

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4196 OF 2012

1. Mrs. Dimple Jatin Khanna @
Dimple Rajesh Khanna @ Mrs.
Dimple Khanna
Indian Adult Inhabitant age 55 years
Residing at Vardanashirwad, Carter
Road, Bandra (West), Mumbai-50

2. Mrs. Twinkle Rajiv Bhatia @
Twinkle Akshay Kumar @ Twinkle
Jatin Khanna @ Twinkle Rajesh
Khanna, Indian Adult Inhabitant
age 39 years Residing at Palm Beach
Apartments, Ground Floor, Gandhi
Gram Road, Juhu, Mumbai – 49.

...Petitioners

Versus

1. Anita Advani
Indian Adult, Indian Inhabitant,
residing at Flat No.504, B-Wing, 5th
Floor, Marain House, 29th Road
Bandra (West), Mumbai 400 050.

2. State of Maharashtra
Through Public Prosecutor, High
Court, Criminal Appellate Side.

...Respondents

WITH
CRIMINAL WRIT PETITION NO.4197 OF 2012

Rajiv Hari Om Bhatia @ Akshay
Kumar, Indian Adult Inhabitant age
45 years Residing at Palm Beach,
Plot No.1, Gandhi Gram Road, Juhu,

Mumbai – 400 049.

...Petitioner

Versus

1. Anita Advani
Indian Adult, Indian Inhabitant,
residing at Flat No.504, B-Wing, 5th
Floor, Marain House, 29th Road
Bandra (West), Mumbai 400 050.

2. State of Maharashtra
Through Public Prosecutor, High
Court, Criminal Appellate Side.

...Respondents

Mr. Shirish Gupte, Senior counsel i/b I.C. Legal
for Petitioners in Cri.W.P. No.4196 of 2012

Mr. Mahesh Jethmalani, Senior counsel a/w
Mr. Edith Dey i/b I.C. Legal for Petitioner in
Cri.W.P. No.4197 of 2012.

Smt. Mrunalini Deshmukh a/w Smt. Seema
Sarnaik and Ms Kanupriya Kejariwal i/b M/s.
Ranjit and Company for Respondent No.1 in both
the petitions.

Shri V.B.K. Deshmukh, APP for Respondent No.2-
State in both the petitions.

CORAM:-M.L. TAHALIYANI, J.

**DATE ON WHICH THE JUDGMENT IS
RESERVED : 8th APRIL, 2015.**

**DATE ON WHICH THE JUDGMENT IS
PRONOUNCED : 9th APRIL, 2015.**

ORAL JUDGMENT :-

Heard learned Senior counsel for Petitioners and Smt. Mrunalini Deshmukh for Respondent No.1 and learned APP Shri V.B.K. Deshmukh for Respondent No.2- State.

2. The Petitioners in all the petitions have moved this Court for quashing the proceedings pending against them in the Court of Metropolitan Magistrate, 9th Court, Bandra, Mumbai, bearing C.C. No. 25/DV/2012 filed by Respondent No.1 under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act')

3. Petitioner No.1 – Mrs. Dimple Jatin Khanna @ Dimple Rajesh Khanna and Petitioner No.2 Mrs. Twinkle Rajiv Bhatia in writ petition No.4196 of 2012 are widow and daughter respectively of the deceased Rajesh Khanna (hereinafter referred to as 'Petitioner Nos. 1 and 2'). The Petitioner in writ petition No.4197 of 2012 (hereinafter referred to as 'Petitioner No.3') is the husband of Petitioner No.2 in writ petition No.4196 of 2012. In this regard it may be mentioned here that there was third similar petition also filed by Mrs. Rinke Samir Saran @ Rinke Jatin Khanna bearing petition No.4228 of 2012. She is also daughter of the deceased Rajesh Khanna. However, during

the course of hearing of petitions a statement was made on behalf of Respondent No.1 that she does not press for any relief against the Petitioner in petition No.4228 of 2012. Said petition was therefore, disposed of accordingly. As such, only two petitions are pending for disposal.

4. Late Shri Rajesh Khanna was staying in his bungalow known as “Aashirwad”, situated at Cartar Road, Bandra, Mumbai. It is admitted position that Petitioner No.1 was not staying with the deceased since few years before the date of death of the deceased Rajesh Khanna, who died on **18-7-2012**. It is further admitted position that Petitioner Nos.2 and 3 are daughter and son-in-law, respectively of Petitioner No.1 and the deceased Rajesh Khanna.

5. The Respondent No.1 Anita Advani has filed a complaint in the Court of Metropolitan Magistrate, 9th Court, Bandra, claiming that she had lived together with the deceased Rajesh Khanna in a shared household and she was in relationship with him in the nature of marriage. It is stated by her that she stayed with the deceased till 22-6-2012 when she was dis-housed from the 'Aashirwad' bungalow. It is stated by her in her complaint that she had stayed with the deceased

as his wife and had taken care of his all the needs in good and bad times. According to her she did not leave the company of the deceased even when his health was deteriorating and he was sinking. It is alleged by her that the Petitioners reached the bungalow only when they realised that the deceased was not likely to live for more than a few days. It is further alleged that Petitioners have reached 'Aashirwad' bungalow only with a view to dis-house the Respondent No.1 and to grab the property belonging to the deceased Rajesh Khanna. She has therefore, claimed reliefs under sections 18, 19 and 20 of the Act. Her prayer clause in the complaint can be reproduced as under :-

“(a) This Hon'ble Court may be pleased to pass a Permanent Perpetual protection order in favour of Complainant/Applicant restraining and prohibiting the respondent from

- (i) committing any further act of domestic violence upon the complainant;
- (ii) aiding or abetting in the commission of acts of domestic violence upon the complainant ;
- (iii) Threatening the Complainant in any form, whatsoever,
- (iv) Obstructing the complainant from having free ingress and egress into the residence at Aashirwad Bungalow, Carter Road, Bandra (West), Mumbai 400 050 and residing therein;
- (v) Restrain the Respondents from alienating any assets, operating bank lockers or bank accounts used or held by Mr. Rajesh Khanna without the leave of this Hon'ble Court;
- (vi) Causing violence to the dependents, other relatives or any person who give the complainant assistance from domestic violence;

(b) This Hon'ble Court may be pleased to pass a permanent

perpetual Residence order in favour of the Complainant /Applicant

(i) Restraining and prohibiting the respondent from dispossessing or in any other manner disturbing the possession of the Complainant from the shared household at Aashirwad Bungalow, Carter Road, Bandra (West), Mumbai 400 050.

(ii) Restraining the respondent from alienating or disposing off the shared household or encumbering the shared household at Aashirwad Bungalow, Carter Road, Bandra (W), Mumbai- 400 050;

(iii) By an appropriate Order direct the respondent to secure an alternate Residential accommodation of same level as enjoyed by the complainant in the above mentioned shared household as alternate accommodation for the Complainant or to pay costs for the same, if the circumstances so require:

(iv) direct the Respondents to execute a bond, with or without sureties, for preventing the commission of domestic violence upon the complainant.

(v) to direct the officer in charge of Bandra police station to give protection to the Complainant or to assist the complainant in the implementation of the above orders;

(vi) to direct the respondent to return to the possession of the complainant her personal belongings and personal effects jewellery clothes and apparels and other movable properties belonging to the complainant lying at Aashirwad Bungalow, Carter Road, Bandra (West), Mumbai 400-050;

(c) This Hon'ble Court may be pleased to pass a monetary relief order in favour of the Complainant /Applicant

(i) directing the Respondents to pay to the Complainant an amount of Rs.10,00,000/- Rupees Ten Lakhs only as monetary relief to meet the expenses incurred on account of bodily pain, harm caused by the Respondents and to compensate for loss caused due to forcible and illegal eviction from the Residence and the resultant mental Agony, anguish, danger to life, health and impairment of the health, injury and damages suffered by the complainant;

(ii) directing the Respondents to pay to the Complainant

- an amount of Rs.50,00,000/- Rupees Fifty Crores Only as and by way of lump sum payments to meet the cost and expenses for securing same level of alternate accommodation for residence of the complainant as enjoyed by the complainant in the shared household;
- (d) pending the hearing and final disposal of the above complainant this Hon'ble Court may be pleased to order and direct the respondents ;
- (di) a protection order in favour of the Complainant /Applicant ;
 - (dii) directing the Respondents to permit the complainant to stay in the Aashirwad Bungalow Carter Road, Bandra (West), Mumbai 400050 or in the alternate secure same level of alternate accommodation for residence of the complainant as enjoyed by the complainant in the shared household; and thereafter restrain the Respondents from obstructing free ingress and egress into the said residence and residing therein;
 - (diii) Restraining and prohibiting the Respondents from committing any act of domestic violence upon the complainant; or aiding or abetting thereof;
 - (div) restrain the Respondents from threatening the Complainant in any form, whatsoever;
 - (dv) Restrain the Respondents from alienating or disposing any assets, operating bank lockers or bank accounts used or held by Mr. Rajesh Khanna and or disposing off or encumbering the shared household without the leave of this Hon'ble Court.
 - (dvi) Directing respondent to secure an alternate Residential accommodation of same level as enjoyed by the complainant in the above mentioned shared household as alternate accommodation for the complainant or to pay costs for the same, if the circumstances so require;
 - (dvii) direct the Respondents to execute a bond, with or without sureties, for preventing the commission of domestic violence upon the complainant;
 - (dviii) direct the officer in charge of Bandra police station to give protection to the Complainant or to assist the complainant in the implementation of the above orders;
 - (dix) Direct the respondent to return to the possession of the complainant the complainant personal belongings and

personal effects jewellerys clothes, and apparels and other movable properties belonging to the complainant lying at Aashirwad Bungalow, Carter Road, Bandra (West), Mumbai 400-050.

(dx) Direct the Respondents to pay to the Complainant an amount of Rs.10,00,000/- Rupees Ten Lakhs only as monetary relief to meet the day to day maintenance expenses of the complainant;

(e) That costs of this complaint and further proceeding may be granted in favour of the complainant;

(f) This Hon'ble Court may be pleased to grant and pass such other and further orders and reliefs as may deem fit in the nature and circumstance of the case;

6. Though the application under section 12 of the Act filed by Respondent No.1 runs into few pages and gives details of her relationship with the deceased Rajesh Khanna, it is not necessary to reproduce the same in the present order. The facts in brief mentioned hereinabove and the prayer clauses of the application of Respondent No.1 are, in my opinion, sufficient enough to give clear picture of the case of Respondent No.1 before the learned Magistrate.

7. On filing of such application the order which is impugned in the present petitions was passed by the learned Additional Chief Metropolitan Magistrate on 7-11-2012, which can be reproduced as under :-

“Presented today by the Applicant. Issue show
cause notices to the Respondents.”

8. The Petitioners are aggrieved by this order. It is the case of the Petitioners that they had never been in the domestic relationship with Respondent No.1 and therefore, she cannot claim any relief against them. It is further submitted that there was no relationship between Respondent No.1 and the deceased in the nature of marriage. Learned senior counsel for the Petitioners Mr. Shirish Gupte and Mr. Mahesh Jethmalani have submitted that even if the application is taken to be true and correct it does not disclose that Respondent No.1 was ever having any relationship with the deceased in the nature of marriage. It is contended that therefore she cannot claim any relief under the Act. In addition to this, it is also submitted that none of the Petitioners are Respondents within the meaning of 'Respondent' as defined under section (q) of the Act. The learned counsel have submitted that the Respondent No.1 cannot take refuge under proviso to section 2 (q) of the Act. What is contended is that Respondent No.1 could not have dragged the Petitioners to Court on the ground that they were relatives of the alleged male partner of Respondent No.1

9. Learned counsel Mr. Jethmalani has submitted that the aggrieved person has to prima facie show that she was in domestic relationship. In the present case Respondent No.1 was under obligation to demonstrate in her application that she had relationship with the deceased in the nature of marriage. Unless this condition is fulfilled, the application could not have been entertained by the learned Magistrate. According to him, show cause notice issued by the Magistrate amounted to abuse of process of Court and needs to be redressed by this Court in exercise of its powers under section 482 of the Criminal Procedure Code.

10. Learned counsel Smt. Mrunalini Deshmukh has submitted that the application made by the Respondent No.1, prima facie, discloses that she was having relationship with the deceased in the nature of marriage and therefore, this Court may not exercise its powers under section 482 of the Criminal Procedure Code to quash the order of the learned Magistrate. It was submitted by her that the inherent powers are to be exercised sparingly and in rarest of the rare cases. According to her, application describes in detail as to how Respondent No.1 had served the deceased Rajesh Khanna for years and as to how the Petitioners had neglected the deceased. Learned

counsel has brought to my notice that Respondent No.1 has alleged that Petitioners reached 'Aashirwad' bungalow only when they realised that if they did not meet the deceased they would lose the property which stood in the name of the deceased. Smt. Deshmukh has submitted that whether Respondent No.1 had relationship with the deceased in the nature of marriage or not is a question of fact which needs to be determined by the Trial Magistrate and therefore, this Court may not intervene at this stage and may not permit the Petitioners to invoke powers of this Court under section 482 of the Criminal Procedure Code. She has relied upon few judgments of Hon'ble Supreme Court to fortify her arguments that this is not a fit case where Court may exercise its powers under section 482 of Criminal Procedure Code. Judgments relied upon by Mrs. Deshmukh are :-

1. Pratibha V/s. Rameshwari Devi & Ors. II(2007)DMC 583 (SC)
2. State of Bihar V/s. Murad Ali Khan & Ors. AIR 1989 SC 1
3. Som Mittal V/s. Govt. of Karnataka AIR 2008 SC 1126
4. Baijnath Jha V/s. Sita Ram & Anr. AIR 2008 SC 2778
5. Sushil Suri V/s. CBI & Anr. AIR 2011 SC 1713

11. My attention was particularly invited to para 10 of the judgment of **Pratibha V/s. Rameshwari Devi & Ors.**¹. The relevant portion of the said para can be reproduced as under :

¹ II(2007)DMC 583 (SC)

10. Before parting with this judgment, we may also remind ourselves that the power under Section [482](#) of the Code has to be exercised sparingly and in the rarest of rare cases.”

12. Learned counsel for the Petitioners Mr. Shirish Gupte has relied upon mainly two judgments of Hon'ble Supreme Court. First judgment relied upon by the learned counsel for the Petitioners is in the case of **State of Hariyana & Ors. V/s. Bhajanlal & Ors**². The learned counsel has relied upon paragraph No. 102 of the said judgment, which can be reproduced as under :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article [226](#) or the inherent powers Under Section [482](#) of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not

² 1992 Supp (1) Supreme Court Cases 335

disclose a cognizable offence, justifying an investigation by police officers Under Section [156\(1\)](#) of the Code except under an order of a Magistrate within the purview of Section [155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section [155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. My attention was also invited to the judgment of Hon'ble Supreme Court in the matter of **Pepsi Foods Ltd. & Anr. V/s. Special Judicial Magistrate & Ors**³. The Hon'ble Supreme court while dealing with the powers of High Court under section 482 of Criminal Procedure Court has said as under :

³ reported at 1998 5 SCC 749

“22. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and Ors. v. Bhajan Lal and Ors. MANU/SC/0115/1992 : 1992CriLJ527 , this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226” (emphasis supplied)

14. As such, after having gone through the judgments of Hon'ble Supreme Court cited by the learned counsel for the Petitioners and the learned counsel for Respondent No.1, one thing is clear that the proceedings pending before the Magistrate can be quashed if

allegations made in the application under section 12 of the Act in their entirety do not prima facie constitute a case to be entertained under section 12 of the Act.

15. In view thereof, what is necessary to be examined is as to whether learned Magistrate was justified in issuing show cause notice to the Petitioners on the application made by Respondent No.1. It is not necessary to be stated here that notice could have been issued only when the application discloses a prima facie case for entertaining application under section 12 of the Act. In the present case learned senior counsel Mr. Mahesh Jethmalani and Mr. Shirish Gupte have invited my attention to the judgment of Hon'ble Supreme Court in the case of **D. Velusamy Vs. D. Patchaiammal**⁴ to support the contention of the petitioners that the relationship, if any, of the respondent no. 1 with the deceased was not akin to marriage. Paragraph Nos. 31, 32 and 33 of the said judgment 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.

4 (2010) 10 SCC 469

(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'.

32. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'

33. No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live in relationship'. The Court in the grab of interpretation cannot change the language of the statute."

16. Learned counsel for Petitioners have also relied upon the judgment of Hon'ble Apex Court in the case of **Indra Sarma Vs. V.K.V. Sarma** (Criminal Appeal No.2009 of 2013). The observations made by the Hon'ble Supreme Court in the said judgment at paragraph Nos. 61, 62, 63 and 66 can be reproduced as under

“ 61. Such relationship, it may be noted, may endure for a long time and can result pattern of

dependency and vulnerability, and increasing number of such relationships, calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship. Legislature, of course, cannot promote pre-marital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against. See *S.Khushboo v. Kanniammal and another* (2010) 5 SCC 600.

62. Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage.

63. We may now consider whether the tests, we have laid down, have been satisfied in the instant case. We have found that the appellant was not ignorant of the fact that the respondent was a married person with wife and two children, hence, was party to an adulterous and bigamous relationship. Admittedly, the relationship between the appellant and respondent was opposed by the wife of the respondent, so also by the parents of the appellant and her brother and sister and they knew that they could not have entered into a legal marriage or maintained a relationship in the nature of marriage. Parties never entertained any intention to rear children and on three occasions the pregnancy was terminated. Having children is a strong circumstance to indicate a relationship in the nature of marriage. No evidence has been adduced to show that the parties gave each other mutual support and companionship. No material has been produced to show that the parties have ever projected or conducted themselves as husband and wife and treated by friends, relatives and others, as if they are a married couple. On the other hand, it is the specific case of the appellant

that the respondent had never held out to the public that she was his wife. No evidence of socialization in public has been produced. There is nothing to show that there was pooling of resources or financial arrangements between them. On the other hand, it is the specific case of the appellant that the respondent had never opened any joint account or executed any document in the joint name. Further, it was also submitted that the respondent never permitted to suffix his name after the name of the appellant. No evidence is forthcoming, in this case, to show that the respondent had caused any harm or injuries or endangered the health, safety, life, limb or well-being, or caused any physical or sexual abuse on the appellant, except that he did not maintain her or continued with the relationship.

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64.

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66. We have, on facts, found that the appellant's status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation.”(emphasis supplied)

17. Learned counsel for the Petitioners brought to my notice that the marriage between the deceased Rajesh Khanna and the Petitioner No.1 Dimple Khanna was not terminated and was in

existence. It was submitted that having knowledge of the fact that the deceased had a wife, who was living separately, respondent no. 1 claimed to have entered into relationship with the deceased Rajesh Khanna. It is submitted that the relationship of Respondent No.1 with the deceased was not in the nature of marriage. Though both of them were of legal age to marry they were not qualified to enter into legal marriage. They had never held themselves out to the world as being spouses. It is therefore, contended that the relationship, if any, between the deceased and Respondent No.1 was not in the nature of marriage and that she therefore, was not entitled for any relief under the Act. learned Senior counsel Mr. Mahesh Jethmalani has submitted that though the petitioners have sympathy for Respondent No.1, the issues in question are to be decided on the basis of law and the case law laid down by the Hon'ble Supreme Court. My attention was again invited to para 32 of the judgment of Hon'ble Supreme Court in the case of **D. Velusamy Vs. D. Patchaiammal** where the Apex Court has said that to get benefits under the Act all the conditions mentioned by Apex Court in the said judgment must be satisfied. It is also said by the Apex Court that if a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not be a relationship in the nature of marriage. My attention

was invited to two phrases used by the Apex Court i.e. “relationship in the nature of marriage” and “live in relationship”. Law extends protection to the aggrieved person having “relationship in the nature of marriage” and not the persons having “live in relationship” The Apex Court has said that Court cannot change the language of statute under the garb of interpretation.

18. It is thus, obvious that the Applicant /Respondent No.1 was under obligation to *prima facie* demonstrate that she had relationship with the deceased in the nature of marriage. If that was lacking in the application, learned Magistrate could not have issued notices to the petitioners. In my considered opinion the Respondent No.1 has failed to show from her application that she had relationship with the deceased in the nature of marriage. I have therefore, come to the conclusion that no case was made out for issuing notices to the Petitioners.

19. There is another aspect which needs to be considered in the present petitions. The word, "respondent" has been defined in section 2(q) of the Act as under :

“(q) “respondent” means any adult male person who

is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:"

20. In the present case deceased Rajesh Khanna was the adult male person with whom Respondent No.1 claimed to have domestic relationship. The petitions under section 12 of the Act are filed against the Petitioners in the Court of Magistrate by virtue of proviso to section 2 (q) of the Act which runs as under :-

“Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.”

21. No doubt the present Petitioners are relatives of the deceased Rajesh Khanna. The question which arises for determination is as to whether the present proceedings could have been filed against them by taking advantage of the above stated proviso to section 2 (q) of the Act. It is admitted position that the Petitioners had never been staying in the shared household with the respondent no. 1. The Petitioner No.1 Dimple Jatin Khanna has been admittedly staying away from the bungalow 'Ashirwad' since last many years. Petitioner No.2 Twinkle Khanna is married and she is staying with her husband petitioner no. 3 in her matrimonial house at Gandhi Gram Road, Juhu,

Mumbai. As such, briefly stated, the Petitioners had never shared common household with the Respondent No.1. Grievance, if any, of Respondent No.1 could have been against the deceased Rajesh Khanna. Had the deceased been alive at the time of filing of complaint and had the Petitioners living together with the deceased, probably, there could have been a cause for Respondent No.1 to file a complaint under section 12 of the Act against the petitioners. The proceedings of present nature could not have been filed against the Petitioners only because they are relatives of the deceased Rajesh Khanna.

22. In my opinion, this is a fit case where this Court shall exercise powers under section 482 of Criminal Procedure Code. If this is not a fit case for exercise of inherent powers, to my mind, there could not be any other conceivable case to exercise such powers.

23. The result is that the petitioners succeed and both the petitions are allowed. Proceedings pending before the learned Metropolitan Magistrate, 9th Court, Bandra against the petitioners vide case No.25/DV/2012 shall stand quashed.

24. Both the criminal writ petitions stand disposed of accordingly.

25. Learned counsel Smt. Sarnaik for Respondent No.1 prays for stay on this order for a period of six weeks. In my opinion, stay on the order will not serve any purpose and therefore, I am not inclined to grant the prayer. Prayer stands rejected.

(JUDGE)