

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CrI. Revision No. (F) 166 of 2015 (O&M)
Date of Decision: November 23rd, 2016

Ajay Bhardwaj

...Petitioner

Versus

Jyotsna and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ajay Bhardwaj, petitioner in person.

Ms. Jyotsna, respondent in person.

JAISHREE THAKUR, J.

Aggrieved against the order dated 4.5.2015, passed by the learned District Family Court, Gurgaon, granting interim maintenance @ ₹20,000/- per month to respondent No.1 and ₹10,000/- per month each to the two children, this revision petition has been preferred.

In brief the facts, as alleged by respondent No.1, are that respondent No.1 came to know the petitioner in the year 2007, while still being married to one Gaurav Sharda. The petitioner herein projected himself to be a divorcee and expressed his willingness to get married to the respondent/complainant. The petitioner herein and respondent No.1 started residing together, out of which relationship, the respondent No.1 bore him twins on 19.3.2011. While residing with the petitioner, respondent No.1 also obtained a decree of divorce from her previous husband under Section 13-B

of the Hindu Marriage Act on 1.8.2011. The respondent No.1 herein requested the petitioner time and again to marry her but came to be informed that no such marriage could take place on account of the fact that the petitioner was still married and had not obtained a decree of divorce. Left with no option, respondent No.1 herein made a complaint to the police and after investigation, FIR No. 341 dated 26.1.2014 came to be registered under Sections 376 and 506 IPC.

It is also alleged that respondent No.1 had got ₹40 lakhs as permanent alimony from her previous husband, but the same has been misappropriated by the petitioner, who had taken a sum of ₹20 lakhs to make investment out of the same. Since, respondent No.1 had no independent source of income and that the petitioner had refused to marry her while abandoning the children born out of this relationship, she preferred a petition under Section 125 of the Code of Criminal Procedure (for short 'Cr. P. C.') on 28.1.2015, wherein the learned District Judge (Family Court) Gurgaon, awarded interim maintenance @ ₹20,000/- to respondent No.1 and a sum of ₹10,000/- each to the children from the date of filing of the petition i.e. 28.1.2015. At the same time, it was ordered that in order to settle the dispute between the parties with regard to the maintenance to an early date, the parties were directed to place on record evidence by way of affidavit supported by documents, if any.

The petitioner, who appears in person, argues that the impugned order, as passed, is wholly unsustainable on account of the fact that respondent No.1 herein is not entitled to maintenance under Section 125 of

Cr.P.C. since said maintenance is only available to a destitute wife, or minor children. It is urged that in the instant case, the parties herein are not legally married and in fact, at best it can be called a live in relationship. It is also argued that without dealing with the issue whether or not there has been a valid marriage between the parties, the Family Court has awarded maintenance. It is further argued that respondent No.1 has been given ₹40 lakhs as permanent alimony by her previous husband and, therefore, she has adequate source of income to maintain herself. The petitioner relies on **Indra Sarma Versus V.K.V. Sarma (2013) 15 SCC 755** to contend that until and unless there is a valid marriage, maintenance under Section 125 Cr.P.C. could not be maintained .

The petitioner also submits that respondent No.1 had got the petitioner arrested in the aforesaid FIR and he had been subjected to imprisonment and humiliation on this count. It is urged that none of these points were dealt with by the trial court while determining interim maintenance of ₹40,000/- per month payable to the respondent No.1 and the children.

Per contra, respondent No.1, who appears in person, has vehemently argued that the impugned order does not suffer from vice since it is interim maintenance that has been awarded. She also argues that she cohabited with the petitioner and they lived together as husband and wife and in the eyes of Society she appeared as his wife . It is submitted that two children were born out of this relationship, thus, it cannot be said that the said relationship had no meaning. She also alleges that the permanent

alimony that has been awarded to her by her previous husband has been usurped by the petitioner and, thus, she has no ways and means to maintain herself. She relies on **Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and another (2011) 1 SCC 141** to contend that the Hon'ble Apex Court has recognized the factum of live in relationship in which it has been held that a woman, who is party to a live in relationship, would have the status of a wife should be awarded maintenance and the partner could not derive any benefit from denying maintenance on the ground that there was no valid marriage.

I have heard learned counsel for the parties and have also perused various documents filed in this petition during the pendency of the petition.

Undoubtedly, Section 125 Cr. P.C. pertains to maintenance to a destitute wife, minor children and old aged parents. Section 125 Cr.P.C. is a beneficial provision to ensure that maintenance is granted to the persons mentioned as above in order to avoid vagrancy and stopping a person from becoming a destitute. There is no ambiguity in the provision that a husband has a legal and a moral duty to maintain his wife and minor children. The term 'wife' as can be understood in normal parlance would be a legally wedded wife. The term 'wife' has been defined under Section 125 the Code of Criminal Procedure, which includes a woman who has been divorced by, or has obtained a divorce from, her husband and had not remarried, but such term has not been defined under the Hindu Marriage Act. Further Black's Law Dictionary (10th Edition page 1832), has defined 'wife' as “a married

woman; a woman who has a lawful spouse living”.

Over the years there has been a marked change in the trend of society where live in relationship has come to be accepted, and such a relationship is not out of the ordinary. Some of these couples, who are residing together, never contract a legally binding marriage within the parameters and definition of a 'marriage' as defined under the Hindu Marriage Act. Various issues have arisen out of this relationship, one of them being 'whether living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage'. This question came to be answered in a judgment rendered by the Hon'ble Apex Court in **Chanmuniya (supra)** where the Hon'ble Apex Court held “where partners live together as husband and wife, a presumption would arise in favour of a wedlock.” The Hon'ble Apex Court was seized of a matter where the appellant and the respondent therein were related and lived in the same house by a social customs and were treated as husband and wife. In fact, the appellant was the younger brother of the husband of the respondent-wife. On the death of the husband of the respondent, the marriage of the appellant and the respondent was solemnized by social custom with *katha and sindur*. The Hon'ble Apex Court, relying on judgments of the House of Lords, came to the conclusion that there was a strong presumption in favour of the marriage. Several other judgments were also relied upon while holding that where a man and woman have lived together for a long time and even though they may not have undergone legal necessities of a valid marriage, if the man deserts her, he should be made

liable to pay the woman maintenance. It was also further held that a man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.

The Committee on Reforms of Criminal Justice System, headed by Dr. Justice V.S. Malimath, in its report of 2003 opined that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties. Thus, it recommended that the word 'wife' in Section 125 Cr.P.C. should be amended to include a woman who was living with the man like his wife for a reasonably long period.

In **D. Velusamy V. D. Patchaiammal 2010 (10) SCC 469**, the Hon'ble Apex Court, while looking into the question whether the appellant-husband therein would be entitled to maintain the respondent -wife, gave certain findings with regard to holding a live in relationship to be valid that is, if the couple held 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. What is note worthy in this judgment is the opinion that the parties must be otherwise qualified to enter into a legal

marriage.

In the case of **Badri Prasad V. Dy. Director of Consolidation and others 1978 AIR (SC) 1557**, the Hon'ble Apex Court held that there was a presumption in favour of wedlock and that law leaned in favour of legitimacy and frowned upon bastardy in a situation where the parties had been in live in relationship for about 50 years.

In the judgment of **Indra Sarma (supra)**, the Hon'ble Apex Court went into the question whether a “live in relationship” would amount to a “relationship in the nature of marriage”, falling within the definition of “domestic relationship” under Section 2 (F) of the Protection of Women from Domestic Violence Act, 2005 and whether the failure to maintain a woman involved in such a relationship amounts to “domestic violence” within Section 3 of the DV Act.

In the case referred to above, both the appellant and the respondent were working together in a private company and the respondent was a married person having two children, whereas the appellant was unmarried. The appellant left the job and started residing with the respondent in a shared household. As dispute arose, the respondent left the company of the appellant, which led to her filing a petition under Section 12 of the DV Act seeking several reliefs therein, one of them being permanent maintenance. The Hon'ble Apex Court, delineated upon the definition of “domestic relationship”, “domestic violence”, “marriage”, as well as “relationship in the nature of marriage” and on the basis of discussion culled out some guidelines for testing under what circumstances a live in

relationship would fall within the expression “relationship in the nature of marriage” as under:-

“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.

(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.

(2) Shared household

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

(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.

(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.

(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.

(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.

(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.

(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.”

Ultimately, by applying the test, as laid down, it came to be

held that the appellant was fully aware that the respondent was a married person with a wife and children and, therefore, was a party to bigamy. While also noting that the parties never entertained any intention to rear children and, thus, by holding that the appellant could not have entered into a live in relationship in the nature of marriage, would not be entitled to any relief under the DV Act.

In the instant case, admittedly, the parties resided together live in relationship since year 2008, out of which relationship two children were born. The petitioner herein, as alleged by respondent No.1, had held himself out to be a divorcee whereas the respondent No.1 herein was undergoing a process of getting divorce from her husband Ajay Sharda, which divorce was finalized in August 2011. Before the said divorce, twins were born in March 2011. On refusal of the petitioner to marry, the differences arose leading to the filing of a petition under Section 125 Cr.P.C. claiming maintenance for respondent No.1 and two minor children.

The question that needs to be determined herein is: whether the respondent No.1 would be entitled to maintenance under Section 125 Cr.P.C. on account of live in relationship, not being a wife. There is no valid marriage between the parties as on the date the petition was preferred. There can be no dispute about the fact that the children being born out of this relationship would be entitled to receive maintenance. This Court, therefore, is not inclined to interfere regarding the quantum of interim maintenance that has been awarded by the Family Court to the children.

As regards maintenance that has been awarded to respondent

No.1, the Family Court has to determine whether or not the relationship was akin to a marriage or not. It has been argued before this Court that respondent No.1 herein was aware of the fact that the petitioner was a married man and hence was legally not competent to enter into a matrimony, as has been alleged by the respondent herein. This Court cannot lose sight of the fact that twins were born out of this relationship which would be of some indication that the couple had gone for this relationship to give it some permanence and that can entitle respondent No.1 to claim interim maintenance, based on the evidence added. However, since all these matters are matter of evidence and the Family Court is seized of it, it would be in the interest of justice to allow the final orders to be passed, while reducing the amount of maintenance that has been awarded to respondent No.1 to sum of ₹10,000/-, so that she is in a position to maintain herself. The sum of ₹10,000 is being awarded in order to tide over the immediate difficulty that respondent No.1 is put to on account of the fact that the petitioner is no longer supporting her financially. Section 125 Cr.P.C was incorporated in order to avoid vagrancy and destitution for a wife/minor children/old age parents, and the same has now been extended by judicial interpretation to partners of a live-in relationship . But the Apex court has also opined that the nature of the live in relationship has to be looked into while determining the entitlement. During the course of arguments, it has also come on record that respondent No.1 herein had preferred a petition under the Protection of Women from Domestic Violence Act, which came to be dismissed, against which order an appeal has been preferred pending adjudication. It has also

been brought on record that respondent No.1 herein, along with her children, is residing in the property bearing No. C-73, Ground Floor, Ardee City, Sector 52, Gurgaon, belonging to the mother of the petitioner, hence respondent No.1 is not without a roof over her head and as such she is secure in that sense. The Family Court seized of the matter will also have to see whether or not respondent No.1 herein is able to maintain herself on account of the fact that she had been granted ₹40 lakhs as permanent alimony from her earlier divorce proceedings. In case the court comes to conclusion that Respondent No 1 is not entitled to maintenance then necessary deductions are permitted from the amounts already paid.

In view of the afore-stated facts, this revision is partly allowed and disposed of with the directions mentioned above. However, it is made clear that the Family Court shall not be influenced by the observations made hereinabove and would decide the case on its merits.

November 23rd, 2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No