

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL REVISION APPLICATION NO. 76 OF 2022

Gopichand @ Gopichandra S/o
Raghoba Patil, aged about 79 years,
Occ. Retired,
R/o Utkarsha Apartment, Near VCA
Ground, Civil Lines, Nagpur
(Original non-applicant.)

.... Applicant

// VERSUS //

Sau. Mohini @ Mangala Patil,
Aged 60 years, Occ. Household
R/o Plot No.31, Trisharan Nagar,
Khamla, Nagpur (Original applicant)

... Non-applicant

Shri S.N.Tapadia, Advocate for applicant.

Shri H.N.Bhondge, Advocate for the non-applicant.

CORAM : ANIL S. KILOR, J.

DATED : 15th NOVEMBER, 2022.

ORAL JUDGMENT :

In this revision application filed under Section 397 of Code of Criminal Procedure, a challenge has been raised to the judgment and order dated 14th February, 2022, passed by the Additional Sessions Judge, Nagpur in Criminal Appeal No.100 of 2020, arising out of judgment and order dated 17th March, 2020, passed by 4th Judicial Magistrate First Class (Special PWDV Act), Nagpur in Misc. Criminal Case No. 878 of 2015, partly allowing the application and thereby restraining the appellant or

relatives or agent from evicting the original applicant/non-applicant from Plot No.31, first floor, Trisharan Nagar, Khamla, Nagpur or disturbing her possession in any manner and also restrained to alienate or disposing of the above referred property, in any manner. It is further restrained from causing domestic violence to the non-applicant and directed to pay Rs.5,000/- per month maintenance alongwith Rs.1,00,000/- as compensation to the respondent.

2. The brief facts of the present case are that respondent/applicant filed Misc. Criminal Case No. 878 of 2015 under the provisions of protection of women from Domestic Violence Act, 2005 (in short referred as "Act of 2005") against the appellant herein alleging that she is a legally wedded wife of the appellant and their marriage was solemnised as per Buddhist rites and customs on 25th December, 1975. Out of the said wedlock, she had begotten one son Sanket on 12th March, 1987. After the marriage, she resided in her matrimonial house with appellant at railway quarter as appellant was working at Divisional Officer, South Eastern Railway. It is the case of the respondent/original applicant that appellant receives pension of Rs.30,000/- per month and during his life time he has constructed double storied house over plot no.31 at Trisharan Nagar, Khamla, Nagpur. The non-applicant is residing on first floor with his son whereas applicant is residing with Sandhya Bose near VCA ground. It is the further case of the respondent that she has no source of income to maintain herself. She is dependent on the applicant. He deliberately neglected her as she never provided any maintenance to her and her son. She further alleged that in

the month of January, 2015, the applicant entered into a contract to sell the house and thereby trying to dispossess the non-applicant from the said property.

3. The learned 4th Judicial Magistrate First Class (Special Court, PWDV Act), Nagpur after hearing both the parties and after examining oral as well as documentary evidence partly allowed the Misc. Criminal Application vide its judgment dated 17th March, 2020 and thereby restrained the applicant from evicting or dispossessing the non-applicant from the said property or alienate it with further injunction by restraining the applicant, his agent or relatives from causing domestic violence to the non-applicant. It is further directed to pay Rs.5,000/- per month maintenance along with Rs.1,00,000/- towards compensation. The said judgment and order dated 17th March, 2020, was carried in appeal, which came to be dismissed vide impugned judgment and order dated 14th February, 2022, which is impugned in the present revision application.

4. I have heard learned counsel for the respective parties.

5. Shri Tapadia, learned counsel for the applicant by relying upon the judgment of Hon'ble Supreme Court in the case of D. Velusamy Vs. D. Patchaiammal¹ and judgment in the case of Reshma Begum Vs. State of Maharashtra and another² of co-ordinate bench of this Court in which the above referred judgment of D.Velusamy Vs. D.Patchaiammal (supra) was relied upon, has submitted that unless the

1 2010(10) SCC 469

2 2018 SCC Online Bom 1827

four conditions are complied with, it cannot be said that there was a relation in the nature of marriage. It is submitted that the conditions are namely (a) the couple must hold themselves out to society as being akin to spouses (b) they must be of legal age of 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.

6. It is further submitted that as per the non-applicant's own story, she got married with the applicant on 25th December, 1975. It is submitted that in the year 1975, on the date of alleged marriage with the non-applicant, the first marriage of the applicant was in existence as he married to one Shankuntala in the year 1966 and who passed away in 3rd March, 1988. He therefore submits that the marriage as claimed by the non-applicant is not a valid marriage and even there was no relationship in the nature of marriage as the applicant and non-applicant both otherwise were not qualified to enter into a legal marriage including being unmarried. He therefore submits that non-applicant cannot claim any relief under the provisions of Act of 2005 and as such said judgment and order passed by the 4th Judicial Magistrate First Class, Nagpur dated 17th March, 2020 and the judgment and order passed by the Additional Sessions Judge-8, Nagpur dated 14th February, 2020, are illegal and not sustainable in the eyes of law.

7. It is submitted that even from the pleadings of the non-applicant it can be seen that she was not continuously cohabited with the

applicant and in absence of any sufficient material that their marriage was legal or their relationship was in the nature of marriage, reliefs granted in favour of the non-applicant by both the Courts below under the provisions of Act of 2005, is illegal, bad in law. Accordingly, he prays for quashing and setting aside the impugned judgment and orders.

8. On the other hand, Shri Bhondge, learned counsel for the non-applicant has drawn attention of this Court to the judgment and order passed by the Family Court No.3, Nagpur dated 11th December, 2019, passed in Petition No.A-473 of 2015 filed by the applicant under Section 11 read with Section 5(i) of the Hindu Marriage Act for declaration that there was no relationship between them as husband and wife, and for seeking permanent injunction against the non-applicant.

9. It is further pointed out that after filing of the proceeding by the non-applicant under the Act of 2005, the applicant has filed the above referred proceeding before the Family Court for declaration and Family Court was pleased to dismiss the said petition by observing that the evidence brought on record shows that the applicant and non-applicant led a life of long cohabitation as husband and wife and therefore the case of the appellant as regards the marriage with Shankuntala and thereafter with Sandhya Bose was rejected by the Family Court. He therefore submits that once Family Court has recorded the findings in favour of the non-applicant and rejected the claim of the applicant for declaration that the non-applicant is not his wife, the present revision application needs to be rejected at threshold.

10. In the light of above referred rival submissions, I have perused the revision application, the judgment and orders of 4th Judicial Magistrate First Class, Nagpur and Additional Sessions Judge-8, Nagpur and the judgment and order of the Family Court.

11. In the case of *D.Velusamy Vs. D. Patchaiammal* (supra), the Hon'ble Supreme Court has held 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 fulfill 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".

12. If the above referred principles are applied to the facts and circumstances of the present case, it can be seen that as per applicant's own case, he got married with one Shakuntala in 1966, who died in the

year 1988. It is thus, stated that the alleged marriage with the non-applicant in the year 1975 is not a valid marriage for the reason that the applicant was not otherwise qualified to enter into a legal marriage because of existence of earlier marriage.

13. However, there is ample evidence showing that even after 1988 i.e. after the death of Shakuntala, the relationship of the applicant with the non-applicant was continued and they voluntarily cohabited and held themselves out to the world as being akin to spouses.

14. Thus, after 1988 i.e. after the death of Shakuntala, the applicant become otherwise qualified to enter into a legal marriage. The applicant and the non-applicant held themselves out to the world as being akin to spouses and they were of legal age to marry in the year 1988. Thus, according to me, considering the evidence brought on record by the non-applicant including the letter Exh.58, it can be seen that though in the year 1975 the applicant was not qualified to enter into a legal marriage, he becomes qualified to enter into a legal marriage in the year 1988 on death of Shankuntala.

15. Therefore, it cannot be said that there was no relationship between the non-applicant and the applicant in the nature of marriage, after the death of Shakuntala in the year 1988. Hence, the relationship of the applicant and non-applicant come within the purview of the words of "Relationship in the nature of marriage". In the circumstances, both the Courts below have rightly held in favour of the non-applicant.

16. Moreover, in addition to this there are observations made by the Family Court in favour of the non-applicant about her marriage with the applicant while dismissing the petition for declaration that there was no relation of the applicant with the non-applicant as husband and wife, filed by the applicant.

17. Thus, considering the limited scope of jurisdiction of this Court in revision application and the discussions made by both the Courts below after examining oral as well as documentary evidence in detailed, I do not find any merit in the present revision application. Hence, I pass the following order:

- i. Criminal revision application is rejected.

[ANIL S. KILOR, J.]

SACHINDANAND
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