Deoki Panjhiyara vs Shahshi Bhushan Narayan Azad & Anr on 12 December, 2012

Equivalent citations: 2013 AIR SCW 168, 2013 (2) SCC 137, 2013 CRI. L. J. 684, AIR 2013 SC (CRIMINAL) 728, 2013 (1) AIR KANT HCR 615, AIR 2013 SC (CIVIL) 636, (2013) 2 RECCIVR 400, (2013) 1 CRILR(RAJ) 8, 2013 CRILR(SC MAH GUJ) 8, (2013) 1 CLR 314 (SC), (2013) 1 HINDULR 207, (2013) 1 GUJ LH 208, (2013) 1 RECCRIR 338, 2013 ALLMR(CRI) 1099, 2013 CALCRILR 2 562, (2013) 1 DMC 18, (2012) 12 SCALE 282, (2013) 1 ALD(CRL) 469, (2013) 1 BOMCR(CRI) 333, (2013) 1 DLT(CRL) 446, (2013) 1 ALLCRILR 794, (2013) 1 MAD LJ(CRI) 137, (2013) 2 MAD LW 60, (2013) 4 CIVLJ 202, (2013) 3 CIVLJ 306, (2013) 1 MADLW(CRI) 330, (2013) 1 MARRILJ 57, (2013) 1 ORISSA LR 891, (2013) 1 CURCRIR 67, (2013) 1 ALLCRIR 1089, (2012) 4 CHANDCRIC 274, 2013 CRILR(SC&MP) 8, 2013 (4) KCCR SN 399 (SC), AIR 2013 SUPREME COURT 346

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Bench: Ranjan Gogoi, P. Sathasivam

|REPORTABLE |

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELATE JURISDICTION

CRIMINAL APPEAL Nos.2032-2033 of 2012
(Arising out of SLP (Criminal) Nos. 8076-8077 of 2010

Deoki Panjhiyara ...Appellant

Versus

Shashi Bhushan Narayan Azad & Anr. …Respondents

J U D G M E N T

RANJAN GOGOI, J.

1. Leave granted.

2. The appellant, who was married to the respondent in the year 2006, had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the DV Act') seeking certain reliefs including damages and maintenance. During the pendency of the aforesaid application the appellant filed an application for interim maintenance which was granted by the learned trial court on 13.02.2008 at the rate of Rs.2000/- per month. The order of the learned trial court was affirmed by the learned Sessions Judge on 09.07.2008. As against the aforesaid order, the respondent (husband) filed a Writ Petition before the High Court of Jharkhand.

3. While the Writ Petition was pending, the respondent sought a recall of the order dated 13.02.2008 on the ground that he could subsequently come to know that his marriage with the appellant was void on the ground that at the time of the said marriage the appellant was already married to one Rohit Kumar Mishra. In support, the respondent – husband had placed before the learned trial court the certificate of marriage dated 18.04.2003 between the appellant and the said Rohit Kumar Mishra issued by the competent authority under Section 13 of the Special Marriage Act, 1954 (hereinafter referred to as 'the Act of 1954').

4. The learned trial court by order dated 7.8.2009 rejected the aforesaid application on the ground that notwithstanding the certificate issued under Section 13 of the Act of 1954, proof of existence of the conditions enumerated in Section 15 of the Act would still required to be adduced and only thereafter the certificate issued under Section 13 of the Act can be held to be valid.

5. The aforesaid order dated 07.08.2009 was challenged by the respondent-husband in a revision application before the High Court which was heard alongwith the writ petition filed earlier. Both the cases were disposed of by the impugned common order dated 09.04.2010 holding that the marriage certificate dated 18.04.2003 issued under Section 13 of the Act of 1954 was conclusive proof of the first marriage of the appellant with one Rohit Kumar Mishra which had the effect of rendering the marriage between the appellant and the respondent null and void. Accordingly, it was held that as the appellant was not the legally wedded wife of the respondent she was not entitled to maintenance granted by the learned courts below. It is against the aforesaid order of the High Court that the present appeals have been filed by the appellant – wife.

6. We have heard Shri Gaurav Agarwal, learned counsel for the appellant and Shri Mahesh Tiwari, learned counsel for the respondent.

7. Learned counsel for the appellant has strenuously urged that the allegation of the earlier marriage between the appellant and Rohit Kumar Mishra had been denied by the appellant at all stages and the said fact is not substantiated only by the Marriage Certificate dated 18.04.2003. Even assuming the marriage between the appellant and the respondent to be void, the parties having lived together, a relationship in the nature of marriage had existed which will entitle the appellant to claim and receive maintenance under the DV Act, 2005. Placing the legislative history leading to the aforesaid enactment, it is urged that in the Bill placed before the Parliament i.e. Protection from Domestic Violence Bill, 2002 an "aggrieved person" and "relative" was, initially, defined in the following terms

:

> "Section 2.....
>
> (a) "aggrieved person" means any woman who is or has been relative of the respondent and who alleges to have been subjected to act of domestic violence by the respondent;
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> (b)... (c)...
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> (d)....
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> (e)....
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> (f)...
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> (g)...
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> (h)....
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> (i)"relative" includes any person related by blood, marriage or adoption and living with the respondent." Thereafter, the different clauses of the Bill were considered by a Parliamentary Standing Committee and recommendations were made that having regard to the object sought to be achieved by the proposed legislation, namely, to protect women from domestic violence and exploitation, clause (2)(i) defining "relative" may be suitably amended to include women who have been living in relationship akin to marriages as well as in marriages considered invalid by law. Pursuant to the aforesaid recommendation made by the Standing Committee, in place of the expression "relative" appearing in clause 2(i) of the Bill, the expression "domestic relationship" came be included in clause (f) of Section 2 of the Act. Learned counsel by referring to the definition of "aggrieved person" and "domestic relationship" as appearing in the DV Act, 2005 has urged that the legislative intent to include women, living in marriages subsequently found to be illegal or even in relationships resembling a marriage, within the protective umbrella of the DV Act is absolutely clear and the same must be given its full effect. It is submitted that having regard to the above even if the marriage of the appellant and the respondent was void on account of the previous marriage of the appellant, the said fact, by itself, will not disentitle the appellant to seek maintenance and other reliefs under the DV Act, 2005.

8. Before proceeding further it will be appropriate to notice, at this stage, the definition of the expressions "aggrieved person" and "domestic relationship" appearing in Section 2(a) and (f) of the DV Act, 2005.

"Section 2.....

> (a) "aggrieved person" means any women 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;
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> (b) .....
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> (c) .....
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> d) .....
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> (e) .....
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> (f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family."

9. Learned counsel, in all fairness, has also drawn the attention of the court to a decision rendered by a coordinate Bench in D. Velusamy vs. D.Patchaimmal[1] wherein this court had occasion to consider the provisions of Section 2(f) of the DV Act to come to the conclusion that a "relationship in the nature of marriage" is akin to a common law marriage which requires, in addition to proof of the fact that parties had lived together in a shared household as defined in Section 2(s) of the DV Act, the following conditions to be satisfied:

> a) The couple must hold themselves out to society as being akin to spouses.
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> 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....." [Para 33]

10. Learned counsel has, however, pointed out that in Velusamy (supra) the issue was with regard to the meaning of expression "wife" as appearing in Section 125 Cr.P.C. and therefore reference to the provisions of Section 2(f) of the DV Act, 2005 and the conclusions recorded were not required for a decision of the issues arising in the case. Additionally, it has been pointed out that while rendering its opinion in the aforesaid case this Court had no occasion to take into account the deliberations of the Parliamentary Standing Committee on the different clauses of Protection of Women from Domestic Violence Bill, 2002. It is also urged that the equation of the expression "relationship in the nature of marriage" with a common law marriage and the stipulation of the four requirements

noticed above is not based on any known or acceptable authority or source of law. Accordingly, it is submitted that the scope and expanse of the expression "relationship in the nature of marriage" is open for consideration by us and, at any rate, a reference of the said question to a larger bench would be justified.

11. Opposing the contentions advanced on behalf of the appellant learned counsel for the respondent – husband has submitted that the object behind insertion of the expression "relationship in the nature of marriage" in Section 2(f) of the DV Act is to protect women who have been misled into marriages by the male spouse by concealment of the factum of the earlier marriage of the husband. The Act is a beneficial piece of legislation which confers protection of different kinds to women who have been exploited or misled into a marriage. Learned counsel has pointed out that in the present case the situation is, however, otherwise. From the marriage certificate dated 18.04.2003 it is clear that the appellant was already married to one Rohit Kumar Mishra which fact was known to her but not to the respondent. The second marriage which is void and also gives rise to a bigamous relationship was voluntarily entered into by the appellant without the knowledge of the husband. Therefore, the appellant is not entitled to any of the benefits under the DV Act. In fact, grant of maintenance in the present case would amount to conferment of benefit and protection to the wrong doer which would go against the avowed object of the Act. Learned counsel has also submitted that the conduct of the appellant makes it clear that she had approached the court by suppressing material facts and with unclean hands which disentitles her to any relief either in law or in equity. In this regard the decision of this court in S.P. Changalvaraya Naidu vs. Jagannath and others[2] has been placed before us.

12. Having considered the submissions advanced by the learned counsels for the contesting parties, we are of the view that the questions raised, namely, whether the appellant and the respondent have/had lived together in a shared household after their marriage on 4.12.2006; if the parties have/had lived together whether the same gives rise to relationship in the nature of marriage within the meaning of Section 2(f) of the DV Act, 2005; whether the decision of this Court in Velusamy (supra) is an authoritative pronouncement on the expression "relationship in the nature of marriage" and if so whether the same would require reference to a larger Bench, may all be premature and the same need not be answered for the present. Instead, in the first instance, the matter may be viewed from the perspective indicated below.

13. The Respondent before us had claimed (before the trial court as well as the High Court) that the marriage between him and the appellant solemnised on 4.12.2006, by performance of rituals in accordance with Hindu Law, was void on account of the previous marriage between the appellant with one Rohit Kumar Mishra. In support thereof, the respondent relied on a marriage certificate dated 18.4.2003 issued under Section 13 of the Special Marriage Act, 1954. Acting solely on the basis of the aforesaid marriage certificate the learned trial court as well as the High Court had proceeded to determine the validity of the marriage between the parties though both the courts were exercising jurisdiction in a proceeding for maintenance. However, till date, the marriage between the parties is yet to be annulled by a competent court. What would be the effect of the above has to be determined first inasmuch as if, under the law, the marriage between the parties still subsists the appellant would continue to be the legally married wife of the respondent so as to be entitled to claim

maintenance and other benefits under the DV Act, 2005. Infact, in such a situation there will be no occasion for the Court to consider whether the relationship between the parties is in the nature of a marriage.

14. Admittedly, both the appellant and the respondent are governed by the provisions of the Hindu Marriage Act, 1955. Section 11 of the Hindu Marriage Act makes it clear that a marriage solemnised after the commencement of the Act "shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions so specified in clauses (i), (iv) and (v) of Section 5."

15. While considering the provisions of Section 11 of the Hindu Marriage Act, 1955 this Court in Yamunabai v. Anantrao[3] has taken the view that a marriage covered by Section 11 is void-ipso-jure, that is, void from the very inception. Such a marriage has to be ignored as not existing in law at all. It was further held by this Court that a formal declaration of the nullity of such a marriage is not a mandatory requirement though such an option is available to either of the parties to a marriage.

It must, however, be noticed that in Yamunabai (supra) there was no dispute between the parties either as regards the existence or the validity of the first marriage on the basis of which the second marriage was held to be ipso jure void.

16. A similar view has been expressed by this Court in a later decision in M.M. Malhotra v. Union of India[4] wherein the view expressed in Yamunabai (supra) was also noticed and reiterated.

17. However, the facts in which the decision in M.M. Malhotra (supra) was rendered would require to be noticed in some detail:

> The appellant M.M. Malhotra was, inter alia, charged in a departmental proceeding for contracting a plural marriage. In reply to the charge sheet issued it was pointed out that the allegation of plural marriage was not at all tenable inasmuch as in a suit filed by the appellant (M.M. Malhotra) for a declaration that the respondent (wife) was not his wife on account of her previous marriage to one D.J. Basu the said fact i.e. previous marriage was admitted by the wife leading to a declaration of the invalidity of the marriage between the parties. The opinion of this court in M.M. Malhotra (supra) was, therefore, once again rendered in the situation where there was no dispute with regard to the factum of the earlier marriage of one of the spouses.

18. In the present case, however, the appellant in her pleadings had clearly, categorically and consistently denied that she was married to any person known as Rohit Kumar Mishra. The legitimacy, authenticity and genuineness of the marriage certificate dated 18.4.2003 has also been questioned by the appellant. Though Section 11 of the aforesaid Act gives an option to either of the parties to a void marriage to seek a declaration of invalidity/nullity of such marriage, the exercise of such option cannot be understood to be in all situations voluntarily. Situations may arise when

recourse to a court for a declaration regarding the nullity of a marriage claimed by one of the spouses to be a void marriage, will have to be insisted upon in departure to the normal rule. This, in our view, is the correct ratio of the decision of this Court in Yamunabai (supra) and M.M. Malhotra (supra). In this regard, we may take note of a recent decision rendered by this Court in A. Subash Babu v. State of Andhra Pradesh & Anr.[5] while dealing with the question whether the wife of a second marriage contracted during the validity of the first marriage of the husband would be a "person aggrieved" under Section 198 (1)(c) of the Code of Criminal Procedure to maintain a complaint alleging commission of offences under section 494 and 495 IPC by the husband. The passage extracted below effectively illuminates the issue:

> "Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband."

19. In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a "relationship in the nature of marriage" would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005.

20. Our above conclusion would render consideration of any of the other issues raised wholly unnecessary and academic. Such an exercise must surely be avoided.

21. We, accordingly, hold that the interference made by the High Court with the grant of maintenance in favour of the appellant was not at all justified. Accordingly, the order dated 09.04.2010 passed by the High Court is set aside and the present appeals, are allowed.

....J. [P. SATHASIVAM] .....J. [RANJAN GOGOI]
New Delhi, December 12, 2012

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[1] (2010) 10 SCC 469

[2] AIR 1994 SC 853

[3] AIR 1988 SC 645
[4] 2005 (8) SCC 351
[5] 2011 (7) SCC 616
