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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1935/2016 and Crl. M.A. 8216/2016

NEERAJ DEVI

..... Petitioner

Through: Mr. Manish Garg and Ms. Samridhi,
Advocates

versus

RAJENDER SINGH & ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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21.08.2018

The petitioner had instituted a case (CC no.1838/1/14) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the respondents claiming that she was married to the first respondent as per Hindu rites and ceremonies on 02.05.2006 at Hathras, Uttar Pradesh. She also alleged that she lived with the first respondent as his wife but was subjected to various episodes of domestic violence giving rise to the cause of action. The first respondent by reply denied the existence of any relationship of wife and husband between the parties referring in this context to the fact that the petitioner was already married to another person and the said marriage had not been dissolved by any decree of divorce. The petitioner admitted the previous marriage and also conceded that there

was no decree of divorce obtained from any court of law though asserting that the *panchayat* of the village where the parties lived had pronounced an oral order of divorce. The Metropolitan Magistrate was not impressed with this submission. By order dated 02.06.2015, she found that the petitioner would not fall within the definition of the expression “*aggrieved person*” since there was no relationship “*in the nature of marriage*” subsisting between her and the respondent. The petition was, thus, dismissed as not maintainable.

The petitioner challenged the said order by appeal (Crl. A. 36/15) in the court of the Sessions. Her appeal was dismissed by order dated 30.01.2016 whereby the view taken by the Magistrate was upheld. The present petition under Section 482 Cr. PC brings yet another challenge to the orders of the two courts below.

Having heard and having perused the record, this court finds no error, illegality or impropriety in the view taken by the courts of the Metropolitan Magistrate as affirmed by the court of Sessions in appeal. The claim of the petitioner of she being in relationship with the first respondent “*in nature of marriage*” does not pass the muster of the test laid down in *D. Velusamy vs. D. Patchaimmal*, (2010) 10 SCC 469 for the simple reason that mere living in the company of the respondent would not amount to render the relationship to be one in the nature of marriage since, in order to make out a case to such effect, the parties must be otherwise qualified to enter into a lawful marriage, including being unmarried. Since the petitioner, a Hindu by

faith, was already married to another person, the said earlier marriage of the petitioner being subsisting at the relevant point of time, it not having been dissolved by any decree of any court or forum of law, she was not qualified to enter into a marital relationship with the first respondent.

Thus, the petition is devoid of substance and is dismissed.

R.K.GAUBA, J

AUGUST 21, 2018

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