
PROGRESSIVE MAINTENANCE JURISPRUDENCE: LOYOLA SELVA KUMAR VS. M. SHARON NISHA

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1. INTRODUCTION

In India, Marriage as an institution has its roots perpetuated deep down under the social crust, extending to the very core of social existence. Marriage is not just an association between two individuals, but a union between two families bringing in a lot of goodness. But, in the same vein, we cannot ignore the grey side of this institution, whether it is the demand for dowry disguised as gifts, harassment or mental pressure, contributing to the complexity of this social institution.

India has come a long way on the path of progress, whether it be the criminalisation of triple talaq or the reservation of seats for women in parliament, it has indeed come a long way and is still working towards it, and one such change is what our case portrays.

In the case of *Loyola Selva Kumar Vs. M. Sharon Nisha and Ors*¹, the Honourable High Court passed a verdict granting maintenance to the wife, despite the marriage being void ab initio i.e. void from the beginning. This case tries to highlight the importance of allotment of maintenance and holding up the right to life irrespective of the existence of the significant other. It also depicts the usage of loopholes in the laws as a means of escape. The various problems including the prevalence of bigamy, dowry and their possible reasons, along with stigmas surrounding marriages are also discussed to put forward the mirror of reality.

Marriage is often linked to a garden of roses, but even in the most enchanting gardens, thorns exist, and this case comment tends to deal with roses and thorns concurrently, thus portraying the responsibility with which the law upholds this institution.

¹ *Loyola Selva Kumar Vs. M. Sharon Nisha and Ors*, MANU/TN/3913/2023.

2. FACTS OF THE CASE

This case is a Criminal Revision Petition in the Madras High Court against the order passed in the Family Court, Tirunelveli, but, the mention of individuals involved is based on the initial case registered in the trial court for convenience. Therefore,

- First Petitioner: M Sharon Nisha
- Second Petitioner: Minor L. Rayon John
- Respondent: Loyola Selva Kumar

In this case, the first petitioner, M. Sharon Nisha alleged that the marriage between her and the respondent Loyola Selva Kumar was solemnised on 26 January 2018. The Second petitioner, Minor. L. Rayon John was born out of the wedlock between the first petitioner and respondent.

M. Sharon Nisha alleged that during the wedding, her parents gave 200 gold jewels, 11 gold chains, 5 gold bracelets and 1 gold ring along with the household articles worth Rs. 4,00,000/- in the form of dowry demanded by the respondent's family.

Initially, the respondent was very affectionate towards the first petitioner but due to the ill advice of his parents, the respondent started to demand Rs. 25 lakhs more as dowry and when the first petitioner failed to fulfil his demand, the respondent started to avoid her.

April 2018, M. Sharon Nisha went to her parent's house for her delivery, in the due course the respondent continued to avoid her and failed to maintain her. The birth of the second petitioner, Minor. L. Rayon John was informed immediately to the respondent but he came only after five days. When the first petitioner asked the respondent about the reason why he had been avoiding her, the respondent openly stated that without giving the dowry of Rs.25 lakhs, he would not live together with the first petitioner. Due to this act of the respondent, the respondent and petitioner are living separately and both the petitioners are struggling for their livelihood.

Further, M.Sharon Nisha, stated that the respondent is working in the ATG Tyre Company as a Supervisor and is getting more than Rs.50,000/- as a monthly salary; that the respondent also owns 11 houses in Sankar Nager and is getting more than Rs. 90,000/- as monthly rent. She also claimed that the respondent is legally bound to maintain her and her daughter.

The first petitioner is hereby claiming maintenance for herself and her minor daughter under

Section 125 of the Code of Criminal Procedure².

Respondent Loyola Selva Kumar denied all the allegations and further denied the very existence of marriage between him and the first petitioner and the paternity to the second petitioner. The respondent further argued that he was already married to a woman, Merlin Rosy on 30 November 2011 and due to their wedlock, they had a child, namely Ivangelin Udhaya; that he had filed a divorce petition before the district court of Tirunelveli in the year 2014 and after the trial, the bench dismissed the case, aggrieved by the verdict respondent appealed to the higher court and the same case is pending before this court. The respondent further presented his argument that his first marriage was still intact and there was no marriage between him and the first petitioner, hence there is no relationship between him and the first petitioner and therefore he is not liable to pay any maintenance.

Respondent in his case further clarified his financial status; that he works at ATG Tyre and he gets only 16,000/- as a monthly salary and his in-hand salary is not more than 11,500/- and he has been paying 7,000/- to his first wife and child and all the claim regarding his financial condition is false and misleading.

3. ISSUES BEFORE THE COURT

1. Is the Marriage between the first petitioner and respondent valid?
2. Is the respondent liable to maintain the first petitioner and her child?

4. JUDGEMENT

The Honourable Court in the case of Loyola Selva Kumar Vs. M. Sharon Nisha and Ors³ put forward a landmark decision overturning the existing prevalence for allotment of maintenance. Additionally, it also paved the way for a wider interpretation of Sec. 125⁴ of The Code of Criminal Procedure. The Court believed that:

1. The divorce petition of the respondent and his first wife was dismissed on 31.08.2015 by the Court. Considering that the first marriage of the respondent is still subsisting, the marriage between the first petitioner and the respondent even if proved, cannot be said to be valid.

²Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1974 (India).

³ Loyola Selva Kumar Vs. M. Sharon Nisha and Ors, MANU/TN/3913/2023.

⁴ Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1974 (India).

2. The document i.e. the birth certificate rightly points out that the second petitioner is the legal child of the respondent. The reluctance to undertake the DNA test also proves the guilt herein.

3. In reference to the pieces of evidence produced before the court and the fact that the first petitioner and the respondent were living together for quite a long period of time the court believed that the first petitioner should be liable for maintenance in the same manner as that of a wife as mentioned under Sec. 125 of CrPC⁵.

4. The Court maintained that “If man and woman have been living together for a long time even without a valid marriage, as in the case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain an application under Section 125, Cr.P.C.”⁶

5. The petitioner shall be allowed to take advantage of the circumstances and of the fact that the respondent kept her in the dark about his first marriage and made a false representation of him being single at the time of the solemnization of their marriage.

6. Therefore, the first and second petitioners are legally the respondent’s wife and son respectively. Hence, making them liable for maintenance.

7. For the quantum of maintenance to be concluded, since there was no salary slip or documents of property provided by the respondent, the court believed that the amount of 10,000 INR per respondent would be viable and reasonable maintenance keeping in mind the economic conditions.

8. As a result, the Criminal Revision Case is now dismissed. Consequently, the connected Miscellaneous Petition is also considered closed from here on.

5. BEYOND THE VOWS: SOCIO-LEGAL PERSPECTIVE OF MARRIAGE

Marriage as an institution gives us our first and closest affinal relationship. This institution helps individuals to come together in a union and fulfil each other’s social, physical, emotional and intellectual needs. Just as we discussed in the introduction, in the path of this alluring institution both flowers and thorns exist. Considering the Indian patriarchal society, women are especially aggrieved by the different types of problems in this institution as portrayed in this

⁵ *ibid*

⁶ *ibid*

case such as bigamy, dowry, financial instability, lack of education and many more. Starting with bigamy, in simple terms, bigamy is when one person marries another person when his/her first marriage is legally intact. Bigamy was declared illegal under the Hindu Marriage Act⁷ which was passed in the year of 1955. However, people still tend to find and use its loopholes. The respondent married the first petitioner even when his first marriage was intact and was demanding dowry again from her.

Dowry is yet another problem that is attached to this institution. People demand dowry in the name of gifts, household articles, and money from the girl's family for the maintenance of their daughter after the marriage and the girl's family gives dowry in a bid to ensure that their daughter would remain safe and would be treated well at her In-law's house.

Everybody knows the evils of dowry, bigamy, and extramarital relationships but the main question persists: why are women still enduring all of this despite the presence of different kinds of institutions and legislations that are fashioned to help them? The answer lies within patriarchy and the power dynamics it enforces. The patriarchal landscape of India creates a bias for male dominance in every relationship. There comes an obligation for the woman to keep the marriage safe and lasting. The first petitioner mentions that she kept quiet for a long time because saving the marriage is considered to be a woman's job. With less percentage of women who are financially stable or are educated enough to sustain themselves, it becomes the least desirable choice for them to not be dependent on their male counterparts despite tolerating injustices daily. Lack of education, financial instability, societal pressure and concern for their child's future contribute to a vicious cycle that restricts women from leaving their marriages irrespective of the conditions they are in.

6. SIGNIFICANT LEGISLATION AT WORK

This section delves deeper into the significant acts and sections that are related to marriage and provides a deeper understanding of the laws that are there for women to maintain equity and justice in the social sphere.

- ❖ **Hindu Marriage Act, 1955⁸** - The Hindu Marriage Act was passed in the year of 1955 to codify all the marriage-related laws for Hindus, Jainas, Sikhs and Buddhists. This Act does not apply to Muslims, Parsi, Jews and Christians, as they have their own

⁷ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

⁸ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

Marriage and Divorce Acts. The main aim of this act was to bring uniformity of law for all the people and to eliminate social evils like bigamy and extramarital relationships etc.

Some important sections under this Act are:-

1. **Section 3⁹**: This section specifies certain criteria of relationship and has defined certain prohibited degrees of relationship, e.g. a person cannot marry another person if one is a lineal ascendant of the other or a person cannot marry the wife of his brother, father or grandfather.
 2. **Section 5 (iii)¹⁰**: According to clause three of section 5, marriage is valid only when the groom and bride have attained the age of 21 and 18 respectively. This section eliminated child marriages and made them illegal.
 3. **Section 24¹¹**: This section defines the provision that during any case that appears in the court of law under this act, the petitioner has to support the respondent with necessary expenses of the proceedings if the respondent has no sufficient independent income. This section applies to both husband and wife. This is a temporary maintenance.
 4. **Section 25¹²**: Section 25 of HMA deals with the provision of permanent alimony and maintenance.
- ❖ **Section 125 of CrPC¹³**: Section 125 of the Code of Criminal Procedure deals with the order of maintenance of wives, children and parents. This act orders any person who has sufficient means to maintain his wife, his children — legitimate or illegitimate — and his parents if they are unable to maintain themselves. The petitioner in this case applied for maintenance under this act for her and her minor daughter. This Act also allotted power to the Magistrate to order the father of a minor female child to maintain her until she attained her majority.
- ❖ **The Hindu Adoptions and Maintenance Act, 1956¹⁴**: According to Section 18 of the Hindu Adoption and Maintenance Act, a Hindu wife is entitled to be maintained by her

⁹ Hindu Marriage Act, 1955, § 3, No. 25, Acts of Parliament, 1955 (India).

¹⁰ Hindu Marriage Act, 1955, § 5 (iii), No. 25, Acts of Parliament, 1955 (India).

¹¹ Hindu Marriage Act, 1955, § 24, No. 25, Acts of Parliament, 1955 (India).

¹² Hindu Marriage Act, 1955, § 25, No. 25, Acts of Parliament, 1955 (India).

¹³ Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1974 (India).

¹⁴ The Hindu Adoption and Maintenance Act, 1956, § 18, No. 78, Acts of Parliament, 1956 (India).

husband in her lifetime. This section also lays down several conditions under which the wife can claim the maintenance while living separately from her husband.

- ❖ **The Protection of Women from Domestic Violence Act, 2005¹⁵:** In our country, nearly half of the population is made up of women, who also happen to be the largest group dealing with domestic violence issues in India. According to the National Family Health Survey (NFHS), 2019-2021, “29.3 per cent of married Indian women between the ages of 18- 49 have experienced domestic/sexual violence; 3.1 per cent of pregnant women aged 18 to 49 have suffered physical violence during their pregnancy¹⁶. These figures are huge and concerning. In India, domestic violence cases are governed under The Protection of Women from Domestic Violence Act 2005¹⁷, passed under the Ministry of Women and Child Development. This act provides help immediately to the victims.

As per the research published in the Journal of Epidemiology & Community Health, One in three women in India is likely to have been subjected to intimate partner violence of a physical, emotional, or sexual nature. Yet only 1 in 10 of these women formally report the offence to the police or healthcare professionals.¹⁸

The act aims to protect the wife or female live-in partner from violence at the hands of their husband or male live-in partner or even their relatives. The scope of the law is wide as it extends protection to women who are sisters including adopted sisters and mothers. Domestic Violence under this act includes actual abuse, and threat to abuse, whether physical, emotional, verbal or economic. The legislation has outlined several specific definitions, including those for ‘aggrieved person’, ‘domestic relationship’, ‘domestic violence’, and ‘shared household’. These definitions aim to provide precise and comprehensive clarity during times of distress or upheaval.

- ❖ **The Dowry Prohibition Act, 1961¹⁹:** Passed on 20th May 1961, prohibits the practice of giving and taking dowry in India. The act in **Section 2** defines dowry as ‘any property or valuable security given or agreed to be given by one party to a marriage to the other

¹⁵ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

¹⁶ Business Standard, Nearly 30% of married Indian women face domestic violence, shows data | India News - Business Standard (business-standard.com) (last visited Apr. 28, 2024).

¹⁷ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

¹⁸ BMJ, 1 in 3 women in India is likely to have been subjected to intimate partner violence | BMJ (last visited May 19, 2024)

¹⁹ The Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961 (India).

party, or by any other person to either party, at or before, or any time after the marriage.²⁰ However, this act does not penalise the transfer of gifts or voluntary exchange during or at the time of marriage.

Some significant sections under this legislation are:-

1. **Section 3²¹**: The following section outlines the consequences of involvement in the giving, receiving, or aiding of dowry. According to this provision, individuals found guilty of these actions are subject to a minimum imprisonment term of five years. Furthermore, they are liable to pay a fine amounting to at least 15,000, or an amount equivalent to the value of the dowry given, whichever is greater.
2. **Section 5²²**: This section specifies that any agreement related to the giving or taking of dowry is considered to be unenforceable or void.
3. **Section 8A²³**: Section 8A of the law specifies that the burden of proof shall lie on the individual who is being prosecuted for either taking a dowry or aiding in the taking of a dowry.

CONCLUSION

With 10 million marriages happening every year in India²⁴, it becomes important to treat the institution with utmost responsibility and respect. In the case, *Loyola Selva Kumar Vs. M. Sharon Nisha and Ors*²⁵, the same delicacy of treatment can be seen, thus creating an impact that would last long. Creating a society where men and women in a relationship are treated equitably is a huge responsibility. The motive for analysing this case stems from a simple reason — this case accounts for the dichotomy of positive and negative and considers both sides in its verdict. The positive side puts forward the clear motive that a person due to the mistake of another should not be kept at a disadvantage. The grant of maintenance to the first petitioner stands strong as an example of the same. *Loyola Selva Kumar* was held liable for paying maintenance to his second wife despite the fact his first marriage was still subsisting. The progressive nature of this judgement stands at the epitome towards the series of changes

²⁰ The Dowry Prohibition Act, 1961, § 2, No. 28, Acts of Parliament, 1961 (India).

²¹ The Dowry Prohibition Act, 1961, § 3, No. 28, Acts of Parliament, 1961 (India).

²² The Dowry Prohibition Act, 1961, § 5, No. 28, Acts of Parliament, 1961 (India).

²³ The Dowry Prohibition Act, 1961, § 8A, No. 28, Acts of Parliament, 1961 (India).

²⁴ Zee Business, 32 Lakh Weddings In India During November - December To Generate Huge Business | Zee Business (zeebiz.com) (last visited Apr. 30, 2024).

²⁵ *Loyola Selva Kumar Vs. M. Sharon Nisha and Ors*, MANU/TN/3913/2023.

that the judiciary is trying to implement. Taking into consideration the negative side, this case also stands as a testament to the loopholes that are twisted and played to derive outcomes that may always not be right. Further, the dominance of man in a relationship either physically or economically creates a system of dependence. The judgement herein acts as a reference point to the future of maintenance, providing justice to every other individual subjected to cheating, mental, emotional and economic distress so on and so forth.