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

CRIMINAL WRIT PETITION NO. 56 OF 2016

1. Shardabai w/o Prakash Pawar,
Age: 41 years, Occu: Household,
R/o C/o Vishwanath Laxman Udhan,
House No. 4-5, Shambhu Nagar,
Aurangabad, Dist. Aurangabad
2. Shivaji S/o Prakash Pawar,
Age: 25 years, Occu: Education,
R/o House No. 4-5, Shambhu Nagar,
Aurangabad, Dist. Aurangabad ..PETITIONERS

VERSUS

Prakash S/o Kashinath Pawar,
Age: 53 years, Occu: Agril.,
R/o Hatnoor, Tq. Kannad,
Dist. Aurangabad ..RESPONDENT

Mr R. R. Karpe, Advocate for petitioners;
Mr C. K. Shinde, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th April, 2016

ORAL ORDER :

Heard Mr Karpe, learned Counsel appearing on behalf of the petitioners and Mr Shinde, learned Counsel on behalf of the respondent.

2. The petitioner along with her son filed an application seeking benefits under sections 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short "DV Act"), in the Court of Judicial Magistrate First Class (4th Court), Aurangabad. It is claimed by petitioner

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no.1 – wife that she be provided rent of Rs.3,000/- or in alternate, two rooms house for her stay; Rs.5,00,000/- towards compensation; Rs.5,000/- towards maintenance of each of the petitioners and protection order.

3. After the present respondent was put to notice, he filed reply to the said claim and denied relationship with petitioner no.1.

4. The learned Magistrate thereafter proceeded to evaluate claim in the complaint. Petitioner no.1 examined herself at Exh.10 and the respondent filed a purshis at Exh.17, stating that he does not want to lead any evidence.

5. It is after considering the material that was placed on record, the learned Judicial Magistrate First Class (Court No.13), Aurangabad, by an order dated 17th July, 2010, passed in Misc. Application No.1254 of 2009, awarded amount of Rs.1,000/- per month towards residence (rent); Rs.2,000/- per month towards maintenance to petitioner no.1 and Rs.1,000/- to petitioner no.2 respectively, till he attains the majority, from the date of the application and Rs.50,000/- towards compensation.

6. Feeling aggrieved thereby, respondent moved an appeal under section 29 of the DV Act, which came to be allowed by judgment dated 1st December, 2015, passed by learned Additional Sessions Judge, Aurangabad. Thus, the present petition.

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7. While inviting attention of this Court to the order impugned, Mr Karpe would submit that the learned Additional Sessions Judge has recorded findings contrary to the case as was put-forth by the petitioners, in the matter of relationship of petitioner no.1 with respondent. While inviting attention of this Court to the provisions of section 2 (f) of the DV Act and relying upon the judgment of this Court in the matter of **Karimkhan Sailanikhan vs. State of Maharashtra & anr.**, reported in **2012 (2) Bom. C.R. (Cri.) 223**, particularly paragraph 11, he would submit that even if petitioner no.1 is held to be not legally wedded wife of the respondent, still the provisions under the DV Act are available to the petitioners. He would then submit that even if acquittal of the respondent is recorded in the proceedings under section 498-A of the Indian Penal Code and application under section 125 of the Code of Criminal Procedure, moved on behalf of petitioners is rejected, the provisions of DV Act are very much available and there is no embargo on the rights of the petitioners to claim benefits therein.

8. Per contra, Mr Shinde, learned Counsel appearing on behalf of the respondent would strenuously urge that once it is brought on record that there was no relationship whatsoever between petitioner no.1 and respondent, the order of the learned Additional Sessions Judge must govern the field. He would then submit that it is not established from evidence of petitioner no.1 that the society has recognized her relationship with respondent and in view thereof, applicability of section 2 (f) of the DV

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Act is under serious doubt. The next submission is that once there is an acquittal for offence punishable under section 498-A of the Indian Penal Code and the Court below has denied the relief claimed under section 125 of the Code of Criminal Procedure, yet the same is required to be considered while evaluating the claim under the DV Act, which according to him, is rightly rejected by the learned Additional Sessions Judge.

9. After inviting attention of this Court to the judgment in the matter of **Indra Sarma vs. V.K.V. Sarma**, reported in **2014 (1) Bom. C.R. (Cri.) 496**, learned Counsel would submit that once the relationship is not established, particularly which should be through a relationship in the nature of marriage, remedy under DV Act is not available to the petitioners.

10. With the assistance of the respective Counsel, I have gone through the pleadings in the complaint under DV Act, the reply filed by respondent Prakash and other respondents and the evidence of petitioner no.1.

11. From the record, it depicts that petitioner no.1 has entered into witness box so as to substantiate her claim under the provisions of DV Act. In my opinion, in her evidence as was discussed by both the Courts below, she had specifically narrated about her physical relationship with the respondent and birth of petitioner no.2 Shivaji from the same. Though in her evidence she was unable to narrate certain stray incidents as regards neighbourhood and other issues, in my opinion, same will be of hardly any consequence while considering the claim under the DV Act.

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12. This Court must take judicial note of the fact that respondent, though had filed written statement denying the relationship with petitioner no.1, said denial is on verification. The pleadings therein cannot be accepted in absence of specific denial but are vague. It is then required to be noted that the respondent had not entered the witness box so as to substantiate his defence as was raised by him in the written statement. As a consequence thereof, the learned Magistrate, while passing order in favour of the petitioners, has proceeded to evaluate their claim based on the evidence brought by petitioner no.1 on record.

13. The fact remains that the provisions of section 2 (f) of the DV Act covers "relationship" other than a valid marriage. The said section reads thus :-

""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"

14. What is required to be noted here is that while evaluating the claim under the DV Act, it is also required to be looked into whether there was domestic relationship as is prescribed under the above section. Upon perusal of the pleadings, it is also noted by me herein above, that petitioner no.1 has come out with a specific case that she was having relationship

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with the respondent, as a consequence whereof, petitioner no.2 Shivaji is born. She has also not suppressed the fact about first marriage of the respondent. As noted herein above, in view of vague defence raised by the respondent and he having not examined himself or any other witness in support of his claim, the testimony and the claim of petitioner no.1 is required to be accepted and it has to be concluded that her claim is very much covered under section 2 (f) of the DV act and there exists a domestic relationship between them.

15. Having regard to aforesaid observations, reliance placed by learned Counsel appearing on behalf of the respondent, on the judgment of Apex Court, in the matter of Indra Sarma (supra), is required to be analyzed. In the said case, while marriage of respondent was in subsistence, he had established relationship with one of his female colleagues, i.e. appellant who was posted with him in his office. It is then noted that when the appellant – lady with whom the respondent had live-in relationship, had initiated the proceedings under the DV Act, based on such relationship. The appellant - claimant in that case, a female, had entered into witness box before the Magistrate so as to establish her claim so also the respondent – male who had lived-in relationship with her. It is upon evaluating the claim and evidence as was brought before the Court, the Apex Court has given a verdict in favour of the respondent – husband on the aspect of section 2 (f) of the DV Act.

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16. If the above factual matrix and the law laid down is considered in the present case, by keeping in mind that the obiter of the Apex Court is also binding on this Court, it is to be noted that the respondent herein had not entered into witness box though had filed vague submissions in the form of written statement. In view of the same, in my opinion, the judgment in the matter of Indra Sarma (supra) will hardly be of any assistance to present respondent.

16. Learned Additional Sessions Judge, while dealing with the claim of the parties has observed that petitioner no.1 has failed to bring on record the lawful marriage/wedding with respondent and as such she is not entitled for the benefits under the DV Act, which in my opinion, does not appear to be the requirement of section 2 (f) of the DV Act.

17. In the light of what has been observed above, the judgment dated 1st December, 2015, rendered by the learned Additional Sessions Judge-4, Aurangabad, in Criminal Appeal (PWDVA) No.166 of 2010, is hereby set aside and the order dated 17th July, 2010, passed by Judicial Magistrate First Class, Aurangabad, in Misc. Application No.1254 of 2009 stands restored.

Criminal Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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