

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2018

PRONOUNCED ON : 31.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.OP.No.21496 of 2015
and
MP.Nos.1 to 3 of 2015

V.Karuppusami

... Petitioner

Vs.

Indira

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in respect of D.V.No.27 of 2015 on the file of the Judicial Magistrate, Tambaram, Chennai and quash the same.

For Petitioner : Mr.A.Raghunathan,
Senior Counsel for M/s.K.Balaji

For Respondent : Ms.R.Nirmala Devi

ORDER

This petition has been filed by the respondent in D.V.No.27 of 2015 on the file of the Judicial Magistrate, Tambaram, to quash the proceedings against him in the above D.V.

2. The respondent herein has lodged a complaint before the Protection Officer, Kanchipuram District alleging that the petitioner herein has committed domestic violence against her and based on the said complaint, the Protection Officer, Kanchipuram District has conducted an enquiry and filed a domestic incident report before the Judicial Magistrate, Tambaram. Based on the said report, the Judicial Magistrate, Tambaram, has taken the case on file in D.V.No.27 of 2015 and issued notice to the petitioner herein. After receipt of the said notice, the petitioner herein has filed the present petition under Section 482 of Cr.P.C. to quash the proceedings against him in D.V.No.27 of 2015 on the file of the Judicial Magistrate, Tambaram.

3. Heard both sides.

4. Mr.A.Raghunathan, Senior Counsel for Mr.K.Balaji, the learned counsel for the petitioner has submitted that in the complaint lodged by the respondent, she has categorically admitted that no marriage was solemnized between herself and the petitioner herein. He further submitted that in the complaint, the respondent has admitted that she already married and got two children through her husband and subsequently, she got divorce from her husband. He further submitted that the respondent has admitted in her complaint that the petitioner herein also already got married and they entered into a live-in relationship and as such, she cannot claim any relief under the Protection of Women from Domestic Violence Act, 2005. In support of the said contentions, the learned Senior Counsel for the petitioner has relied upon the decision in Indra Sarma /vs/ V.K.V.Sarma AIR 2014 SC 309.

5. Per Contra, Mr.K.P.Gopalakrishnan for Ms.R.Nirmala Devi, the learned counsel for the respondent has submitted that the petitioner herein is doing business in medicines and since the respondent herein was working as Pharmacist in a private hospital, the petitioner herein has approached her and made requests to prescribe medicines to purchase from him. She further submitted that considering the petitioner's requests, the respondent recommended his name to her Superior Officer for purchasing medicines from him and in due course, he became a friend and taking advantage that she already got divorce from her husband, he moved close and exploited her and had extra marital relationship with her. He further submitted that inspite of the repeated requests made by the respondent, the petitioner refused to give the status of wife to the respondent and also cheated her and received 50 sovereigns of jewels and Rs.5,00,000/- by cash. He further submitted that the Domestic Violence Act, 2005 was enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India to provide for a remedy under the Civil Law which is intended to protect the women from being victims of Domestic Violence and to prevent the occurrence of domestic violence in the society. He further submitted that the complaint filed by the respondent and the domestic incident report would prima facie show that the petitioner and the respondent herein have lived together as husband and wife for a long time and hence there is a presumption of valid marriage between them and therefore, the provisions of Protection of Women from Domestic Violence Act would attract.

6. In support of the aforesaid contentions, the learned counsel for the respondent has relied upon the following decisions:

- i) Mohit Yadam /vs/ State of A.P CDJ 2009 APHC 928;
ii) Kamala /vs/ M.R.Mohan Kumar 2018 SCC OnLine
SC 2121

7. In the complaint filed by the respondent before the Protection Officer, Kanchipuram, she has stated that she already married and got two children from her husband and subsequently, she got divorce with her husband and also stated that the petitioner herein told her that he married his wife only due to the force exercised by his mother. So, it is clear that eventhough the respondent got divorce from her husband, the petitioner herein has not divorced his wife. In such circumstances, the petitioner herein cannot legally marry her.

8. In Indra Sarma /vs/ V.K.V.Sarma AIR 2014 SC 309, the Hon'ble Supreme Court in Paragraph Nos.64 and 65 has observed as follows:

"64. Appellant had entered into this relationship knowing well that the respondent was a married person and encouraged bigamous relationship. By entering into such a relationship, the appellant has committed an intentional tort, i.e., interference in the marital relationship with intentionally alienating respondent from his family, i.e., his wife and children. If the case set up by the appellant is accepted, we have to conclude that there has been an attempt on the part of the appellant to alienate respondent from his family, resulting in loss of marital relationship, companionship, assistance, loss of consortium etc., so far as the legally wedded wife and children of the respondent are concerned, who resisted the relationship from the very inception. Marriage and family are social institutions of vital importance. Alienation of affection, in that context, is an intentional tort, as held by this Court in Pinakin Mahipatray Rawal case (supra), which gives a cause of action to the wife and children of the respondent to sue the appellant for alienating the husband/father from the company of his wife/children, knowing fully well they are legally wedded wife/children of the respondent.

65. 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. Appellants and the respondents 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 appellants 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. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to domestic violence under Section 3 of the DV Act ".

9. In this case also, the respondent had entered into this relationship knowing well that the petitioner herein was a married person and encouraged bigamous relationship. In view of the aforesaid decision of the Hon'ble Supreme Court, the respondent herein having been fully aware of the fact that the petitioner herein was a married person, could not have entered into a live-in relationship in the nature of marriage. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to domestic violence under Section 3 of the DV Act.

10. In Mohit Yadam /vs/ State of A.P CDJ 2009 APHC 928 (supra), the Hon'ble High Court of Andhra Pradesh has held as follows:

" The Protection of women from Domestic Violence Act, 2005 was enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India to provide for a remedy under the Civil Law which is intended to protect the women from being victims of Domestic Violence and to prevent the occurrence of domestic violence in the society"

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11. In Kamala /vs/ M.R.Mohan Kumar 2018 SCC OnLine SC 2121 (supra), the case of the appellants was that the marriage between appellant No.1 and the respondent was solemnized on 18.07.1998 and out of the said wedlock, two children were born. Their further case was that while the marriage between the appellant No.1 and the respondent was subsisting, the respondent married one Archana after which the appellants were neglected by the respondent". The Hon'ble Supreme Court, taking into consideration of the said facts has held that the appellant No.1 and the respondent had lived together as husband and wife for a long period and hence, the appellants are entitled to get maintenance from the respondent under Section 125 Cr.P.C., whereas in this case, the respondent herein has categorically admitted in her complaint that the petitioner herein got already married another woman. Further, she has stated that inspite of her repeated requests, the petitioner herein did not marry her. Therefore, the aforesaid decision will not help the respondent herein.

12. In view of the decision of the Hon'ble Supreme Court in Indra Sarma /vs/ V.K.V.Sarma, (supra), the respondent having fully aware of the fact that the petitioner herein was a married person, could not have entered into a live-in relationship. The respondent'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 and consequently, any act, omission or commission or conduct of the petitioner herein in connection with that type of relationship, would not amount to domestic violence under Section 3 of the DV Act. Therefore, the respondent herein cannot seek any relief under the provisions of protection of women from Domestic Violence Act, 2005, against the petitioner herein. Consequently, the proceedings against the petitioner in D.V.No.27 of 2015 on the file of the Judicial Magistrate, Tambaram are liable to be quashed.

13. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioner herein in D.V.No.27 of 2015 on the file of the Judicial Magistrate, Tambaram are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

vv

To

1. The Judicial Magistrate,
Tambaram.

2. The Public Prosecutor,
High Court, Madras.

3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr. P.Gopalakrishnan, Advocate SR.No. 8571

+1cc to Mr. K.Balaji, Advocate SR.No. 8488

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A.SK(03/04/2019)



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