

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4280 OF 2017**

Sunil Udhavrao Naik

.....Petitioner

V/s.

Vaishali S. Naik and another

....Respondents

Mr. Deepakar Livingston i/b Mr. Vishal Hegade for the petitioner.
Mr. H. J. Dedhiya APP for the State.

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 5, 2018.

P.C.

Respondent-wife initiated proceedings under sections 18, 19, 19(b), 19(f), 20, 22, 23(1) and 23(2) of Domestic Violence Act, 2005 in which a finding was recorded by the learned Magistrate vide order dated 24/04/2015 that the complaint is not maintainable.

2 In appeal under section 29 of the Domestic Violence Act, 2005, the learned District Judge relied on the Judgment in the matter of **V. D. Bhanot Vs. Savita Bhanot [A.I.R. 2012 Supreme Court 965]** and other judgments and held that the complaint is maintainable. The Appellate Judge set aside the order of the learned Magistrate

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directing the parties to appear before the Trial Court on 29/03/2017.

As such, this petition.

3 The learned counsel for the petitioner submits that the order impugned is not sustainable for the reason that the applicant is a custodian of minor daughter and still the application under the Domestic Violence Act is moved on behalf of such daughter. According to him, his physical health does not support him and he is wholly dependent on earnings from his sister. In addition, the learned counsel would urge that for past almost 19 years there is no domestic relationship between the petitioner and the respondent/wife as such provisions of Domestic Violence Act are not available to the respondent/wife. He would draw support from the Judgment of this Court in the matter of **Sejal Dharmesh Ved Vs. The State of Maharashtra [2014 ALLMR (Cri) 636.]**.

4 The learned APP supports the order.

5 Having considered rival submissions it is to be noted that the

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proceedings *qua* section 9 of Hindu Marriage Act for restitution of conjugal rights, were withdrawn by the petitioner. Section 13 (1) (a) of Hindu Marriage Act proceedings for divorce were contested by the petitioner. All these facts demonstrate that there exists a relationship between the petitioner and the respondent which has prompted her to initiate proceedings under the Domestic Violence Act.

6 What is ordered by the learned Appellate Court is that the Magistrate shall deal with the complaint of respondent/wife on its own merit. This petition in extra ordinary jurisdiction under Article 227 of Constitution of India is against order of remand.

7 As the petitioner has every right to defend his case before the learned Magistrate and for the reasons recorded herein above, I hardly notice any reason for interference, hence, petition stands dismissed.

[NITIN W. SAMBRE, J.]