

UDAY GUPTA

v.

AYSHA & ANR.

(SLP (Cri.) No. 3390 of 2014)

APRIL 21, 2014

[DR. B.S. CHAUHAN AND J. CHELAMESWAR, JJ.]

FAMILY LAW : Institution of marriage - In the impugned order, the High Court made observation that a valid marriage does not necessarily mean that all the customary rights pertaining to the married couple are to be followed and subsequently solemnized - Instant SLP filed by Advocate not party before the High Court challenging the said observations - Held: Such observations had been made in the facts of that case - In fact, the High Court observed that if a man and woman are living together for a long time as husband and wife, though never married, there would be a presumption of marriage and their children could not be called illegitimate - High Court made the said observations as the alleged marriage took place in 1994 and two children were born in 1996 and 1999 respectively - Therefore, the observations made by the High Court in the said judgment were restricted to the facts of that case and do not lay down the law of universal application - Precedent - Presumption.

Madan Mohan Singh & Ors. v. Rajni Kant & Anr. AIR 2010 SC 2933 : 2010 (10) SCR 30; Bharatha Matha & Anr. v. R. Vijaya Ranganathan & Ors. AIR 2010 SC 2685 : 2010 (7) SCR 154 - relied on.

Case Law Reference:

2010 (10) SCR 30 Relied on Para 7

2010 (7) SCR 154 Relied on Para 7

A CRIMINAL APPELLATE JURISDICTION : SLP (Criminal)
No. 3390 of 2014.

B From the Judgment and Order dated 17.06.2013 of the
High Court of Judicature at Madras in Crl. R.C. No. 674 of
2007.

M.R. Calla, Shivani M. Lal, M.K. Tripathi, Pratiksha
Sharma, Ankit Achariya, Gaurav Dave in the Petitioner Uday
Gupta (Petitioner-In-Person).

The following Order of the Court was delivered

O R D E R

1. Permission to file special leave petition is granted.
2. This petition has been filed by an Advocate of this Court though not a party before the Madras High Court wherein the judgment impugned dated 17.6.2013 had been passed in Criminal R.C. No.674 of 2007 making certain observation regarding the relationship between man and woman and particularly the institution of marriage.
3. Mr. M.R. Calla, learned senior counsel appearing for the petitioner has submitted that the observations made by the High Court that “a valid marriage does not necessarily mean that all the customary rights pertaining to the married couple are to be followed and subsequently solemnized” are not legally tenable. It has been pointed out by Mr. Calla, learned senior counsel that such observations demolish the very institution of marriage itself, and therefore, are liable to be set aside.
4. In view of the nature of the order we propose to pass, we do not consider it necessary to issue notice to anyone.
5. We have gone through the judgment and order impugned and perused the record of the case.

6. We are of the view that such observations had been made in the facts of that case. In fact, what the learned Judge wanted to say is that if a man and woman are living together for a long time as husband and wife, though never married, there would be a presumption of marriage and their children could not be called to be illegitimate. Such a view stands fully fortified by a very large number of judgments.

7. This Court in *Madan Mohan Singh & Ors. v. Rajni Kant & Anr.*, AIR 2010 SC 2933 held as under:-

"The courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. (Vide: *Mohabbat Ali Khan v. Mohd. Ibrahim Khan*, AIR 1929 PC 135; *Gokalchand v. Parvin Kumar*, AIR 1952 SC 231; *S.P.S. Balasubramanyam v. Suruttayan*, (1994) 1 SCC 460; *Ranganath Parmeshwar Panditrao Mali v. Eknath Gajanan Kulkarni*, (1996) 7 SCC 681; and *Sobha Hymavathi Devi v. Setti Gangadhara Swamy & Ors.*, (2005) 2 SCC 244.)"

In *Bharatha Matha & Anr. v. R. Vijaya Ranganathan & Ors.*, AIR 2010 SC 2685, this Court dealt with the legitimacy of the children born out of such relationship observing:

"Thus, it is evident that Section 16 of the (Hindu Marriage) Act intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object."

8. In the instant case, the High Court made the aforesaid observations in the facts of that case as the alleged marriage took place in 1994 and two children were born in 1996 and 1999 respectively. Therefore, the observations made by the

A High Court in the said judgment are restricted to the facts of that case and do not lay down the law of universal application.

9. In view of the above, we do not deem it necessary to consider the case any further.

B 10. With these observations, the special leave petition stands disposed of.

D.G.

S.L.P. disposed of.