief. In her cross-examination she has stated her date of birth as 19-01-1996. She has also admitted that on the alleged date of marriage Women and Child Development Officer along with the police officials came to place to stop the performance of marriage for the reason that she was a minor. She has denied that no marriage was performed.
9. Mithala Prasad (AW-2) has stated that he was priest who had

performed the marriage of petitioner No.1 with the respondent on 28-05-2010. In his cross-examination he has admitted that if any marriage is performed of a girl below 18 years and a boy below 21 years, then performance of marriage amounts to an offence. He has also admitted that officials had come on the marriage place to stop the performance of marriage, but as soon as they left the marriage was performed.

10. Anil Kumar Jaiswal (AW-3) has stated about performance of marriage and his statement has remained intact in his cross-examination.
11. Petitioner No.1 Rakesh Kumar Kushwaha (NAW-1) has stated that marriage was initiated and was to be performed on 28-05-2010, but a complaint was made by some unknown person because of which the Women and Child Development Officer along with SDM and police officials came to the place of marriage and after verifying the age etc. they cautioned him that such marriage cannot be performed because such marriage had been illegal. Thereafter, the marriage was not performed. In his cross-examination he has denied the adverse suggestion given. Similar is the statement of Shobharam (NAW-2), Duleshwari Bai (NAW-3) who is Sarpanch of Gram Panchayat and Dharam Das (NAW-4) who is resident of the village where both the petitioners reside that after interference made by the officials and police the marriage was not performed.
12. The statement regarding the marriage is contradictory, therefore, any preponderance of probability cannot be made out in favour of any of the parties. However, one fact is clearly appears to be undisputed on the basis of the statement made by the respondent herself that her date of birth was 19-01-1996 and she has not made any other statement to contradict the admission made by her and neither any

such statement has been made by any of the respondent's witnesses to contradict the date of birth stated by the respondent herself, which clearly establishes that on the alleged date of marriage, i.e., 28-05-2010 the respondent was of age below 18 years. As it appears that both the parties are followers of Hindu religion, therefore, they are governed by Hindu Marriage Act, 1955. The conditions for valid marriage is provided under Section 5 of this Act in which one of the conditions in Section 5 Clause III is very clear that the age of the bridegroom should be more than 21 years and the age of bride should be more than 18 years at the time the marriage is performed, otherwise it would not be a valid marriage. Therefore, only evidence that marriage was performed would not validate the marriage which appears to be otherwise invalid according to Law in this respect. Hence, the ground raised by the petitioners respecting to the marriage of petitioner No.1 with the respondent holds ground and it cannot be said that there is valid performance of marriage between the petitioner No.1 and the respondent, regarding which both the Courts below have committed error by not appreciating the admission made by the respondent herself.

13. Another ground raised in this revision that there had never been a domestic relationship between the parties is examined. Sunaina Kushwaha (AW-1) has stated that after the marriage she started residing in her matrimonial home in village Amhar where she was tortured for demand of dowry etc. In cross-examination she has remained firm on this statement. Similar is the statement given by Mithala Prasad (AW-2) and Anil Kumar Jaiswal (AW-3). Rakesh Kumar Kushwaha (NAW-1)/Petitioner No.1 has made statement in denial in examination-in-chief and cross-examination, he has denied the

suggestions given by the applicant/respondent side. Shobharam (NAW-2) has made similar statement and has remained firm on his statement in cross-examination. Similarly Duleshwari Bai (NAW-3) and Dharam Das (NAW-4) have also made statement denying the marriage and cohabitation of petitioner No.1 with the respondent.

14. It was burden on the respondent side to establish her case on the basis of preponderance of probabilities for the reason that it is a case of quasi civil nature. The ground of marriage raised by the respondent has failed for the reason that even if it is assumed that the marriage was performed even then it was not a valid marriage, therefore, the only ground left on which the matter can be considered is whether the petitioner No.1 and the respondent had lived together in domestic relationship. It has been held in **Indra Sarma Vs. V.K.V. Sarma** (supra) in paragraphs 37, 38, 39 and 40 that:-

“37. Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

a) Domestic relationship between an unmarried adult woman and an unmarried adult male: Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship “in the nature of marriage” so as to fall within the definition of Section 2(f) of the DV Act.

c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship “in the nature of marriage”.

d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the “nature of marriage”, so far as the aggrieved person is concerned.

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38. Section 2(f) of the DV Act though uses the expression “two persons”, the expression “aggrieved person” under Section 2(a) takes in only “woman”, hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

39. We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence”, have a common sense/balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the “nature of marriage”. Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression “relationship in the nature of marriage”, of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression “in the nature of marriage”. Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of and essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in (a) and (d) supra. Women, who fall under categories (b) and (c), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), referred to in paragraph 37(b) of the Judgment.

40. We have, therefore, come across various permutations and combinations, in such relationships, and to test whether a particular relationship would fall within the expression “relationship in the nature of marriage”, certain guiding principles have to be evolved since the expression has not been defined in the Act.”

15. Therefore, it is very clearly defined that relation should have existed in the nature of marriage which means that even if marriage is not performed there should have a possibility of performance of such marriage.

16. According to the appreciation of the evidence made in the case, it is found that on the alleged date of performance of marriage age of the respondent was merely 14 years and 9 months and thereafter according to the statement made by herself she left her matrimonial home before 29-06-2011 because that is the date when the application was filed under Section 12 of the Act, 2005. Hence, the marriage which is not permitted by Law, therefore, marriage like relationship which is defined under Section 2(f) of the Act, 2005 cannot be regarded as relationship permissible under the Law. There may be some other remedy available to the respondent, but it can be said on the basis of the discussion made hereinabove that no remedy is available to the respondent under Section 12 of the Act, 2005. Therefore, after overall consideration, I am of this opinion that the orders passed by the Courts below are erroneous and not in accordance with Law, which cannot sustain. Consequently, the petition is allowed and the order passed by the JMFC, Baikunthpur, District Koriya dated 30-01-2016 in Criminal Case No.51/2014 and the order passed by the Additional Sessions Judge (FTC) Baikunthpur, District Koriya in Criminal Appeal No.16/2016 dated 20-11-2017 are hereby set aside.

Sd/-
(Rajendra Chandra Singh Samant)
Judge