

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 656 OF 2014

Pandit S/o Vyankat Gawali

Age : 47 Yrs., Occ. Govt.Service,

R/o : Karajgaon, Tq. Ausa,

Dist. Latur.

.... PETITIONER

V E R S U S

Sunita W/o Mahesh Suryawanshi

Age : 38 Yrs., Occ. Service,

R/o : Karajgaon, Tq. Ausa,

Dist. Latur.

.... RESPONDENT

.....

Mr. S.V.Warad, Advocate for Petitioner.

Mr. A.N.Irpatgire, Advocate for Respondent.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 11th AUGUST, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally by the consent of the learned counsel for the parties.

2. Heard Mr. S.V.Warad, learned counsel for the Petitioner and Mr. A.N.Irpatgire, learned counsel for the Respondent.

3. Challenge in the present Writ Petition is the following part of the operative Order in the Judgment dated 11/11/2013 in Criminal Appeal No. 3/2012 passed by the learned Sessions Judge, Latur :

“ It is however made clear that till the final hearing of the matter, the present respondent is entitled to recover the maintenance as per the direction of the learned Judicial Magistrate First Class from the appellant, as interim maintenance ”.

4. Present respondent filed Misc. Application No. 7/2011 on the file of learned Judicial Magistrate First Class,

Ausa u/s 12 of the Protection of Women from Domestic Violence Act, 2005. The only prayer in the said application was for maintenance.

5. In spite of the service of the notice of the said proceedings, for the reasons best known to the petitioner, he remained absent requiring the learned Magistrate to pass order on 16/09/2011. By the said order, learned Magistrate directed the petitioner to pay ₹ 1,500/- [Rupees One Thousand Five Hundred] per month to the respondent by way of maintenance.

6. Aforesaid Judgment and Order was questioned before the appellate Court by the petitioner by filing Criminal Appeal No. 3/2012. It was pointed out by the present petitioner before the learned appellate Court that the relations between the petitioner and respondent are not of husband and wife and, therefore, the application itself was not maintainable. Learned appellate Court, after hearing the parties to the said Appeal, was pleased to allow the Appeal and the order passed by the learned Judicial Magistrate First Class on 16/09/2011 was set aside and the

matter was remanded back to the learned Magistrate for fresh hearing on merit. While remanding the matter, after setting aside the Judgment and order passed by the learned Magistrate, learned appellate Court has observed, which is reproduced in paragraph No. 3 of this Judgment.

7. It is stated before this court by both the learned counsel that after the remand, petitioner has appeared and he has already filed his Written Statement. Learned counsel for the petitioner has invited my attention to the authoritative pronouncement of the Hon'ble Apex Court in **Indra Sarma Vs. V.K.V.Sarma, 2014 ALL MR (Cri.) 319 (S.C.).**

Paragraph No. 38 of the said Judgment is as under :

“ Section 2 (f) of the D.V.Act though uses the expression “two persons”, the expression “aggrieved person” under section 2 (a) takes in only “woman”, hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the D.V.Act ”.

8. In the present case, since the very relationship between the petitioner and respondent is in question and the matter is still subjudiced before the learned Magistrate, in my view, the observations which are impugned in the present Writ Petition were clearly unwarranted by the learned appellate Court. In that view of the matter, present Writ Petition needs to be allowed. That leads me to pass the following order.

ORDER

- (i) Present Criminal Writ Petition is allowed.
- (ii) Observations made in the last paragraph of the operative Order in the Judgment dated 11/11/2013 in Criminal Appeal No. 3/2012 passed by the learned Sessions Judge, Latur is hereby quashed and set aside.
- (iii) Learned Judicial Magistrate First Class, Ausa is hereby directed to dispose of Misc. Application No. 7/2011 within a period of six months from the date of appearance by both the parties.

- (iv) Both the learned counsel for the parties undertake before this Court that the petitioner and respondent will appear before learned Judicial Magistrate First Class, Ausa on 27/08/2015.
- (v) Needless to mention, all the points raised by the respective parties are kept open.
- (vi) Rule is made absolute in above terms.

[V.M.DESHPANDE, J.]