

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3222 OF 2024

Karishma Amir Dhage C/o Bhimrao Shivaji Kapurkar ...Petitioner
Versus
Amir Khudbuddin Dhage & Ors. ...Respondents

WITH
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Versus
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Mr. Anand S. Patil, for the Petitioner in both Writ Petitions.
Mr. Balwant Salunkhe, for Respondent No.1.
Ms. S. D. Shinde, APP, for the Respondent-State.
Ms. N. S. Baig, *Amicus Curiae*, present.

CORAM: MADHAV J. JAMDAR, J.
DATED: 16 JUNE 2025

JUDGMENT:

1. Heard Mr. Anand Patil, learned Counsel for the Petitioner, Mr. Balwant Salunkhe, learned Counsel for Respondent No.1, Ms. S. D. Shinde, learned APP for the Respondent-State and Ms. N. S. Baig, learned *Amicus Curiae*.

CHALLENGE:

2. The Petitioner has filed proceedings bearing Criminal

Miscellaneous Application No.55 of 2022 in the Court of the learned Judicial Magistrate First Class, Islampur under Sections 12 and 13 of the Protection of Women from Domestic Violence Act, 2005 (“DV Act”) and filed Interim Application under Section 23 of the D.V. Act bearing Exhibit-5 seeking interim maintenance. The said Application has been allowed by the learned JMFC, Islampur by Order dated 17th June 2023. The learned JMFC granted Rs.2,000/- per month towards maintenance and Rs.1,500/- per month towards rent to the Petitioner.

3. The Respondent Nos.1 to 3 have challenged said Order dated 17th June 2023 under Section 29 of the DV Act by filing Criminal Appeal No.23 of 2023, whereas the present Petitioner has challenged said Order dated 17th June 2023 as far as quantum of maintenance and quantum of residential order by filing Criminal Appeal No.28 of 2023. The learned Additional Sessions Judge, Islampur by separate Orders dated 3rd May 2024 allowed the Criminal Appeal No.23 of 2023 filed by the Respondent Nos.1 to 3 and set aside the Order granting maintenance and for rent in favour of the Petitioner. The Petitioner has challenged said Order dated 3rd May 2024 passed in Criminal Appeal No.23 of 2023 by filing Criminal Writ Petition No.3223 of 2024. The learned Additional Sessions Judge, Islampur by Order dated 3rd May 2024 dismissed Criminal Appeal No.28 of 2023 filed by the Petitioner. The Petitioner has challenged said Order by filing Criminal Writ Petition

No.3222 of 2024.

SUBMISSIONS OF THE PETITIONER:

4. Mr. Anand Patil, learned Counsel for the Petitioner submitted that although there are different Affidavits filed by Kazi-Tajuddin Sardar Bagwan Kolhapuri, who performed the marriage between the Petitioner and the Respondent No. 1, however the third Affidavit on Page No.77 of Writ Petition No.3222 of 2024 clarifies the position. He submitted that the second Affidavit dated 4th April 2022 (Pages 73 -76) has been executed by said Tajuddin Sardar Bagwan due to pressure brought by the Respondent No.1. He submitted that apart from the Affidavits of said Kazi there are Affidavits of two witnesses namely Furkan Anwar Khan (Pages 68-69) and Farhan Mohammad Kazi (Pages 71-72) who witnessed the said marriage. He submitted that the marriage took place on 25th November 2019 and the same was performed by Kazi - Tajuddin Sardar Bagwan Kolhapuri. Mr. Anand Patil, learned Counsel submitted that there is compliance of Section 7 of the Muslim Marriage Act. He submitted that as Respondent No.1 has pressurized the said Kazi, 2 NCs have been lodged on 1st May 2022 (Page 79) and on 14th May 2022 (Page 81). He submitted that said Kazi has performed many marriages and he was working as Imam in Muslim Boarding Society for more than 26 years. Learned Counsel therefore submitted that the material on record establishes the performance of the marriage between

the Petitioner and the Respondent No. 1.

5. Mr. Patil, learned Counsel also pointed out a FIR bearing FIR No.49 of 2022 which was lodged on 26th January 2022 (Pages 83-85). He submitted that the same also supports his case about harassment. He submitted that the network engineer mentioned in said FIR as occupation of the Petitioner is incorrect and the Petitioner has only studied upto 12th Std and she is housewife as rightly recorded in the said FIR.

6. Mr. Patil, learned Counsel submitted that Respondent No.1 at the relevant time was Upa-Sarpanch and a Gram Panchayat Member and he is very influential. He submitted that as there is sufficient material to show that marriage was performed between the Petitioner and Respondent No.1, therefore the learned Sessions Judge committed grave illegality and irregularity in passing the impugned Orders.

7. Mr. Patil, learned Counsel pointed out signatures of the Respondent No.1 on application bearing Exhibit-34 in Criminal Miscellaneous Application No.55 of 2022 and submitted that the said signatures are totally different and the Respondent No.1 is in the habit of putting different signatures.

8. Learned Counsel relied on the decision of the Supreme Court in ***Sukhdev Singh v. Sukhbir Kaur***¹ and more particularly on Paragraph 27 of the same.

1 2025 SCC OnLine SC 299

9. Learned Counsel submitted that it is very significant to note that register maintained by said Kazi was produced by the Respondent No.1 before the learned Trial Court. As far as the said register is concerned, copies of all other marriage certificates are available, except the one pertaining to the marriage between the Petitioner and the Respondent No. 1 as the same has been destroyed by the Respondent No.1.

10. Learned Counsel therefore submitted that the impugned Orders be quashed and set aside. He submitted that as the Respondent No.1 is a politically influential and he is a building contractor, maintenance of Rs.20,000/- per month and rent of Rs.15,000/- per month be granted as prayed.

SUBMISSIONS OF RESPONDENT NOS.1 TO 3:

11. On the other hand, Mr. Balwant Salunkhe, learned Counsel for Respondent Nos.1 to 3 submitted that as three Affidavits were filed by said Kazi contradicting each of the Affidavit no reliance can be placed on any of the Affidavits. He pointed out call records between Kazi and the Respondent No.1. He submitted that in any case as the marriage is doubtful, the Petitioner is not entitled for any interim relief. He submitted that the marriage certificate on which the Petitioner is relying is a bogus certificate. The original Nikah Nama has not been produced.

12. Mr. Salunkhe, learned Counsel further submitted that the FIR which has been lodged by the Petitioner specifically states that the

Petitioner is a network engineer. He pointed out the complaint/letter dated 11th May 2022 sent by the Respondent No.1 to the Police Inspector, Islampur Police Station. He submitted that said Kazi has given a bogus certificate by accepting consideration. As the Respondent No.1 questioned him about the same and told him that Respondent No.1 would file police complaint against him, said Kazi informed Respondent No.1 that he would give proper evidence in the Court to the effect that said bogus certificate was issued to the Petitioner and therefore the Respondent No.1 has not taken any further action against said Kazi. He pointed out the said aspects mentioned in the letter/complaint addressed to the Police Inspector, Islampur Police Station by letter dated 11th May 2022.

13. Mr. Salunkhe, learned Counsel pointed out Section 2(a), 2(f) and 2(s) of the *Protection of Women from Domestic Violence Act, 2005* (“**DV Act**”). He also pointed out points mentioned by the learned *Amicus Curiae* in Paragraph Nos.8, 10, 11, 14 and 15 of the written note submitted by her. He also pointed out the decision of the Supreme Court in *D. Velusamy v. D. Patchaiammal*² and more particularly on Paragraph No.31 of the same. He has also relied on the Judgment of a learned Single Judge of this Court in the case of *Sunil Sandu Ingale vs. Pratibha Sunil Ingale*³ and more particularly on Paragraph Nos.5 and 14 of the

2 (2010) 10 SCC 469

3. CRA No. 80 of 2021 (Cri) Order dated 22.02.2023, Aurangabad Bench.

same. He submitted that if the Petitioner ultimately establishes in said DV proceedings about the performance of the marriage between the Petitioner and Respondent No.1, then the Petitioner can be granted reliefs from the date of application. He therefore submitted that the challenge to the impugned Orders by these Writ Petitions be not entertained.

SUBMISSIONS OF MS. N. S. BAIG, LEARNED *AMICUS CURIAE*:

14. Ms. N. S. Baig, learned *Amicus Curiae* has in addition to the oral submissions filed written submissions. Apart from pointing out the various aspects, she pointed out the points which are in favour of the Petitioner and also in favour of Respondent No.1. She submitted that the Marriage Certificate on the basis of which the Petitioner is claiming right does not have any reference number or register number. She pointed out various provisions of the *Kazis Act, 1880*. She submitted that normally Kazi signs the Nikah Nama in capacity of Kazi but the present Marriage Certificate is signed by Kazi in capacity of Kaari. She submitted that Kaari has signed at the place of Kazi and also at the place of Vakil. She submitted that it is mandatory that permission of Wali of girl is to be obtained before marriage. Wali in marriage is a male guardian of bride, who may be his father, grandfather, brother, son and so on. She has raised several contentions regarding the same. She submitted that marriage cannot be kept secret and therefore there are

certain requirements of a valid marriage in Islam, namely as follows:

“A number of requirements are mentioned in the Quran for marriage, they are:

- 1- The couple must both be at the age of marriage.*
- 2- Believers may not marry disbelievers or mushrikeen.*
- 3- The couple must make a genuine commitment to one another.*
- 4- The marriage must be declared.*
- 5- The marriage must be contracted.*
- 6- The marriage must be intended as a permanent bond.*
- 7- The man must pay a dowry to his bride.”*

15. Ms. Baig, learned *Amicus Curiae*, pointed out that Respondent No.1 not only denied the marriage but also denied domestic relationship. She pointed out the decision of the Supreme Court in *D. Velusamy* (supra). She submitted that under the DV Act the couple must cohabit with each other as spouse for a significant period of time. Merely spending weekends together or one night stand would not make it a domestic relationship. She pointed out Paragraph No.31 of the decision of *D. Velusamy* (supra).

16. Ms. Baig, learned *Amicus Curiae* also pointed out various aspects which are in favour of the Petitioner. She submitted that although even if there are some irregularities presumed in marriage of the Petitioner, the same does not make the marriage void. She pointed out the decision

of the Supreme Court in ***Mohd. Salim v. Shamsudeen***⁴ and submitted that there are three categories of Muslim Marriages:

- i. Valid Marriage
- ii. Irregular / Invalid Marriage
- iii. Void Marriage

Learned *Amicus Curiae* submitted that the marriage if not valid can be irregular / invalid or void. She submitted that a marriage with a woman prohibited by reason of consanguinity, affinity or fosterage is void and the same is *void ab initio*. An irregular marriage is one which is not unlawful in itself but unlawful for something else, and after removal of such irregularities the irregular marriage comes under the category of valid marriage. She submitted that the present marriage is not *void ab initio* and the same can be either valid or irregular marriage. More particularly, she relied on Paragraph No.10 of the said decision. She submitted that both valid and irregular marriage gives status of wife to a woman. She also relied on the decision of the Supreme Court in ***Capt. Ramesh Chander Kaushal v. Veena Kaushal***⁵ and submitted that if two interpretations are possible then the one which is beneficial to the weaker section is to be preferred. She submitted that in view of the circumstances of the case the marriage certificate is *prima facie* evidence of the marriage and whether the marriage is valid or irregular

4 (2019) 4 SCC 130

5 (1978) 4 SCC 70

is a matter of trial.

REASONING:

17. Before considering the rival submissions, it is necessary to set out the contentions which the Petitioner has raised in the DV proceedings. The same are summarized as follows:

- i. The Petitioner is the wife of Respondent No.1.
- ii. The Petitioner has married Respondent No.1 as per the Muslim religious rights at Balasaheb Darga, Kolhapur on 25th November 2019.
- iii. The Petitioner and Respondent No.1 were staying as husband and wife at Kolhapur by taking a room on rent.
- iv. The Respondent No.1 used to come at Kolhapur on several occasions and sometimes Respondent No. 1 used to take her to the house of the parents at Peth Naka. However, as the parents of the Respondent No.1 has raised objection, he was avoiding to take the Petitioner to the parents' house at Peth Naka, Taluka-Walwa, District-Sangli.
- v. The Petitioner has narrated about the incident which has taken place on 22nd January 2022 where the Petitioner has gone to said residence at Peth Naka, Taluka-Walwa, District-Sangli, where the Petitioner was assaulted by Respondent Nos.1 to 3.
- vi. Due to incident of assault which has taken place on 22nd January 2022, FIR has been lodged on 26th January 2022 under Sections 354,

323, 324 504, 506 read with 34 of the *Indian Penal Code, 1860*.

vii. Thereafter, as Respondent No.1 was not maintaining the Petitioner, she requested him to grant maintenance. However, the Respondent Nos.1 to 3 abused her on phone.

viii. In the DV proceedings, the contentions are raised regarding sound financial position of Respondent No.1. It is stated that Respondent No.1 is a building contractor and he was having a car as well as a scooter and his monthly income is Rs.2,00,000/-. The Petitioner has sought maintenance of Rs.20,000/- per month and rent of Rs.15,000/- per month.

18. The Respondent Nos.1 to 3 have filed Reply to the said application. In the said reply *inter alia* following contentions are raised :-

- i.** The Respondent No.1 is married and he has children.
- ii.** During the lockdown due to COVID-19 pandemic Respondent No.1 and Petitioner came into contact on Facebook and started contacting each other and during the period she has saved the said chatting and due to same on the pretext that the said chatting would be made public, the Petitioner started giving threats and started insisting that the Petitioner should marry Respondent No.1. Therefore a complaint has been filed on 22nd January 2022 with the Islampur Police Station.

iii. As the Petitioner was insisting that she would file case with the police, both Petitioner and Respondent No.1 were arrested under Section 151(3) and they were produced before the Court on 22nd January 2022. Both of them were released on bail bond. Thus, it is contended that there is no marriage performed between the Petitioner and the Respondent No.1.

iv. The Petitioner is a highly qualified and she is a network engineer.

19. Before proceeding further, it is necessary to set out the documentary evidence.

The documentary evidence produced by Petitioner:

i. The Petitioner has produced a Marriage Certificate dated 25th November 2019 (Page No. 66). The same bears signature of Kazi/Kari-Tajuddin Sardan Kolhapuri and of two witnesses namely Furkan Anwar Khan and Farhan Mohammad Kaji.

ii. Affidavit dated 31st March 2022 (Page No.65) of Tajuddin Sardar Bagwan i.e. Kazi/Kari who performed the marriage. In the said Affidavit it is stated that said Kazi performed the marriage of Petitioner and Respondent No.1 on 25th November 2019 as per the Muslim religious rights and accordingly has issued the said Marriage Certificate. It is stated in the said Affidavit that the contents of said Marriage Certificate are correct and at that time Farhan Mohammad Kazi and Furkan Anwar Khan were present as witnesses and they have signed the said marriage

certificate as witnesses.

iii. Affidavit dated 9th June 2022 of Furkan Anwar Khan i.e. witness to the said marriage (Page No.68). He has stated in the said Affidavit that the marriage was performed between the Petitioner and Respondent No.1 on 25th November 2019 by said Tajuddin Sardar Bagwan in his presence as per the Muslim religious rights. It is stated that on the said Marriage Certificate said Furkan Anwar Khan and Farhan Mohammad Kazi have signed as witnesses and also the said Marriage Certificate is signed by the Petitioner and Respondent No.1.

iv. Affidavit dated 9th June 2022 of Farhan Mohammad Kazi (Page No.71). He has stated in the said Affidavit that the marriage was performed between the Petitioner and Respondent No.1 on 25th November 2019 by said Tajuddin Sardar Bagwan in his presence as per the Muslim religious rights. It is stated that on the said Marriage Certificate said Furkan Anwar Khan and Farhan Mohammad Kazi have signed as witnesses and also the said Marriage Certificate is signed by the Petitioner and Respondent No.1.

v. Copy of FIR bearing FIR No.49 of 2022 dated 26th January 2022 (Page No.83) lodged by the Petitioner about the assault made on 22nd January 2022 by the Respondent Nos.1 to 3. In the said FIR it is mentioned that the Petitioner is housewife, however it is further stated that she is “Network Engineer”. It is the contentions of the Petitioner

that the Petitioner has passed only upto 12th Standard and it is incorrectly mentioned that she is a “Network Engineer”. In any case, it is specifically stated that she is housewife.

vi. Affidavit dated 14th April 2022 of Tajuddin Sardar Bagwan Kolhapuri (Page No. 77) inter alia confirming about the performance of said marriage between the Petitioner and the Respondent No. 1 and further stating that the Respondent No. 1 alongwith some political persons came to his residence on 2nd April 2022 and 4th April 2022 and his signature was taken on the some paper without allowing him to read the same and also took away Nikhanama Book. It has been further stated that the Respondent No. 1 told said Kazi-Tajuddin Sardar Bagwan Kolhapuri that the said Nikhanama Book was destroyed. It is further stated in the said Affidavit that he is Imam Kari and entitled to perform marriage and he has performed several marriages and issued certificates. He has performed the marriage between the Petitioner and the Respondent No. 1 and accordingly issued marriage certificate. Alongwith the said Affidavit dated 14th April 2022 of said Tajuddin Sardar Bagwan NCs dated 1st May 2022 and 14th May 2022 filed by said Kazi against the Respondent No.1 are also produced concerning the threat given by the Respondent No. 1 and about forcibly taking away of said Nikhanama Book.

The documentary evidence produced by the Respondent Nos.1 to 3:

- i. Affidavit dated 4th April 2022 (Page 74) of said Kari Tajuddin Sardar Bagwan Kolhapuri, wherein it is stated that the Petitioner and Respondent No.1 are not known to said Kari. The Petitioner approached said Kari about 10 days back and she gave an amount of Rs.6,000/- and for said consideration a bogus Nikah Nama / Marriage Certificate was prepared and handed over to her. It is stated that said marriage was never performed by him.
- ii. Respondent Nos.1 to 3 have also produced details of call record between the Respondent No.1 and said Kari in a Pen-Drive.
- iii. A copy of application/complaint dated 11th May 2022 filed with the Islampur Police Station.
- iv. The Respondent Nos.1 to 3 produced Nikah Nama Book maintained by said Tajuddin Sardar Bagwan Kolhapuri, to substantiate that same do not contain office copy of the certificate dated 25th November 2019 issued regarding marriage between the Petitioner and the Respondent No.1.

[Note: It is the submission of the Petitioner that the fact that said Nikah Nama Book was produced in the Court by the Respondent Nos.1 to 3 clearly substantiates the contents of the Affidavit dated 14th April 2022 of the said Tajuddin Sardar Bagwan Kolhapuri that the Respondent No.1 alongwith few of his political associates came at his residence on 2nd April 2022 and 4th April 2022 and forcibly took away said Nikahnama

Book and informed that the said Nikahnama Book was destroyed. It is the contention of the Petitioner that the said Nikahnama Book should have been in possession of the said Tajuddin Sardar Bagwan. It is the further submission of the Petitioner that the Respondent No.1 has destroyed the office copy of marriage certificate dated 25th November 2019 concerning marriage between the Petitioner and Respondent No.1 as available in the said Nikhanama Book].

20. In view of the above documentary evidence, it is necessary to summarize the reasons given by the learned Sessions Court while allowing the Appeal filed by Respondent Nos.1 to 3 and dismissing the Appeal filed by the Petitioner. The learned Sessions Court has *inter alia* given following reasons:

A) Applicant claims herself to be the wife of opponent No. 1. In support of her contention, she relied on the Nikahnama filed on record. However, the Kazi who alleged to performed the marriage has filed two contrary affidavits in a court. In one affidavit, he claimed that no such marriage took place, whereas, in another affidavit, he claimed that he had performed the marriage. The Kazi has not yet been examined in court. Under such circumstances, when there are two contrary affidavits of the same person, on whose reliance the document is filed, it comes under the shadow of doubt and no prima facie reliance can be placed on such a document.

B) Moreover, the said Nikahnama is not having any serial number to show its genuineness. The applicant herself has alleged that as it was a love marriage, hence, no person from her family was present in her marriage. As per Muslim law, at the time of Nikah, the wife also be represented by her Vakil. This fact prima facie creates doubt over the marriage of the applicant with opponent No.1.

C) At the time of drafting the petition, the learned advocate had wisely drafted the petition and tried to show that the applicant was residing with opponent no. 1 at his house at Peth Naka, Islampur. In this context, I perused the title clause and the place of the resident of the applicant. It was shown to be vaguely at Islampur. Whereas, the place of residence of opponent No. 1 was shown as near Union Bank, Peth Naka, Tal. Walwa. Thus, from the title clause of the petition itself, it appears that the applicant is not residing with opponent no. 1 at his house at Peth Naka.

D) The applicant never came to the house of opponent No. 1 at Peth Naka. She used to reside at Rajarampuri. Thus, this fact shows that the applicant was not living with opponent No. 1 in the shared household at Peth Naka. As mentioned earlier it is a wise drafting, to show the relationship and share household at Peth Naka to bring the present application within the jurisdiction of Islampur Court.

E) From the contention of the applicant, it appears that opponent No. 1 has not come to her since 2019, hence she came in search of opponent No. 1 at Islampur and there was a dispute between opponent No. 2 and 3. They abused and assaulted her. As mentioned supra, the applicant never resided with opponents No. 2 and 3 at Peth Naka. Hence, taking cognizance against these persons under the D.V. Act is doubtful.

F) Opponent No. 1 came with a specific case of 'honey trap'. Now a days, such types of cases are increasing in society. This fact cannot be ignored while deciding the application for interim maintenance. Misuse of the D.V. Act can't be ruled out.

G) As mentioned supra by the Hon'ble High Court, when the alleged marriage itself is under the shadow of a doubt, the Magistrate shall refrain himself from granting the interim maintenance. In the present case, it appears that the learned Magistrate has ignored this fact and awarded the maintenance to the applicant.

21. Thus, the learned Sessions Court has recorded *prima facie* finding

that in view of two contradictory Affidavits filed by Kazi, there is grave doubt and the said marriage is under the shadow of doubt. However, it is required to be noted that there are 3 Affidavits filed by said Kazi. The learned Sessions Court has completely ignored the third Affidavit dated 14th April 2022 which is very relevant. The said third Affidavit reads as under:

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मी श्री. ताजुद्दीन सरदार बागवान, (मो.नं. ०९३७१११४२२४) व.व.७४, व्यवसाय, सह. संपादक स्वागतवाडी / इमाम, रा.१६५३, गंजी गल्ली, सोमवार पेठ, कोल्हापूर येथे सत्य प्रतिज्ञेवर कथन करतो की, मी अर्जदार कु. करिश्मा बाबुखान पठाण व जाबदार श्री. अमिर कुतबुद्दीन ढगे यांचा विवाह दिनांक : २५/११/२०१९ झा रोजी मुस्लिम पध्दतीने पीर बालेसाहेब बाब दर्गाह, कोल्हापूर येथे मी समक्ष विवाह लावून दिलेला आहे, त्याबाबत त्यांना सदर विवाहाचे सर्टिफिकेट दिलेले असून, त्यावरील सही ही माझीच आहे. विवाह नोंद दाखल्यातील मजकूर खरा व बरोबर आहे. सदर विवाहावेळी श्री फरहान महंमद काझी, श्री. फुरकान अनवर खान यांनी साक्षीदार म्हणून माझे समक्ष सहया केलेल्या आहेत. वरील म्हणणेमध्ये दिलेला संपूर्ण मजकूर माझे माहिती व समजुतीप्रमाणे खरा व बरोबर आहे. त्याबद्दल मी दिनांक : ३१/०३/२०२२ रोजी ऑफिडेव्हीट दिले आहे.

त्यानंतर जाबदार अमिर कुतबुद्दीन ढगे यांनी दिनांक : ०२/०४/२०२२ झा रोजी माझ्या घरी येवून आरडाओरडा करू लागले व निकाहनामा बोगस आहे असे म्हणून माझ्या घरी येवून दमदाटी करू लागले व निकाहनामा बुक दाखवण्यास सांगितले व ते घेवून गेले. परत करतो म्हणून पण त्यानंतर दिनांक : ०४/०४/२०२२ रोजी अमिर कुतबुद्दीन ढगे व काही राजकीय लोकांना घेवून मला थोडं बोलायचं आहे. म्हणून घराबाहेर घेवून गेले व मला दमदाटी करून काही कागदावरती माझ्याकडून न वाचता मजकूर लिहून घेतला आहे व अमिर कुतबुद्दीन ढगे याने माझ्याकडून लिहून घेतलेला सर्व मजकूर खोटा व चुकीचा आहे. त्यानंतर मी निकाहनामा बुक मागितल्यावर ते फाडून टाकण्यात आले असे सांगितले.

मी ताजुद्दीन सरदार बागवान असून, इमाम, कारी मी स्वागतवाडी सह संपादक आहे आणि मुस्लिम बोर्डिंग सोसायटीमध्ये इमामत म्हणून २६ वर्षे सर्किस केली आहे. इमाम या नात्याने मला लग्न लावून देण्याचा अधिकार आहे. मी खूप सारे लग्न लावून दिली आहेत तशाच प्रकारे करिश्मा बाबुखान पठाण, जबाबदार अमीर कुतबुद्दीन ढगे यांचा विवाह दिनांक २५/११/२०१९ रोजी मुस्लिम पध्दतीने पीर बालेसाहेब बाबा दर्गाह, कोल्हापूर येथे मी समक्ष विवाह लावून दिलेला आहे. त्याबद्दल त्यांना सदर विवाहाचे सर्टिफिकेट दिलेले असून, सदर विवाहावेळी श्री.

फरहान महंमद काझी, श्री. फुरकान अनवर खान यांनी साक्षीदार म्हणून माझे समक्ष सहाय्य केलेल्या आहेत. तसेच त्यावरील सही ही माझीच आहे व नोटरीसुद्धा खरी आहे.”

22. Thus, what is stated in the third Affidavit dated 14th April 2022 is that on 2nd April 2022 Respondent No.1 has come to the residence of said Kazi and he was abusing him and took the Nikah Nama register. Thereafter, on 4th April 2022 said Respondent No.1 came along with some politically influential persons and took said Kazi outside the house and got his signature on some papers by abusing him. It is further stated in the said Affidavit that when said Nikah Nama register was demanded by said Kazi, it was told to him that the said Nikahnama Registrar has been destroyed. In the said Affidavit, it has been stated that he is working for 26 years with Muslim Boarding Society as Imam and he has performed many marriages and that he has performed marriage of the Petitioner and Respondent No.1 on 25th November 2019.

23. The contents of the said Affidavit dated 14th April 2022 of said Kazi has been substantiated as the said register (Nikah Nama Book) has been produced by the Respondent No.1 before the learned Trial Court, wherein as far as the concerned Certificate is concerned, the office copy of the same was not found. Thus, the contents of above said Affidavit dated 14th April 2022 are completely substantiated by the conduct of the Respondent No.1 by which he has produced the said Nikanama Register before the learned Trial Court. The said Nikah Nama Registrar

should have been in the custody of said Kazi - Tajuddin Sardar Bagwan Kolhapuri.

24. It is significant to note that the learned Appellate Court while recording that there is doubt regarding the said marriage, has completely ignored the Affidavit of witnesses to the marriage i.e. Affidavit of Furkan Anwar Khan and Affidavit of Farhan Mohammad Kazi. There is no contradiction with respect to the said Affidavit and no contradictory Affidavits are filed by them.

25. Thus, the position on record *prima facie* clearly shows that marriage has been performed between the Petitioner and Respondent No.1. The Respondent No.1 is politically influential person in the said locality as he was at the relevant time Upa-Sarpanch and the Member of Gram Panchayat. The Respondent No.1 also is a construction contractor and therefore financially also very sound.

26. In view of the above position, it is relevant to note the decision of ***Mohammed Salim*** (supra) as submitted by learned *Amicus Curiae* and more particularly on Paragraph Nos.24 and 25 of the same, which reads as under :-

“24. We find that the same position has been reiterated in the 21st Edn. of Mulla as follows. The distinction between void and irregular marriages has been dealt with in Section 264 at p. 349:

“(1) A marriage which is not valid may be either void or irregular.

(2) A void marriage is one which is unlawful in itself, the prohibition against the marriage being perpetual and absolute. Thus, a marriage with a woman prohibited by reason of consanguinity (Section 260), affinity (Section 261), or fosterage (Section 262), is void, the prohibition against marriage with such a woman being perpetual and absolute.

(3) An irregular marriage is one which is not unlawful in itself, but unlawful 'for something else', as where the prohibition is temporary or relative, or when the irregularity arises from an accidental circumstance, such as the absence of witnesses. Thus, the following marriages are irregular, namely:

(a) a marriage contracted without witnesses (Section 254);

(b) a marriage with a fifth wife by a person having four wives (Section 255);

(c) a marriage with a woman undergoing iddat (Section 257);

(d) a marriage prohibited by reason of difference of religion (Section 259);

(e) a marriage with a woman so related to the wife that if one of them had been a male, they could not have lawfully intermarried (Section 263).

The reason why the aforesaid marriages are irregular, and not void, is that in clause (a) the irregularity arises from an accidental circumstance; in clause (b) the objection may be removed by the man divorcing one of his four wives; in clause (c) the impediment ceases on the expiration of the period of iddat; in clause (d) the objection may be removed by the wife becoming a convert to the Mussalman, Christian or Jewish religion, or the husband adopting the Moslem faith; and in clause (e) the objection may be removed by the man divorcing the wife who constitutes the obstacle; thus, if a man who has already married one sister marries another, he may divorce the first, and make the second lawful to himself."

(emphasis supplied)

25. *The effect of an irregular (fasid) marriage has been dealt with in Section 267 at pp. 350-51 of the 21st Edn. of Mulla as follows:*

“267. Effect of an irregular (fasid) marriage.—(1) An irregular marriage may be terminated by either party, either before or after consummation, by words showing an intention to separate, as where either party says to the other “I have relinquished you”. An irregular marriage has no legal effect before consummation.

(2) If consummation has taken place—

(i) the wife is entitled to dower, proper or specified, whichever is less (Sections 286, 289);

(ii) she is bound to observe the iddat, but the duration of the iddat both on divorce and death is three course [see Section 257(2)];

(iii) the issue of the marriage is legitimate. But an irregular marriage, though consummated, does not create mutual rights of inheritance between husband and wife....”

(Emphasis added)

27. The learned *Amicus Curiae* on the basis of the factual position and on the basis of the documentary evidence has submitted that there is *prima facie* evidence of marriage. The marriage is either valid or irregular marriage, however, the same gives status of wife to the Petitioner. It is further submitted by her that whether the marriage is valid or irregular is a matter of trial.

28. Thus, *prima facie* there is sufficient evidence to show that the marriage has been performed between the Petitioner and Respondent No.1 on 25th November 2019. In fact, the material on record also

shows that the marriage is valid marriage. The material on record further shows that the Respondent No.1 has attempted to ensure that the evidence regarding marriage is destroyed and also he has pressurized the witnesses with the help of other politically influential persons.

29. In view of the above position, it is necessary to consider submission of Mr. Salunkhe, learned Counsel for the Respondent Nos.1 to 3. He has pointed out Sections 2(a), 2(f) and 2(s) of the DV Act, which read as under:

“2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “aggrieved person” means any woman 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;

...

(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;

...

(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a

household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;”

30. On the basis of the above provisions, it is the submission of Mr. Salunkhe, learned Counsel that the Petitioner is not the aggrieved person. He has also relied on the decision of the Supreme Court in *D. Velusamy* (supra) and more particularly on Paragraph No.31 of the same, which reads as under:

“31. In our opinion a “relationship in the nature of marriage” is akin to a common law marriage. Common law marriages require that although not being formally married:

- (a) The couple must hold themselves out to society as being akin to spouses.*
- (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.*

(See “Common Law Marriage” in Wikipedia on Google.)

In our opinion a “relationship in the nature of marriage” under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a “shared household” as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a “domestic relationship”.”

31. It is significant to note that the above Paragraph on which Mr. Salunkhe, has heavily relied is concerning the relationship in the nature

of marriage. In the present case, there is sufficient documentary evidence to show that the marriage has been performed between the Petitioner and Respondent No.1. In any case the material on record shows that the above parameters are also fulfilled.

32. It is the submission of Mr. Salunkhe, learned Counsel on the basis of Sections 2(a), 2(f) and 2(s) of the DV Act that the Petitioner is not in a domestic relationship with the Respondent No.1. He submitted that 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 marriage or through relationship in nature of marriage. He submitted that share household means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent. He submitted that as at no point of time Respondent No.1 has stayed with the Petitioner together it cannot be said that she was staying in a share household and therefore she can be termed as aggrieved person as per the provisions of the DV Act.

33. However, it is required to be noted that even the learned Sessions Judge has also observed that both the Petitioner and Respondent No.1 were staying together at Kolhapur and the contention regarding residence at Peth Naka, Islampur was raised just for the purpose of contending that Islampur Court has jurisdiction.

34. It is required to be noted that the Petitioner has come up with a specific case that after the marriage the Petitioner has acquired premises on rental basis at Kolhapur and he was staying along with her in the said premises. It is further stated that although initially the Respondent No.1 took the Petitioner at the premises at Peth Naka, Islampur, however, thereafter the Respondent No.1 due to opposition of Respondent Nos.2 and 3 have refrained to take Petitioner to Peth Naka, Islampur.

35. As already noted herein above, the Petitioner is a politically influential person as he was Upa-Sarpanch and also financially sound as he is a building contractor. The manner in which he has tried to destroy the evidence regarding marriage shows that his version is not believable.

36. It is also required to be noted that the Petitioner's sister was married about 12 years back and she stays at Peth Naka, Islampur and the Petitioner came in contact with Respondent No.1 as she used to go to Peth Naka, Islampur at her sister's place and thereafter the love relationship developed between them and the marriage between the Petitioner and Respondent No.1 took place on 25th November 2019.

37. In this background of the matter, it is required to note the contention which the Respondent No.1 has raised. He has stated that during the period of lockdown due to COVID-19 pandemic the

Respondent No.1 came in contact with Petitioner through Facebook communication.

38. The overwhelming evidence on record shows that the marriage between the Petitioner and the Respondent No.1 took place on 25th November 2019 which is much prior to the said COVID-19 pandemic. Thus, it is clear that *prima facie* the Respondent No.1 has come with a totally a false case and therefore his version is not be reliable. One of the reason given by the learned Appellate Court to set aside the order of the learned Trial Court is that although the Petitioner was staying at Kolhapur, she has raised contentions regarding stay at Peth Naka, Islampur just to bring the case filed under DV Act under the jurisdiction of Islampur Court. Admittedly, Respondent Nos.1 to 3 are staying at Peth Naka, Taluka-Walwa, District-Sangli, Islampur i.e. under the jurisdiction of Islampur Court.

39. In the above background, it is necessary to see Section 27 concerning jurisdiction, which reads as under:

“27. Jurisdiction.—(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.”

(Emphasis added)

40. Thus, as per Section 27 of the DV Act various Courts have jurisdiction including the Court where the Respondent resides. Thus, Islampur Court has, in any case jurisdiction to decide the case as the Respondent Nos.1 to 3 are admittedly staying at Peth Naka, Taluka-Walwa, District-Sangli which is in the jurisdiction of the Islampur Court. Thus, case is made out for interference in the impugned Order.

41. Perusal of the record shows that the Petitioner is a politically influential person and he is also financially sound. It is required to note that it is the contention of the Petitioner that Respondent No.1 is earning Rs.2,00,000/- per month, whereas it is the contention of the Respondent No.1 that he is earning Rs.10,000/- per month. Although there is no documentary evidence produced before the Court however, the Respondent at the relevant time was the Upa-Sarpanch and the Member of Gram Panchayat and he is having a four-wheeler car and a scooter. He is admittedly a contractor. Thus, in the facts and circumstances, Rs.10,000/- per month is awarded to the Petitioner towards the maintenance as well as the rent. The said payment be paid on or before the 10th day of each succeeding month. Arrears, if any, to

be paid within a period of 3 months.

42. Accordingly, both the Writ Petitions are allowed in above terms with no order as to costs.

43. It is clarified that the observations in this Order are *prima facie* observation and the said DV case be disposed of by the learned Trial Court without influenced by the *prima facie* observations made in this order.

44. This Court places on record its appreciation for the assistance rendered by Ms. N. S. Baig, learned *Amicus Curiae*.

[MADHAV J. JAMDAR, J.]