

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.80 OF 2021

Dr. Sandu Ingle

For Applicant

...Applicant

Versus

Dr. Sandu Ingle

For Respondent

...Respondent

...

Mr. C.V. Dharurkar, Advocate for the Applicant.

Mr. V. S. Advani, Advocate for the Respondent.

CORAM : S.G. MEHARE, J.

DATED : FEBRUARY 22, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By the consent of parties heard finally.
2. The husband has impugned the orders of the learned Judicial Magistrate First Class, Raver granting interim maintenance dated 19.11.2019 below Exhibit-6 in PWDA No.6 of 2018 and confirmed by the learned Additional Sessions Judge, Bhusawal in Criminal Appeal No.1 of 2020 dated 12.03.2021.
3. The respondent/wife had claimed that she and applicant got married in the State of Gujarat. They had a register marriage. They were living together; however, the husband did not disclose to her

that at the time of their marriage he was already married. She has alleged that the husband has committed the domestic violence. She had no source of income. She needs the immediate financial assistance from her husband.

4. The husband appeared in the matter. He came with a case that the wife had suppressed her earlier marriages. She was married twice before her alleged marriage with him. Her earlier marriages were not legally and validly dissolved. About her earlier marriages, she herself admitted in the report lodged against the husband. The customary deed of divorce have also placed on record. On the basis of these facts and circumstances, the husband claims that she is not in a domestic relationship. Hence, her petition would not stand. No order of interim maintenance should have been passed. However, both the Courts failed to consider these legal aspects. They have not properly appreciated the case laws relied upon by the husband. Considering the facts of the case, the domestic relationship *prima facie* falls under the shadow of doubt. She was not legally wedded wife of the applicant nor able to become his wife. Therefore, both Courts have committed a grave error of law in ignoring the provisions of law and mechanically granted her the interim maintenance.

5. In a nutshell, the arguments of learned counsel for husband were that there was no domestic relationship; hence, the wife cannot

claim any relief against it under the Protection of Women from Domestic Violence Act, 2005 (for short 'PWDV Act').

6. Per contra, learned counsel for the wife has vehemently argued that *prima facie* evidence of register marriage was available on record. After performing the marriage, they were residing together in a shared house. He committed domestic violence against her. He did not disclosed her previous marriage. When she learnt about his earlier marriage , he kept her in a separate house. However, he did not stop domestic violence. Therefore, *prima facie* material is available on record to believe that they were in domestic relationship. She has proved the domestic violence against her *prima facie* to satisfy the Court to pass an interim order of maintenance. The case laws relied upon by the husband, are distinguishable on facts. The impugned orders before the Court are legally correct and proper. Learned counsel for the applicant did not point out a single ground that the impugned orders are erroneous on its face.

7. The report lodged by the wife and documents placed on record reveals that she was previously married and had children. She had also love affair with her close relative against whom she had filed a forceful sexual assault case; however, she turned hostile; hence, he was acquitted.

8. In view of the arguments of respective counsels, a very short point that arises for consideration is whether the parties were in domestic relationship at the time of filing of the case.

9. Before advertng to the issue raised, the Court is of the view that Section 23 of the PWDV Act should be discussed about the powers of the Court granting interim and ex parte orders. For exercising the powers under that section the Magistrate has to satisfy that the applicant has a *prima facie* case disclosing that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, for granting an interim or ex parte order as contemplated under Section 18, 19, 20, 21 or 22 against the respondent.

10. The term 'aggrieved person' has been defined under Section 2 (a) of the Domestic Violence Act that "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

11. The interim relief granted to the wife pertains to the monetary relief. That cover under Section 20 of the said Act. It has been provided therein that monetary relief may be granted to the aggrieved person. In other words, it may be stated that in order to claim the relief under the PWDV Act under any of the heads

permissible, the person claiming the relief has to establish the domestic relationship.

12. In the case of *D. Velusamy Vs. D. Patchaiammal*, AIR 2011 SC 479, the Hon'ble Supreme Court has held that :

“A “relationship in nature of marriage” is akin to a common law marriage. Common law marriage requires 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.”

13. The definition as given in the above case, has been consistently followed in various judgments. The law is clear that the parties in domestic relationship must be otherwise qualified to enter into a legal marriage including being unmarried. The domestic relationship means a relationship between two persons that they are related by consanguinity, marriage, or through a relationship in the nature of marriage.

14. *Prima facie*, the material was placed before both the Courts that their domestic relationship was under the shadow of doubt. Both were married earlier to their domestic relationship.

Where such a *prima facie* material is available, the Courts are suppose to maintain self-restrain from passing orders under Section 23 of the PWDV Act. After having gone through the facts of the case, the Court is of the *prima facie* view that it was not a fit case to exercise the power under Section 23 of the PWDV Act. Both Courts did not consider the legal aspects and have conveniently avoided the law laid down interpreting the domestic relationship. The Court is satisfied that both impugned orders are erroneous on the face of record, against the provisions of law and improper; therefore, warrants interference. Hence, the following order :

ORDER

- I) The revision application is allowed.
- II) The order granting interim maintenance by the learned Judicial Magistrate First Class, Raver dated 19.11.2019 below Exhibit-6 in PWDA No.6 of 2018 and confirmed by the learned Additional Sessions Judge, Bhusawal in Criminal Appeal No.1 of 2020 dated 12.03.2021, is quashed and set aside.
- III) Rule is made absolute in above terms.
- IV) No order as to costs.

(S.G. MEHARE, J.)