

(2021) 08 SHI CK 0187

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No.182, 196 Of 2020

Surat Singh And Others

APPELLANT

Vs

Sharda D/O Sh. Kundan And Others

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 21
Code Of Criminal Procedure, 1973 — Section 125, 482
Protection Of Women From Domestic Violence Act, 2005 — Section 2(a), 2(f), 2(s),
2(q), 3, 12
Indian Penal Code, 1860 — Section 302, 380, 498A

Citation : (2021) 08 SHI CK 0187

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : M. S. Chandel, Sudhir Thakur, Karun Negi

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. Since both these appeals arise out of the judgment dated 29.02.2019, therefore, they are taken up together for consideration and are being disposed

of by way of a common reasoning.

2. Both the parties have filed these petitions under Section 482 of the Code of Criminal Procedure against the judgment dated 29.02.2020 passed by

the learned Additional Sessions Judge-I, Solan, District Solan, H.P. in Criminal Appeal No. 6-S/10 of 2019 and Criminal Appeal No. 34-S/10 of 2019.

3. Brief facts leading to the present appeal are that the applicant-Sharda (hereinafter referred to as the Applicant) had filed an application

under Section 12 of Protection of Women from domestic Violence Act, 2005 alleging that the applicant was living with respondent-Surat Singh

(hereinafter referred to as the "Respondent") as wife for the last 40 years. Their marriage was solemnized in the year 1960 and two children, namely, Surinder Prakash and Sushma were born out of the wedlock. The long and continuous cohabitation between the applicant and the respondent has been adjudged by Civil Court. Though Civil Court had held that the applicant cannot be said to be the legally married to the respondent but it was concluded that the applicant and respondent are living together in a house hold as they are related by consanguinity and relationship like marriage for all intends and purposes. The Pariwar Register, electoral card also depict that applicant and respondent were living as husband and wife. The applicant was also residing in a house owned by respondent at Mauja Shamti, Solan. The applicant asserted her right to retain the possession over the part of building i.e. Surat Bhawan. She also alleged that respondent had cheated and misguided her by assuring that she would be kept as a wife and his wife has already been divorced. The respondent was jailed in a criminal case under Section 302 of IPC and during this time the applicant not only managed the litigation but also looked after the family of the respondent. She also arranged legal assistance for the respondent when he was facing trial under Section 380 of IPC. During the course of marriage Sushma daughter was born in 1989-90. Thus according to applicant since she has continuously cohabited with respondent for the last 40 years, she should not be forcibly evicted from the building in her possession. She has also prayed that respondent be restrained from disconnecting the water and electricity connections of the 4th storey of Surat Bhawan or alienating or disposing of the property in order to adversely affect her right. She has further prayed for grant of maintenance alleging that she did not have any source of income.

4. The claim of applicant was resisted by the respondent on the ground that the applicant was an active political leader and member of Kisan Sabha since 1974 when she came in contact with respondent. In separate proceedings under Section 125 Cr.P.C. learned Chief Judicial Magistrate has held that the applicant was not legally wedded wife of respondent. The respondent has asserted that applicant never came in contact with him and never resided with him since the year 1984 as during that time she started living with her parents at village Tanach. The children i.e Surinder and Sushma

were also studying in School at Shawya in th year 1993-94 when applicant left her children they were studying with children of Durgi Devi wife of respondent. The respondent had admitted that the applicant and respondent are related by consanguinity. It was also admitted that applicant and her son are in occupation of two rooms set. The respondent has alleged that applicant has married to Basti Ram of Manwa and thereafter married a person at village Dana Badag. The respondent also alleged that in order to get vacated the room in possession of son of respondent Chander Shekher the applicant and her son called police on 31.08.2009. In fact the respondent had resorted to procedure of law and gave notice to applicant to vacate the accommodation.

5. Learned Trial Court after recording evidence and evaluating the same held the applicant entitled for maintenance to the tune of Rs.3000/- per month from the respondent, from the date of this order with compensation of Rs.20,000/- and the respondent was restrained from dispossessing the applicant or in any manner disturbing the possession of applicant from the residential house/shared household known as Surat Bhawan situated at Shamti, Distt. Solan and further respondent is restrained from alienating or renouncing his rights from the said shared household.

6. Feeling aggrieved by the impugned order the appeal titled as Sharda vs. Surat Singh has been filed on the grounds that impugned order of the learned trial Court is illegal and not sustainable. The applicant does not have any source of income and respondent is a big landlord who owns landed property in Solan and in his native village. The earnings of the respondent are about Rs.50,000/- per month. Hence, the conclusion of the learned trial court that the applicant was entitled for maintenance of Rs.3,000/- per month is wrong and needs to be altered. The applicant has sought enhancement of maintenance to the extent of Rs.10,000/- per month from the date of application. It is also asserted by applicant that due to act and conduct of the respondent, the applicant has suffered mental torture and assessment of compensation to the extent of Rs.20,000/- is wrong and deserves to be modified on the higher side.

7. Separate appeal filed by the respondent. It was asserted that the learned trial Court order is contrary to the evidence on record. In fact the applicant was already married to the knowledge of respondent. Applicant who

was member of Kisan Sabha and besides this she entered into relationship with respondent. The name of applicant was entered in the Pariwar Register of Gram Panchayat concerned i.e. Gram Panchayat Habban along with the wife of respondent Smt. Durgi Devi and her children. Photographs and other documents also shows that applicant knew very well that respondent was married to Durgi Devi and had six children. In these circumstances, the applicant is not entitled for protection under domestic Violence Act, 2005. The lower Court disbelieved the document i.e. Pariwar Register of village Dana belonging to Gram Panchayat Danaghati mere on the ground that Hira Singh is not resident of village Danaghati. It was not observed by learned trial Court that Danaghati is name of Gram Panchayat. The children of applicant were entered as adopted children of Hira Singh in Gram Panchyat. It was asserted that respondent is a senior citizen of 80 years of age. The compensation as well as maintenance granted by the learned trial Court is not maintainable. The son of applicant Surinder Prakash is employed as Protection Officer and he has already been directed by Court to give regular maintenance to his mother.

8. Learned Additional Session Judge-I, Solan dismissed both the appeals constraining both the parties to once again approach this Court under Section 482 of the Code of Criminal Procedure.

9. Criminal Misc. Petition (Main) No. 182 of 2020 has been preferred by the respondent questioning the maintainability and applicability of Protection of Women from Domestic Violence Act, 2005 on the ground that the applicant is not covered under the definition of "aggrieved person". Since the applicant was already married and started living with another married person, she is not entitled to any relief under the Act.

10. The applicant has filed separate petition being Criminal Misc. Petition (Main) No. 196 of 2020 questioning the inadequacy of compensation as also the date of award of compensation, which according to the applicant ought to have been from the date of application and not from the date of order.

I have heard learned counsel for the parties and have gone through the material placed on record.

11. At the outset, it needs to be observed that the respondent right from the very beginning has continuously denied his relationship with the applicant.

It is evident from the fact that when these proceedings were pending before the

learned Judicial Magistrate, Solan, the applicant had filed a petition being Cr.MMO No. 198 of 2016, seeking direction to the respondent to undergo DNA profiling. This application was allowed by this Court vide its order dated 18.04.2017 and pursuant to this DNA profiling was conducted and it has been conclusively established that out of the relationship between applicant and the respondent two children Surinder Prakash and Sushma were born to the applicant from the loins of the respondent.

12. At this stage, it would be relevant to reproduce some of the observations that were made by this Court, which reads as under:-

10. Shri H.S.Rana, learned counsel for the respondent, has strenuously argued that the application filed by the petitioner is totally

misconceived as the provisions of the "DV Act" even in the case of "live-in - relationship" would only apply to cases where the

"live - in- relationship" is a "relationship in the nature of marriage" falling within the definition of the domestic relationship under

Section 2(f) of the Act and has placed strong reliance upon the judgment of the Hon'ble Supreme Court in Indra Sarma versus

V.K.V.Sarma (2013) 15 SCC 755. He would contend that the petitioner very well knew that the respondent is already married and still

entered into relationship and even bore two children from his loins and, therefore, her relationship with the respondent was not in the

nature of marriage.

11. I have minutely and carefully gone through the judgment in Indra Sarma's case (supra) where the Hon'ble Supreme Court has

distinguished the "live-in-relationship" with that "relationship in the nature of marriage". It was held that all "live-in-

relationships" are not relationships in the nature of marriage. It was further held that relationship to qualify as "relationship in the

nature of marriage" should have some inherent or essential characteristics of a marriage though not a marriage legally recognized. The

Hon'ble Supreme Court drew a distinction between the nature of marriage and marital relationship by observing as under:-

36. We have already dealt with what is "marriage", "marital relationship" and "marital obligations". Let us now examine

the meaning and scope of the expression "relationship in the nature of

marriage? which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is a relationship in the nature of marriage? which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

37. The distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in- relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of".

12. The Hon'ble Supreme Court thereafter proceeded to elucidate some of the categories of the cases which would or would not amount to relationship in the nature of marriage and the same are as under:-

38. 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:

38.1. (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.

38.2. (b) Domestic relationship between an unmarried woman and a married adult male.- Situations may arise when an unmarried adult

woman 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.

38.3. (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.

38.4. (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.

38.5 (e) Domestic relationship between same sex partners (Gay and Lesbians).- The DV Act does not recognize such a relationship and that

relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the

Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa),

the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have

brought these relationships into the definition of Domestic relationship.

13. Finally, the Honorable Supreme Court culled out some of the guidelines for distinction under what circumstances, the live-in-

relationship would fall within the expression relationship in the nature of marriage under Section 2(f) of the DV Act, which

according to it were only illustrative and not exhaustive but were only meant to give some insight to such relationship and the same read

thus:-

56. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will

fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The guidelines, of course, are not

exhaustive, but will definitely give some insight to such relationships.

56.1. Duration of period of relationship.- Section 2(f) of the DV Act has used the expression "at any point of time", which means a

reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

56.2. Shared household.- The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

56.3. Pooling of resources and financial arrangements.- Supporting each other, or any one of them, financially, sharing bank accounts,

acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint

names, so as to have a long standing relationship, may be a guiding factor.

56.4. Domestic arrangements.- Entrusting the responsibility, especially on the woman to run the home, do the household activities like

cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

56.5. Sexual relationship.- Marriage- like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate

relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

56.6. Children.- Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long

standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

56.7. Socialization in public.- Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is

a strong circumstance to hold the relationship is in the nature of marriage.

56.8. Intention and conduct of the parties.-

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities,

primarily determines the nature of that relationship.â??

14. Judged in the light of the aforesaid guidelines, it would be noticed that the Court here is dealing with a case where a woman (petitioner)

herself admits that she has never married to the man (i.e. the respondent), but would claim that respondent was having access to her and out

of this relationship, two children were born, whereas the case of the respondent is that of total denial of not only the relationship, but also

with regard to the children being born out of this relationship.

15. As observed earlier, the parties have two grown-up children and, therefore, the sexual relationship inter se them was not just for

pleasure but for procreation of children so as to give emotional support, companionship as also material affection, caring etc. As observed

by the Honâ??ble Supreme Court, having children is a strong indication of relationship in the nature of marriage and would be a strong

indicator to establish that the parties intended to have long standing relationship, sharing the responsibility for bringing up and supporting

the children.

16. Therefore, prima-facie, having concluded that the parties are not totally strangers, I am of the considered view that no prejudice would

be caused either to the respondent or the two children, if they undergo DNA test. After all, only the truth will come out from such test and it

has to be remembered that every trial is a voyage of discovery in which the truth is the quest. It is, therefore, the duty of the Court to ensure

that the truth in a case comes out. The truth is the basis of justice delivery system and therefore, should be the guiding star in the entire

judicial process. The Courtâ??s serious endeavour has to be to find out where in fact the truth lies. Judges at all levels have to seriously

engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire

credibility only when people will be convinced that justice is based on the foundation of the truth.

13. Admittedly, the aforesaid order has attained finality and the observations that were prima facie made at the time of passing of the order are now to

be treated as conclusive inter se the parties because of the establishment of paternity of the respondent vis-a-vis two children Surinder Praksh and

Sushma.

14. As regards the applicability of the Act, as contended by Shri M. S. Chandel, Advocate, it needs to be remembered that history behind the

legislation of the Act, more particularly, the object of the Act to provide for more effective protection of the rights of woman guaranteed under the

Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith and incidental thereto, it would

be appropriate to once again refer to Indra Sarma's case (supra) more particularly, paras 16 and 53, which read as under:-

16. "Domestic Violence" is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna

Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a

human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general

recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that

occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his

relatives, it is an offence punishable under Section 498A IPC. The Civil Law, it was noticed, did not address this phenomenon in its entirety.

Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14,

15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act.

53 Live-in relationship, as such, as already indicated, is a relationship which has not been socially accepted in India, unlike many other

countries. In *Lata Singh v. State of U. P.*, 2006 AIR(SC) 2522 it was observed that a live-in relationship between two consenting adults of

heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in

Civil Law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the

society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related

by consanguinity, marriages etc. We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations.

15. The object of enacting Domestic Violence Act is to prevent deep rooted patriarchal set up prevailing in the Indian society since time immemorial.

16. It is needless to emphasize that "domestic violence" has got different facets which would affect the woman of every social background

irrespective of their age, religion, caste or class. Indeed, it is a violent crime that not only affects the woman but also her children. It is difficult to

decipher the root or the cause behind the crime. However, one of the reasons resulting in the domestic violence is on account of gender discrimination

and destruction of power. The framers of legislation having considered the relevant statutes which are already in force felt that there is an imminent

need to arrest the particular type of violence that takes place in domestic set up.

17. In order to curb domestic violence, which includes emotional, mental, financial and other forms of cruelty and keeping in view the danger that

would be caused to the healthy life (mental or physical) of victim and also to relieve the woman from physical, sexual, verbal, emotional and economic

abuse, a special statute i.e., Protection of Women from Domestic Violence Act, 2005 has been enacted.

18. Earlier to passing of domestic violence Act, victim could only resort to Section 498A of IPC or seek maintenance u/s 125 of Cr.PC. Since both the

provisions of law were not sufficient enough to deal with the situations referred to supra, Domestic Violence Act came into force on and from

13.09.2005. It is also worth to quote the objective of the Act which reads as under:-

"An Act to provide for more effective protection of the rights of woman guaranteed under the Constitution who are victims of violence of

any kind occurring within the family and for matters connected therewith and incidental thereto."

19. This enactment was made in order to implement the recommendation No. 12 of United Nations Committee on Convention for elimination of all

forms of discrimination against woman [CEDAW, 1989 which was ratified in India in June, 1993]. Therefore, any interpretation in respect of the Act

should always be in conformity to the international conventions and international

instruments and norms.

20. In *Ishpal Singh Kahai vs. Ramanjeett Kahai*, 2011 OnlineBom 412, the Honâ??ble Bombay High Court held that the object of the domestic

Violence Act is to grant statutory protection to the victims of violence in the domestic sector who had no proprietary rights.

21. As observed above, every attempt is made by the respondent to raise a ground that there was no marriage inter se him and the applicant,

therefore, the applicant is not entitled to maintenance. This contention has virtually been over-ruled earlier by this Court while adjudicating Cr.MMO

No. 198 of 2016 in paras 14 to 16 (supra).

22. It needs to be reiterated that the applicant has never set up a plea that she was legally wedded wife and this question has been answered while

adjudicating Cr.MMO No. 198 of 2016.

23. The question as to whether the applicant had solemnised marriage with the respondent during the subsistence of her earlier marriage is/was not

question required to be gone into the proceedings under Section 12 of the Act. This has been held by a Coordinate Bench of this Court in CMPMO

No. 295 of 2019, titled as *Param Jeet Singh vs. Kiran Bala and another*, decided on 15.03.2021, wherein it was observed as under:-

10. â??Whether respondent No.1 solemnized marriage with the petitioner during subsistence of her earlier marriage with respondent No.2

is /was not a question required to be gone into the proceedings under Section 12 of the Domestic Violence Act, rather in that case

complainant with a view to claim maintenance is/was only required to prove that her relationship with the petitioner falls within the

definition of expression â??relationship in the nature of marriage â? under Section 2(f) of the Act and she has been subjected to domestic

violence as defined under section 12 of the Act.

Consequently, the appeal by the respondent is ordered to be dismissed.

24. Now, adverting to the petition filed by the applicant, it would be noticed that the learned Trial Magistrate has awarded the maintenance from the

date of the order and not from the date of the application.

25. This Court in Cr.MMO Nos. 51 and 52 of 2016, titled as *Rajnish Singh Chaudhary vs. Dr. Purnima Thapar and Anr.* , decided on 23.05.2017, has

held as under:-

25. As regards the order of maintenance being enforced from the date of the application, it is more than settled that the order of

maintenance has normally to be awarded from the date of application and only under the compelling circumstances, can the order of grant

of maintenance be postponed to a later date.

26. It is contended by the respondent that the applicant cannot be awarded maintenance from the date of application as the matter has been prolonged

before the Court on her instances. However, record reveals otherwise.

27. At this stage, it would be fruitful to refer to following observations of the Honâ??ble Supreme Court in *Bhuvan Mohan Singh vs. Meena and*

others (2015) 6 SCC 353, wherein it was observed as under:-

â??16. In the present case, as we find, there was enormous delay in disposal of the proceeding under Section 125 of the Code and most of

the time the husband had taken adjournments and sometimes the court dealt with the matter showing total laxity. The wife sustained herself

as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance

from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of

the High Court. However, we direct, as prayed by the learned counsel for the appellant, that he may be allowed to pay the arrears along

with the maintenance awarded at present in a phased manner. The learned counsel for the respondents did not object to such an

arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge

per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.

28. In view of the aforesaid discussion, the order passed by the learned Trial Court, as also upheld by the learned Additional Session Judge, upholding

the grant of maintenance from the date of the order and not from the date of the application is clearly erroneous and is accordingly set aside.

29. As regards the quantum of maintenance, it would be noticed that the same was awarded in the year, 2018 vide order dated 31.12.2018 and it

cannot be denied that since then the cost of living has gone up and it is more

than settled that if the cost of living has gone up then there is a change in the circumstances in favour of the applicant, which enable her to ask for enhancement of maintenance. The provision for maintenance is enacted for social justice and specially to protect women and children so that they are not compelled to live in penury.

30. Therefore, in the given facts and circumstances, I am of the considered view that henceforth the applicant is entitled to Rs.5,000/- maintenance per month.

31. In view of the aforesaid discussion, the petition filed by the respondent is ordered to be dismissed and the petition filed by the applicant is allowed to the extent that the applicant will now be entitled to maintenance to the tune of Rs.3000/- from the date of application i.e. 20.08.2016 instead of date of decision i.e. 31.12.2018 up till today and thereafter at the rate of Rs.5,000/- henceforth.

These petitions are disposed of in the aforesaid terms, so also pending application(s), if any.