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

CRIMINAL WRIT PETITION NO. 1047 OF 2014

Mahamad Sharif Hanif Shaikh,
Age: 40 years, Occu: Business,
Near Police Station, Kallamb,
Tal. Kallamb, Dist. Osmanabad

..PETITIONER

VERSUS

Nasrin Mahamad Sharif Shaikh,
Age: 34 years, Occu: Household,
R/o. Near Devi Road Police Station,
Kallamb, At present Khaja Nagar,
Osmanabad, Tal. & Dist. Osmanabad
& ors.

..RESPONDENTS

Mr Mobin H. Shaikh, Advocate for petitioner;
Mr V. B. Deshmukh, Advocate for respondent No. 1

CORAM : N.W. SAMBRE, J.

DATE : 16th April, 2016

ORAL ORDER :

Heard respective parties.

2. Present petitioner is a non-applicant in Misc. Application No. 528 of 2009 preferred under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter shall be referred as the 'Act'). It is the case of the respondents that in view of the embargo pursuant to the Mohammedan law, the present petitioner, who was married to Ashiya- real sister of respondent No. 1, could not have maintained and lived with the present respondent No. 1 as husband and wife. It is then claimed that out of the relationship two children were born, who as such, are also not entitled for maintenance.

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3. The learned Chief Judicial Magistrate, Osmanabad, allowed the application by an order dated 1st August, 2011 ordering payment of monthly maintenance of Rs.1,000/- to respondent No. 1 and Rs. 1,000/- each to the respondent Nos. 2 and 3 alongwith Rs. 25,000/- towards compensation, which order was upheld in Criminal Appeal No. 84 of 2012 by the learned Ad-hoc Additional Sessions Judge, Osmanabad by his order dated 8th July, 2012. As such, present writ petition.

4. The learned Counsel appearing on behalf of the petitioner, while relying upon the provisions of Section 468 of the Code of Criminal Procedure, would urge that Act, which came into effect in 2005 and the incident in question, which is formed to be basis for invoking provisions of Act, has taken place prior to the said Act came into force. The learned Counsel placed reliance upon judgment of the Apex Court in the matter of **Indrajit Singh Grewal Vs. State of Punjab & anr.** reported in **2012 Cri. L.J. 309.**

5. While opposing the petition, learned Counsel appearing on behalf of respondent No. 1 submits that the petitioner is married to the real sister of respondent No. 1, however, he has developed relationship with respondent No. 1, out of which two children have born.

6. learned Counsel appearing on behalf of respondent No. 1 then would submit that, since the petitioner neglected to maintain her, provisions

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of the Act were invoked. According to him, even if, the issue of limitation is applicable, in view of continuing cause of action proceeded, is very much tenable.

7. Having bestowed my thoughts to the submissions made, it is required to be noted that present petitioner has claimed that he has married to real sister of respondent No. 1, who was examined in support of his claim. The real sister of respondent No. 1 Aashiya, though has stated that there was no relationship between respondent No. 1 and the petitioner, however, from the other evidence, as is placed on record, particularly the evidence of Shivaji Sopan Dhawne, who has produced *bonafide* certificates depicting name of the present petitioner as father of respondent No. 2 and 3. The evidence of Maya Damodhare, witness No. 3, who is head of Mahila Sahayya Kaksha, Osmanabad, has in clear terms stated relationship of present petitioner with respondent No. 1. In this background, in my opinion, both the Courts below are right in holding relationship of the petitioner with that of respondents herein, pursuant to the provisions of Section 12 of the Protection of Women from Domestic Violence Act.

8. It is then required to be noted that the alleged incident, as is narrated in the complaint is based on marriage which was performed some 13 years back resulting into birth of respondent Nos. 2 and 3. In my opinion, once, it is established that there exists a domestic relationship between petitioner with the respondent Nos. 1, 2 and 3, continuing cause

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of action is required to be inferred. It is then to be noted that the High Court of Bombay in catena of judgments has taken a view that Protection of Women from Domestic Violence Act can be made applicable retrospectively.

9. As such, issue of limitation, as sought to be canvassed by relying upon the judgment in the matter of **Indrajeet Singh Grewal** (cited supra), will be of hardly any assistance.

10. In the above background, present petition fails and stands dismissed.

(N.W. SAMBRE, J.)

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