

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 72 OF 2014

Mrs. Maria Mercy Suzana Fernandes,
D/O late Egidio Fernandes,
Age 59 years, R/O Panorama Exclusive,
Near Microwave Station,
Monte Hill, Aquem, Alto,
Margao, Salcete, Goa.

... Petitioner

V e r s u s

1. Mr. Francisco Monte Piedade Cruz,
r/o H. No. 37/A Gold road,
Pajifond, Margao.

2. Mr. Vijay Monte Cruz,
r/o H. No.37/A Gold road,
Pajifond, Margao.

.... Respondents

Ms. P. Bandekar for the Petitioner.

Shri B. Prabhudessai for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 20th February, 2018.

ORAL ORDER :

The challenge in this petition is to the order refusing interim maintenance to the petitioner in a proceeding under the Protection of Women from Domestic Violence Act, 2005 (Act, for short).

2. The petitioner, worked as a cashier in a Liquor shop at new Market Margao. The employer of the petitioner was one Francisco Monte Piedade Cruz i.e respondent no.1. The second respondent is the son of the first respondent. According to the petitioner, Francisco Piedade Cruz made sexual advances to her out of which she had begotten a daughter. The respondent no.1 allowed the petitioner to reside at his residence up to the year 1983 and both of them stayed as husband and wife. After the birth of the child, the petitioner and the respondent no.1 shifted to a rented flat at “Shanke” building behind old market and continued there till the year 1997. In the year 1997, the petitioner purchased a house at Aquem out of her own earning. The petitioner approached the learned Magistrate with an application under section 12 of the Act and sought various reliefs. On 27/6/2013, petitioner filed an application for interim maintenance therein. The application for interim maintenance does not show that a claim of any specific amount was made towards interim maintenance. Be that as it may, the application was opposed on behalf of the respondent on the ground that the petitioner and the respondent no.1 were not in a 'domestic relationship' and that the petitioner cannot be said to be an “aggrieved person”.

3. The learned Magistrate by an order dated 9/4/2014 dismissed

the application after taking note of the provisions of section 2(f) of the Act and placing reliance on the decision of the Supreme Court in the case of **D. Velusamy Vs. D. Patchaiammal, AIR 2011 SC 479** and **Indra Sarma Vs. V.K.V. Sarma, 2013 AIR (SCW) 6783**. The said order has been confirmed in appeal by the learned Sessions Judge vide judgment and order dated 9/4/2014 in Criminal Appeal No.131/2013. Feeling aggrieved, the petitioner is before this Court.

4. I have heard the learned counsel for the parties. Perused record and I do not find that any case for interference is made out.

5. Admittedly the petitioner does not claim that she is a legally wedded wife of the respondent no.1. The case made out is that the petitioner and the respondent were in a relationship 'in the nature of marriage'. The Hon'ble Supreme Court in the case of **D. Velusamy (supra)** has held that in order to establish a relationship 'in the nature of marriage' the following needs to be satisfied:

- (i) The couple must hold themselves out to society as being akin to spouses;
- (ii) They must be of legal age to marry;
- (iii) They must be otherwise qualified to enter into a legal marriage, including being unmarried and

(iv) they must have voluntarily co-habitted and held themselves out to the world, as being akin to spouses, for a significant period of time.

It has been held that all live-in relationships will not come within the ambit of “relationship in the nature of marriage” within the meaning of section 2(f) of the Act.

6. The learned magistrate has noticed in para 14 of the order that as per the affidavit filed by the applicant herself she was already married. The learned magistrate has noticed that the petitioner herself had claimed that in an attempt to conceal her pregnancy, the respondent no.1 sent her to Panaji. This would prima facie negate any conclusion that the petitioner and the respondent no.1 were either staying or were holding out to the world at large that they were residing “as being akin to spouses” as held by the Hon'ble Supreme Court in the case of **D. Velusamy (supra)**. The learned magistrate has, therefore, held and to my mind rightly so, that the petitioner is not entitled to interim maintenance at least at this stage. The impugned order does not suffer from any infirmity so as to require interference. The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

Ap/