

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.68 OF 2016

1. Mrs. Kalawati Seth,
w/o Mr. Rajendra Seth,
major of age, married,
resident of Flat No.34,
Monisha Tower, 4th Lane,
Lokhandwala Complex,
Mumbai 400 053.
2. Mr. Rajendra D. Seth,
major of age, married,
resident of Flat No.34,
Monisha Tower, 4th Lane,
Lokhandwala Complex,
Mumbai 400 053. ... Petitioners

Versus

Ms. Rekha Jha,
Major of age, D-Fox-2,
Dr. Almeida Complex,
Ponda, Goa ... Respondents

Mr. Ryan Menezes, Advocate for the petitioners.

Mr. S. Keny, holding for Mr. A. De Olivera, Advocate
under Legal Aid Scheme for the respondent.

Coram :- C. V. BHADANG, J.

Date :- 26th October, 2016

ORAL ORDER :

Heard the learned Counsel for the parties.

2. The petitioner no.2, is the respondent

before the learned Magistrate in proceedings under Protection of Women from Domestic Violence Act, 2005 (the Act, for short). The said proceedings are instituted by the respondent herein. The petitioners are seeking quashing of the said proceedings in Criminal Case No.59/OA/DVA/2011/B pending before the learned Judicial Magistrate, First Class, Ponda.

3. The case made out by the present respondent before the learned Magistrate is that the petitioner no.2 was earlier married to petitioner no.1. According to the respondent, that marriage was dissolved by a Deed of Divorce by mutual consent, executed on 18/07/2007. The respondent was also married previously, but she claims that her husband is dead. The respondent has sought various reliefs under the Act against the petitioner no.2. Admittedly, the trial before the Magistrate has commenced, in which the respondent has closed her side and the petitioner no.2 is leading his evidence.

4. On behalf of the petitioners, it is

contended that on her own saying, the respondent cannot be said to be in a 'domestic relationship' with the petitioner no.2. It is submitted that the marriage between the petitioner nos.1 and 2 cannot be said to be dissolved by a Deed of Divorce by mutual consent, as such a dissolution of marriage is not contemplated in law. It is submitted that the relationship between the petitioner no.2 and respondent also would not come within the ambit of relationship 'in the nature of marriage.' Strong reliance is placed on the decision of Hon'ble Supreme Court in the case of **D.Velusamy Vs. D. Patchaiammal**; [AIR 2011 SC 479], in order to submit that even assuming that the parties are in a 'live-in relationship', all live-in relationships cannot amount to relationship 'in the nature of marriage', as held by the Hon'ble Supreme Court. Reliance is also placed on the decision of the Supreme Court in the case of **Indra Sarma Vs. V.K.V. Sarma**; [2013 STPL (Web) 944 SC]. Reliance is also placed on the decision of **Dimple Jatin Khanna Vs. Anita Advani** of this Court in Criminal Writ Petition No.4196/2012,

decided on 09/04/2015.

5. I have carefully considered the circumstances and the submissions made.

6. There cannot be any dispute with the law as laid down by the Hon'ble Supreme Court in the case of **D. Velusamy** (supra). However, in the present case, the proceedings under the Act are filed by the respondent, way back in the year 2011 and the trial before the learned Magistrate is said to be at the fag end. It would be further significant to note that the matter about grant of interim relief had come before this Court in Writ Petition (Criminal) No.79/2013 at the instance of the petitioner no.2. This Court in para 17 of the judgment dated 11/04/2014, had found that *prima facie* relationship between the petitioner no.2 and the respondent is of husband and wife or at least 'in the nature of marriage'. The respondent claims that although she was married earlier, her husband is dead, which aspect is disputed on behalf of the petitioner no.2. There is also a question about the lawful

dissolution of marriage between the petitioner nos.1 and 2 on the basis of the Deed of Divorce by mutual consent. All these aspects are required to be gone into by the learned Magistrate while deciding the matter.

7. None of the cases, on which reliance is placed on behalf of the petitioners involve a claim for quashing of the proceedings. The case of **D. Velusamy** (supra) arose out of an application under Section 125 of the Code of Criminal Procedure. The case of **Indra Sarma** (supra) arose out of a final order passed by the Magistrate under the said Act. The case of **Dimple Khanna** (supra) also turned on its own facts. The petitioner had approached this Court immediately after the issuance of show cause notice.

8. Coming back to the present case and having regard to the fact that the petition is filed after a period of almost 5 years and that there is a *prima facie* finding already recorded by this Court in Writ Petition (Criminal) No.79/2013 and further having regard to the fact that the matter involves disputed

questions both of law and fact, I decline to entertain this petition, which is, accordingly, dismissed. Needless to mention that all the rival contentions of the parties are left open, to be gone into by the learned Magistrate.

9. At this stage, the learned Counsel for the petitioners states that the proceedings before the learned Magistrate may be expedited.

10. Having regard to the fact that the proceedings pertain to the year 2011 (which according to the provisions of the Act, have to be disposed of within a period of sixty days) and further having regard to the fact that they are part heard, the learned Magistrate shall decide the same as expeditiously as possible and preferably, within a period of six months from the date of receipt of this order.

C. V. BHADANG, J.

SMA