
(2017) 08 BOM CK 0188
In the Bombay High Court
Case No : 531 of 2017

Dhanraj s/o Tukaram Shirsat

APPELLANT

Vs

Shalini d/o Kisan Wankhade, & Anr.

RESPONDENT

Date of Decision : 07-08-2017

Acts Referred:

[Protection of Women From Domestic Violence Act, 2005](#), [Section 2\(s\)](#) - Definitions

Citation : (2017) 08 BOM CK 0188

Hon'ble Judges : P.N. Deshmukh

Bench : SINGLE BENCH

Advocate : A.M. Tirukh, G. Tiwari

Final Decision : Allowed

Judgement

1. Rule, returnable forthwith. Heard finally with consent of Shri Tirukh, learned Counsel for petitioner, and Smt. Tiwari, learned Additional Public Prosecutor for respondent no.2. None for respondent no.1 though served. It is noted that even on the earlier date, none represented respondent no.1 and with a view to give one more chance to respondent no.1, matter was adjourned for today.

2. Challenge in this petition is to judgment and order dated 5/5/2017 passed by learned Additional Sessions Judge, Akola in Criminal Appeal No.185/2016 and to order dated 19/12/2016 passed by learned Judicial Magistrate, First Class, Akola in Miscellaneous Civil Application No.745/2016 vide which application filed by petitioner in domestic violence proceedings initiated by respondent no.1 came to be rejected. In the said application it was brought on record that after declaration of marriage between parties as null and void, there exists no relationship of any kind between them and as such, proceedings initiated by respondent no.1 were prayed to be dismissed.

3. Learned trial Court took a view that there is no specific provision in the Protection of Women from Domestic Violence Act, 2005 that couple should be

married. The view taken by learned trial Court was upheld by learned appellate Court, thereby holding that considering facts in the case, prima facie as there was relationship in the nature of marriage between parties and as they had shared household, complaint was tenable. Accordingly, appeal was rejected.

4. Perusal of the impugned judgment reveals that learned appellate Court held that for the purpose of applying provisions of the Protection of Women from Domestic Violence Act, 2005, a valid marriage is not a condition precedent for initiating proceedings under the said Act and whether such relationship in fact exists between the parties is a matter of evidence and as such, can be considered only after opportunity is given to both sides to adduce evidence and holding that such a question having been based on facts can only be considered on leading evidence, dismissed the appeal.

5. Shri Tirukh, learned Counsel for petitioner, has relied upon fact of dissolution of marriage having been declared as null and void. Perusal of judgment dated 30/5/2015 of learned Family Court, Akola, which is filed with the petition, reveals that by the said judgment, matrimonial relationship between parties has come to an end as marriage, which took place between them on 17/2/2013, is declared as null and void. Respondent no.1 preferred Family Court Appeal No.90/2015 before Division Bench of this Court thereby questioning legality and correctness of the judgment of learned Family Court whereby petition filed by petitioner was allowed, thereby declaring that marriage between petitioner and respondent no.1 is null and void. The Division Bench of this Court dismissed the appeal. It is submitted by learned Counsel for petitioner that the said judgment of Division Bench has attained finality. As such, it is noted that in view of judgment dated 30/5/2015 passed by learned Family Court, matrimonial relationship between petitioner and respondent no.1 has come to an end after their marriage dated 17/2/2013 is declared as null and void.

6. In the background of facts as aforesaid, Shri Tirukh, learned Counsel for petitioner, has submitted that since there exists no matrimonial relationship between parties, which is essential condition to proceed with complaint filed under the Protection of Women from Domestic Violence Act, 2005, petition is liable to be allowed by quashing the proceedings and for that purpose, has relied upon the judgment of Hon'ble Apex Court in the case of D. Velusamy vs. D. Patchalammal {(2010) 10 SCC 469} where in para 31, it is observed 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".

7. In view of legal pronouncement as aforesaid, it goes without saying that for proceedings under the Protection of Women from Domestic Violence Act, 2005, it is necessary for the party approaching by way of complaint to fulfill the above said requirements and in addition, the parties must have lived together in a shared household as defined under Section 2(s) of the Act. It is to be noted that in the case in hand, undisputedly parties were married to each other, their marriage was declared as null and void by the competent Court, which order has attained finality as appeal before Division Bench of this Court came to be dismissed and as such, from the date of said order of the learned Family Court, there exists no relationship between petitioner and respondent no.1 as husband and wife.

8. In that view of the matter and case of D. Velusamy (supra), it can thus clearly be seen that the Hon"ble Apex Court in unequivocal terms held that all livein relationships will not amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. It has been held that to get such benefits, it is necessary to prove that the couple must hold themselves out to society as being akin to spouses, they must be of legal age to marry, they must be otherwise qualified to enter into a legal marriage, including being unmarried and they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

9. In that view of the matter, the petition is allowed. The impugned judgment dated 5/5/2017 passed by learned Additional Sessions Judge-2, Akola in Criminal Appeal No.185/2016 and impugned order dated 19/12/2016 passed by learned Judicial Magistrate, First Class, Akola below Exh. 8 in Misc. Criminal Application No.745/2016 are quashed and set aside.

10. Rule is made absolute in the above terms. No order as to costs.