

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.118 OF 2020

Dyaneshwar s/o Ramkrushna Wardhekar,
Age 55 years, Occupation: Service,
R/o Sironcha District Gadchiroli,
presently at C/o Shri Ramesh Batkal,
Near Maharaj Tea Stall, Wadgaon Chowk,
Nagpur Road, Chandrapur. **PETITIONER**

...V E R S U S...

1. Smt. Vandana Dyaneshwar Wardhekar,
Age 44 years, Occupation: Household.
2. Miss Ridhi Dyaneshwar Wardhekar,
Age 21 years, Student.

Respondent Nos.1 and 2 are resident of
C/o Madhusudan Ramkrushna Wardhekar,
Surbhi Vihar, Near Bhagyashri School,
VMV Amravati,
Tahsil and District Amravati. **RESPONDENTS**

Mr. R.D. Bhuibhar, Advocate for Petitioner.
Mr. D.P. Dapurkar, Advocate for Respondents.

CORAM: **ROHIT B. DEO, J.**
DATE: **21st JANUARY, 2021.**

ORAL JUDGMENT:

With consent the petition is finally heard at the
admission stage.

2. The petitioner is assailing the concurrent findings recorded that the petitioner is liable to pay maintenance of Rs.10,000/- per month to respondent 1 and Rs.5000/- per month to respondent 2 in addition to amount of Rs.2000/- towards rent.

3. The learned counsel for the petitioner Mr. Bhuihar has twin submissions to canvass. The first submission is that tested on the anvil of the decision in *Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755*, the material on record is grossly insufficient to infer “relationship in the nature of marriage”, the other submission is that the maintenance awarded is unreasonable and disproportionate to the needs of the respondents and the income of the petitioner.

4. In my considered view, both the submissions merit rejection.

5. Respondents initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 (DV Act) registered as Miscellaneous Criminal Application 97/2016, alleging that respondent 1 and the petitioner herein entered into matrimonial alliance on 20.05.1998 at Amravati and respondent 2 is the child born from the wedlock. It is further averred that few

months from the marriage, the petitioner herein started ill-treating respondent 1. The instances and nature of the ill-treatment, physical and emotional, are vividly described in paragraph 2 of the application under section 12 of the DV Act. It is then averred that respondent 1 gave birth to respondent 2 on 27.05.1999. The petitioner was visibly unhappy due to the birth of the girl child and persisted in ill-treating respondent 1 and ignoring the child. It is further averred, that the ill-treatment culminated in the petitioner forcing respondent 1 to leave the matrimonial house.

6. The petitioner filed response generally denying the allegations in the section 12 application and in the specific submissions the petitioner averred that respondent 1 is married to Mr. Kadu and that the petitioner is married to Mrs. Anita Salkute and both the marriages are subsisting. Petitioner denied that he was the father of the child and expressed willingness to undergo the DNA test.

7. The learned Magistrate considered the documentary material placed on record by respondent 1 *inter alia* the Aadhar Card, Birth Certificate, *Bona fide* Certificate and the Life Insurance Policy in which the address shown is the residence of the petitioner herein. Mr. Kadu, who according to the petitioner is the

legally wedded husband of respondent 1, stepped into the witness box asserting that his marriage with respondent 1 is not in existence and denying that he was the father of respondent 2. The petitioner stepped into the witness box and deposed that there was no husband and wife relationship between him and respondent 1. The learned Magistrate considered several decisions and recorded a finding that the relationship is akin to marriage, and therefore, is a domestic relationship within the meaning of section 2(f) of the DV Act. In so far as the quantum of maintenance is concerned, the consideration by the learned Magistrate is discernible from paragraphs 22, 25 and 26 of the order dated 13.11.2018 which read thus:

22] These points are interlinked with each others and based on same set of fact. Therefore, in order to avoid repetition, I discuss it together. The learned advocate for Petitioner No.1 vehemently argued that the Respondent is serving as a Branch Manager. Moreover, Respondent is having an agricultural land bearing gut no.13/1 situated at Kharabi, Tq.Nandgaon Khandeshwar, Dist. Amravati which is at Exh.34, 35. It appears that Respondent received the salary of Rs.50,990/- after deducting the amount of Rs.17,428/- in the month of May-2015. The agricultural land is on the name of various cultivators which includes the name of Respondent. Being husband of Petitioner No.1 and father of Petitioner No.2, it is obligation on Respondent to maintain them. There is no evidence to prove that, Petitioner No.1 is having

any source of income and out of that income, she is able to maintain herself and her children. From the discussion supra, I am of the opinion that Respondent having sufficient means of income whereas, Petitioner No.1 is unable to maintain herself and her children. Hence, I answer point Nos.3 & 4 in the affirmative.

25] *A perusal of this provision makes it clear that domestic relationship arises in respect of an aggrieved person if the aggrieved person had lived together with the Respondent in a shared household. This living together can be either soon before filing of petition or 'at any point of time'. The Petitioner No.1 has filed the tax receipt and index no.II of property situated at Shegaon. Which is marked at Exh.44, 45-A, 45-B. It appears that the above two flats Nos.103, 104 is registered on the name of Respondent. However, at this moment whether the above flats were delivered on rent or not, this fact is not brought on record. Moreover, the Petitioner No.2 is taking education at Akola. Therefore, it is not justifiable to allow the petitioners to go and reside in one flat. However, some permanent arrangement of residence of petitioners must be made. Respondent cannot escape the responsibility of making arrangement of residence of petitioners. Therefore, it will be better and appropriate to direct Respondent to pay the rent of the house in which the petitioners reside. No doubt, this rent will have to be paid to Petitioner No.1 only after filing the rent-agreement or rent-receipts before the Court. Considering the matter I think it fit to grant Rs.2000/- per month as rent of alternate accommodation to Petitioner No.1 only after filing of the rent-agreement or rent-receipts before Court or if she provided to Respondent. Hence, I answer point No.6 accordingly.*

26] *Considering the matter and respective findings to the points supra, Respondent is having sufficient means of income and Petitioner No.1 is unable to maintain herself and Petitioner No.2.*

It is nowhere the case of Respondent that during separate residence of Petitioners, any monetary aid is provided to Petitioner No.1. Being husband of Petitioner No.1 and father of Petitioner No.2, it is not only moral but also legal obligation of Respondent to ensure their living. Therefore, Petitioners are entitled to maintenance under the head of monetary relief. To ascertain the quantum of maintenance, regard must be had to the basic requirements of food, clothing, medication, miscellaneous expenditure, basic entertainment etc. of Petitioner No.1 and for medication, clothing, education of Petitioner No.2. Considering the standard of living of both parties, the probable minimum income of Respondent, it will be just and appropriate to grant maintenance at the rate of Rs.10,000/- per month to Petitioner No.1 and Rs.5,000/- per month to Petitioner No.2. Therefore, I answer point No.7 in partly affirmative.

8. The learned Sessions Judge dismissed the appeal preferred by the petitioner under section 29 of the DV Act confirming the view of the learned Magistrate that irrespective of the legality of the marriage, the relationship was in the nature of marriage and therefore, a domestic relationship. A finding is recorded that the parties held out to the public at large, as husband and wife.

9. Mr. R.D. Bhuihar fairly invites my attention to the articulation in *Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755*. The Supreme Court has crystallized the law thus:

34. *Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:*

- (a) Consanguinity*
- (b) Marriage*
- (c) Through a relationship in the nature of marriage*
- (d) Adoption*
- (e) Family members living together as joint family.*

35. *The definition clause mentions only five categories of relationships which exhausts itself since the expression “means”, has been used. When a definition clause is defined to “mean” such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression “include” so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression “relationship in the nature of marriage”.*

36. *We have already dealt with what is “marriage”, “marital relationship” and “marital obligations”. Let us now examine the meaning and scope of the expression “relationship in the nature of marriage” which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category, that is, “relationship in the nature of marriage” which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.*

37. *The distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest, etc., even if they are not sharing a shared household, being based on law. But live-in relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression “in the nature of”.*

38. *Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:*

38.1. (a) Domestic relationship between an unmarried adult woman and an unmarried adult male.—*Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.*

38.2 (b) Domestic relationship between an unmarried woman and a married adult male.—*Situations may arise when an unmarried adult*

woman knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship “in the nature of marriage” so as to fall within the definition of Section 2(f) of the DV Act.

38.3 (c) Domestic relationship between a married adult woman and an unmarried adult male.— Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship “in the nature of marriage”.

38.4 (d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male.— An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the “nature of marriage”, so far as the aggrieved person is concerned.

38.5 (e) Domestic relationship between same sex partners (gay and lesbians).— The DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. The legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (UK), have recognized the relationship between the same sex couples and have brought these relationships into the definition of domestic relationship.

39. Section 2(f) of the DV Act though uses the expression “two persons”, the expression “aggrieved person” under Section 2(a) takes in only “woman”, hence, the Act does not recognize the relationship of same sex (gay or lesbian) and,

hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

40. *We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence”, have a common sense/balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the “nature of marriage”. Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression “relationship in the nature of marriage”, of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression “in the nature of marriage”. Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of an essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in para 38.1 (a) and para 38.4 (d) supra. Women, who fall under categories (b) and (c) (paras 38.2 and 38.3), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), referred to in para 38.2 of the judgment.*

10. I had re-visited the issue, on the anvil of the law declared in *Indra Sarma v. V.K.V. Sarma*, and having done so, I do

not find any error whatsoever in the view taken concurrently.

11. The relationship is certainly in the nature of marriage. The quantum of maintenance is not only reasonable, is the minimum amount which would be required by the respondents herein to sustain themselves in a dignified manner.

12. The petition is dismissed.

13. Needless to record, the respondents are permitted to withdraw the amount of Rs.1,00,000/- deposited by the petitioner in compliance with the interim order. The said amount shall be adjusted against the maintenance due and payable.

14. Rules is made absolute in the afore-stated terms.

JUDGE