

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.121 OF 2017

1. Sangeeta Gorakhnath Kerkar
alias Sangeeta Giri
wife of Gorakhnath Kerkar,
C/o Mahabaleshwar Gaonkar,
Zuwarwada, Tivrem, Marcela
Goa
2. Suryjay alias Priyanshu
Gorakhnath Kerkar since
minor through Petitioner
No.1, i.e. his mother as
Natural Guardian Mrs.
Sangeeta Gorakhnath Kerkar
C/o Mahabaleshwar Gaonkar,
Zuwarwada, Tivrem,
Marcela Goa .. Petitioners.

Vs

1. Gorakhnath Kerkar, Major
of age, son of Mr. Suresh
Kerkar, Businessman,
owner of Suresh bar and
restaurant, opposite
Syngentha Co., Dhulapi-
Tiswadi-Goa, Permanent
resident of Thilaka
Residency, Dhulape,
Tiswadi-Goa .. Respondent.

Mr. Sagar Dhargalkar, Advocate for the petitioners.

Mr. S. Taleigaonkar, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

DATE : 15th November, 2017

ORAL ORDER :

The challenge in this petition is to the judgment and order dated 26/04/2016, passed by the learned Magistrate in proceedings under the Protection of Women from Domestic Violence Act, 2005 (Act, for short), dismissing the application filed by the petitioners, which order has been confirmed by the learned Sessions Judge in Appeal.

2. Admittedly, the petitioner no.1 during subsistence of her marriage, had entered into relationship with the respondent, out of which the petitioner no.2 was born. It is not disputed that the respondent is also married to one Supriya Kerkar. The petitioners approached the learned Magistrate for various reliefs under the provisions of the Act, claiming that the petitioner no.1 had entered into relationship with the respondent being unaware of the marital status of the respondent. The learned Magistrate found that the relationship between the petitioner no.1 and the respondent cannot be termed as a "relationship in the nature of marriage", within the meaning of provisions of the Act, which finding has been confirmed by the learned Sessions Judge, relying on the decision of the Supreme Court in the case of **Indra Sarma Vs. V.K.V. Sarma**; (2013)15 SCC 755.

3. The learned Counsel for the petitioners sought to distinguish the judgment in the case of **Indra Sarma** (supra) on the ground that in that case, the petitioner wife was aware of the marital status of the respondent. He, thus, points out that in that case, the petitioner had knowingly entered into a relationship with a married person. The learned Counsel points out that in the present case, the petitioner no.1 was not aware of the marital status of the respondent and this is the first ground on which, according to the learned Counsel for the petitioners, the decision in the case of **Indra Sarma** (supra) is distinguishable. Secondly, it is contended that the facts obtaining in the case of **Indra Sarma** (supra) would show that the respondent had insisted the wife to adopt contraceptive methods to avoid pregnancy. It is submitted that there was no intention of the parties in the said case, of procreation of children. Here, in the present case, according to the learned Counsel for the petitioners, there is a child born out of the relationship.

4. I have considered the contentions raised on behalf of the petitioners and I do not see that the decision in the case of **Indra Sarma** (supra) can be distinguished on the grounds as urged. Assuming that the petitioner no.1 was not aware that the

respondent was already married, the fact remains that the petitioner no.1 was aware that she herself was married and her marriage has not been dissolved. Thus, the petitioner no.1, during subsistence of her marriage, knowingly entered into relationship with the respondent. This aspect, if considered in the context of the ratio in the case of **Indra Sarma** (supra), it cannot be said that there was a relationship 'in the nature of marriage', between the petitioner no.1 and the respondent. Even on the second aspect, although as held by the Hon'ble Supreme Court, the intention of having a long term relationship with the object of procreation of children is one of the indication to infer that it is a relationship in the nature of marriage that is not the only indication. Considering the fact that the petitioner no.1, although married, had knowingly entered into the relationship with the respondent, there cannot be any relationship in the nature of marriage between the petitioner no.1 and the respondent.

5. The learned Counsel for the respondent points out that the maintenance till October, 2017 is paid, which is not disputed by the learned Counsel for the petitioners.

6. At this stage, the learned Counsel for the petitioners has pointed out certain findings recorded by the learned

Magistrate in para 66 of the judgment, which impinge upon the character of the petitioner no.1. In para 66, the learned Magistrate has recorded that the respondent had claimed that the petitioner no.1 was having relationship with many persons, while denying paternity of the petitioner no.2. The learned Magistrate has found that in the rejoinder, the petitioner no.1 has denied having relationship with one Sunil Giri and one Mohan. However, there is no denial to the allegation that she is having relationship with Nilkanth Chavan, which according to learned Magistrate, shows that the petitioner no.1 was having relationship with Nilkanth.

7. I do not find that only on the ground of absence of denial, such a finding that the petitioner no.1 was having relationship with one Nilkanth, can be recorded. In any case, the learned Counsel also points out that there is no such allegation in the reply filed by the respondent. In such circumstances, the observations /findings in para 66 of the judgment of the learned Magistrate, are hereby expunged.

8. In my considered view, no exception can be taken to the concurrent finding recorded by the Courts below, based on the judgment in the case of **Indra Sarma** (supra). The impugned

judgment does not exhibit any infirmity so as to require interference. Criminal Writ Petition is accordingly dismissed.

C. V. BHADANG, J.

SMA