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

CRIMINAL WRIT PETITION NO.285 OF 2024

1. Sau. Priti W/o Kapil Jain,
Aged about 41 Years,
Occupation : Household. .. [original applicant]
2. Ku. Nayara D/o Kapil Jain,
Aged about 6 Years,
Occupation : Nil,
Petitioner No.2 being minor
through legal guardian mother i.e.
Petitioner No.1.
Both R/o C/o. Smt. Arunabai
Subhashrao Gawande,
Jalaram Nagar, Amravati,
Taluka and District Amravati.

..... PETITIONERS

// VERSUS //

1. Kapil Virchand @ Virendra Jain,
Aged about 45 Years,
Occupation : Private Job., .. [original respondent]
2. Virchand @ Virendra Ganpatlal Jain,
Aged about 70 Years,
Occupation : Business.
3. Sau. Kiran Virchand @ Virendra Jain,
Aged about 67 Years,
Occupation : Business,
NA Nos.1 to 3 are
R/o. Raghunandan Apartment,
Bapatwadi, Near Radiant Hospital,
Amravati,
Taluka and District Amravati.
4. Sau. Dipali Kamlesh Singhai,
Aged about 50 Years,
Occupation: Service,
R/o. Khimlasa, Taluka Khurai,
District Sagar,
(Madhya Pradesh).

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5. Kamlesh Singhai,
Aged about 53 Years,
Occupation : Business,
R/o. Khimlasa, Taluka Khurai,
District Sagar,
(Madhya Pradesh).

.... RESPONDENTS

Mr. S. R. Sayare Counsel h/f Smt. S. W. Deshpande, Counsel for
the petitioners.

Mr. A. M. Tirukh, Counsel for the respondents.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 20.08.2025
PRONOUNCED ON : 11.09.2025

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with
the consent of the parties.

2. By this writ petition, the petitioners have challenged the
order passed by the learned Additional Sessions Judge, Amravati, in
Appeal No.166/2022 dated 30.11.2023 confirming the order passed
by the learned Judicial Magistrate First Class, Court No.13,
Amravati, below Exh.7 in PWDVA No.191/2019, dated 20.08.2022,
by which the application of the present petitioners for grant of
maintenance is rejected.

3. Brief facts which are necessary for disposal of the writ
petition are as under:

The respondent No.1 has completed his B.Sc. and was
working as Medical Representative in Sun Pharmaceutical Company

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at Amravati. He was a tenant in the house of the mother of the petitioner No.1 in March 2002 for three months. The marriage of respondent No.1 was performed with Rina on 09.12.2010, whereas the marriage of petitioner No.1 with Mehul Gaglani was performed on 14.08.2012. The petitioner No.1 was not treated well by her husband Mehul Gaglani, and driven out of the house, therefore, she started residing separately from 19.01.2015. In the month of February 2017, the respondent No.1 came to know that petitioner No.1 was driven by her husband and now she is residing with her mother. Therefore, he started visiting the petitioner No.1 and her mother, regularly. He assured her that he will keep her happily as his wife. From 28.03.2017, believing the promise made by the respondent No.1, the petitioner No.1 and her mother allowed the petitioner No.1 to reside at respondent's house. The petitioner No.1 as well as respondent No.1 both are educated and they have decided to stay together prior to the final decree of dissolution of marriage from their respective spouses. Due to the physical relationship, petitioner No.1 was pregnant of seven months. The respondent Nos.1 to 3 called Maullana from Chandur Railway from where the family of respondents belongs to and some stupefying substance was administered to her. In between, the Civil Judge, Senior Division, Amravati passed the decree of divorce between respondent No.1 and his wife Rina in Hindu Marriage Petition No.258/2015. On 06.06.2018, the petitioner No.2, Nayara born out

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of the relationship between the petitioner No.1 and respondent No.1. The decree of dissolution of marriage was passed between the petitioner No.1 and her husband on 28.02.2019.

4. As per the allegation of the petitioners, respondent No.1 started doubting the *bona fides* of the petitioner No.1. On 25.02.2019, the respondent No.1 issued a legal notice through his Counsel to the brother of the petitioner No.1 stating therein that his sister is living with a person having faith in Jainism, but she was not following the same. The notice was replied by her brother. On 24.03.2019, the marriage between the petitioner No.1 and respondent No.1 was solemnized at the house of the respondent in presence of the family members and colleagues. As there was first birthday of her daughter i.e. petitioner No.2 therefore, she was decided to celebrate the birthday. But respondent No.1 demanded amount of Rs.2,00,000/- from her and ill-treated her. Therefore, on 30.05.2019, she filed a complaint with the Commissioner of Police, Amravati and the matter was taken before the counseling cell and there was conciliation between the parties. However, the respondent No.1 refused to take proper care of the petitioner No.2. On 05.06.2019, the respondent No.1 had quarreled with the petitioner No.1 and therefore, she constrained to leave the matrimonial house. As she was not having any source of income to maintain her as well as her daughter, therefore, she filed a

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complaint on 06.06.2019 with Rajapeth Police Station, Amravati and the matter was referred to the Women's Cell. On 19.07.2019, the petitioner No.1 and respondent No.1 attended the office of Women Cell and during counselling, they have shown their willingness to reside together, but the respondent No.1 has not shown his willingness, therefore, on 19.08.2019 the petitioner Nos.1 and 2 preferred an application for grant of maintenance. They have also filed an application for grant of interim maintenance. The learned Judicial Magistrate First Class rejected the said application on the ground that there is no legal marriage between the petitioner No.1 and respondent No.1 and birth of the petitioner No.2 is not out of legal marriage and thereby rejected the application. Being aggrieved and dissatisfied with the same, she preferred an appeal which is also dismissed and therefore, present writ petition.

5. Heard learned Counsel for the petitioners, who submitted that relationship between the present petitioner No.1 and the respondent No.1 was in the nature of the marriage which is now covered under the definition of wife. She was subjected for the domestic violence and therefore, she is entitled for grant of maintenance. Learned Magistrate as well as learned Additional Sessions Judge had not considered this aspect and wrongly come to the conclusion that the domestic relationship being through marriage is disputed because there has been no any evidence in

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any form produced by the applicant except her bare words prima facie to prove the marriage. The point of marriage can only be proved by conducting a full-fledged trial and on the basis of the evidence adduced. At this stage, the interim maintenance application in the present case it has to be seen, whether there has been a domestic relationship through a relationship in the nature of marriage between the parties and by observing the same rejected the application. He submitted that similarly the Appellate Court has also considered this aspect and wrongly come to the conclusion that the petitioner No.1 does not cover under the definition of wife and therefore, she is not entitled for any amount towards the maintenance. It is further observed by the Additional Sessions Judge that admittedly, the petitioner No.2 is the daughter of applicant No.1 and respondent No.1, but on the day of birth, the relationship in between petitioner No.1 and the respondent No.1 cannot be termed as through a relationship in the nature of marriage. At the same time, there is no specific pleadings that the respondent No.1 has subjected her domestic violence and therefore, she is not entitled for any maintenance.

6. Learned Counsel for the petitioners placed reliance on **D. Velusamy Vs. D. Patchaiammal** reported in **(2010) 10 SCC 469** and **N. Usha Rani and another vs. Moodudula Srinivas** reported in **2025 SCC OnLine SC 225**.

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7. After hearing both sides and on perusal of the application as well as reply filed by the respondent No.1, it reveals that the relationship between the petitioner No.1 and the respondent No.1 is not disputed, as respondent No.1 has admitted that petitioner No.2 is his daughter begotten out of the relationship with the petitioner No.1. The only contention of the respondent No.1 was that there was no relationship between them in the nature of marriage and therefore, the petitioner Nos.1 and 2 are not entitled for any maintenance. There is no dispute as to the fact that marriage of the respondent No.1 was performed with one Rina Jain which came to be dissolved 16.04.2018. Similarly, the marriage of the petitioner No.1 with Mehul Jayant Gagalani was also dissolved by decree dated 28.02.2019. Prior to that, the petitioner No.1 and the respondent No.1 started residing together. Since 15.01.2015, the petitioner No.1 was residing separate at her parents house and since 28.03.2017, she started living with the respondent No.1 as husband and wife along with his parents. Admittedly, the birth of the petitioner No.1 was 06.06.2018 i.e. prior to the dissolution of marriage between the petitioner No.1 and her husband, but the dissolution of marriage between respondent No.1 and his wife was on 16.04.2018. Both the Courts rejected the application only on the ground that at the relevant stage, it cannot be ascertained that whether the relationship between them was in the nature of marriage and rejected the application of interim maintenance. The

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learned Additional Sessions Judge has also considered the aspect of live in relationship and observed that initially the petitioner No.1 started residing with respondent No.1 during the subsistence of her previous marriage and Court has passed divorce decree from her former husband on 28.02.2019. There is a dispute regarding performance of marriage and therefore, the evidence is required in detailed and dismissed the appeal.

8. Both Courts below held that the birth of the petitioner No.2 was during the subsistence of the first marriage of the petitioner No.1 with her husband as her marriage was dissolved after the birth of petitioner No.2. The question has to be examined, in view of the provisions of the Protection of Women from Domestic Violence Act. Section 2(a) of the Act states that "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent". Section "2(f) defines 'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship. Section 3(a) defines Domestic Violence means 3(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved

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person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

9. Thus, in view of the relevant provisions in the Protection of Woman from Domestic Violence Act, the expression domestic relationship includes not only the relationship of marriage but also relationship 'in the nature of marriage'. The question therefore arises as to what is the meaning of the expression 'a relationship in the nature of marriage'. This expression has not been defined in the Act. The Hon'ble Apex Court in the case of **D. Velusamy Vs. D. Patchaiammal** (referred supra) defines a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriage require that although not being formally married :-

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

10. It is further held by the Hon'ble Apex Court that in our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get

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such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a 'relationship in the nature of marriage'.

11. Similarly, in **N. Usha Rani and another vs. Moodudula Srinivas** (referred supra) wherein also the Hon'ble Apex Court held that "thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations." It is further held that a broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our

Constitution, namely, social justice and upholding the dignity of the individual.”

12. Thus, the purposive interpretation needs to be given to the provisions of Section 12 of the Protection of Women from Domestic Violence Act. While dealing with the application of a destitute wife or hapless children or the aggrieved person under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.” Admittedly, the provisions under the Protection of Women from Domestic Violence Act are with an intention of social justice and the objective of maintenance or the economic health is considered against the particular facts and circumstances of this case. It is settled law that social welfare provisions must be subjected to an expansive and beneficial construction and this understanding has been extended to

maintenance. An alternate interpretation would not only explicitly defeat the purpose of the provision by permitting vagrancy and destitution, but would also give legal sanction to the actions of the respondent in knowingly entering into a marriage with the petitioner, availing its privileges but escaping its consequent duties and obligations. The only conceivable mischief that could arise in permitting a beneficial interpretation is that the petitioner would claim dual maintenance, however, that is not the case under the present facts. A plea of separation from the first marriage is already taken by the petitioner in a recent judgment in the case of **Mohd. Abdul Samad vs. State of Telangana and another (2024) SCC OnLine SC 1686** wherein the Hon'ble Apex Court observed as follows:

"43. In this context, I would like to advert to the vulnerability of married women in India who do not have an independent source of income or who do not have access to monetary resources in their households particularly for their personal expenses. In Indian society, it is an established practice that once a daughter is married, she resides with her husband and/or his family unless due to exigency of career or such other reason she has to reside elsewhere. In the case of a woman who has an independent source of income, she may be financially endowed and may not be totally dependent on her husband and his family. But what is the position of a married woman who is often referred to as a "homemaker" and who does not have an independent source of income, whatsoever, and is totally dependent for her financial resources on her

husband and on his family? It is well-known that such an Indian homemaker tries to save as much money as possible from the monthly household budget, not only to augment the financial resources of the family but possibly to also save a small portion for her personal expenses. Such a practice is followed in order to avoid making a request to the husband or his family for her personal expenses. Most married men in India do not realise this aspect of the predicament such Indian homemakers face as any request made for expenses may be bluntly turned down by the husband and/or his family. Some husbands are not conscious of the fact that the wife who has no independent source of finance is dependent on them not only emotionally but also financially. On the other hand, a wife who is referred to as a homemaker is working throughout the day for the welfare of the family without expecting anything in return except possibly love and affection, a sense of comfort and respect from her husband and his family which are towards her emotional security. This may also be lacking in certain households.

*44. While the contributions of such a homemaker get judicial recognition upon her unfortunate death while computing compensation in cases under the Motor Vehicles Act, 1988 vide **Kirti Vs. Oriental Insurance Co. Ltd, (2021) 2 SCC 166**, the services and sacrifices of homemakers for the economic well-being of the family, and the economy of the nation, remain uncompensated in large sections of our society."*

45. Therefore, I observe that an Indian married man must become conscious of the fact that he would have to financially empower and provide for his wife, who does not have an independent source of income, by making available financial

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resources particularly towards her personal needs; in other words, giving access to his financial resources. Such financial empowerment would place such a vulnerable wife in a more secure position in the family. Those Indian married men who are conscious of this aspect and who make available their financial resources for their spouse towards their personal expenses, apart from household expenditure, possibly by having a joint bank account or via an ATM card, must be acknowledged.

46. Another aspect of vulnerability of a married Indian woman is regarding her security of residence in her matrimonial home. In this context in the case of **Prabha Tyagi Vs. Kamlesh Devi, (2022) 8 SCC 90**, this Court while considering Section 17 along with other provisions of the Domestic Violence Act, 2005 opined as under:

"60. In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in praesenti but also a past domestic relationship. Therefore, Parliament has intentionally used the expression "domestic relationship" to mean a relationship between two persons who not only live together in the shared household but also between two persons who "have at any point of time lived together" in a shared household."

47. Thus, both 'financial security' as well as 'security of residence' of Indian women have to be protected and

enhanced. That would truly empower such Indian women who are referred to as 'homemakers' and who are the strength and backbone of an Indian family which is the fundamental unit of the Indian society which has to be maintained and strengthened. It goes without saying that a stable family which is emotionally connected and secure gives stability to the society for, it is within the family that precious values of life are learnt and built. It is these moral and ethical values which are inherited by a succeeding generation which would go a long way in building a strong Indian society which is the need of the hour. It is needless to observe that a strong Indian family and society would ultimately lead to a stronger nation. But, for that to happen, women in the family have to be respected and empowered."

13. In the light of the aforesaid observation of the Hon'ble Apex Court admittedly, in the present case, the petitioner No.1 was residing separately from her husband since 15.01.2015. Since 28.03.2017, she started living with the respondent No.1 as husband and wife. Admittedly, there was no decree of divorce in favour of the petitioner No.1, but she had filed the petition for decree of divorce on 18.08.2018 and the said decree of divorce was passed on 28.02.2019. Admittedly, the respondent No.1 has admitted that he is the biological father of the petitioner No.2. In the light of the observation of the Hon'ble Apex Court in the case of **D. Velusamy Vs. D. Patchaiammal** (referred supra) wherein the Hon'ble Apex Court already considered that even if a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a

servant it would not be a relationship in the nature of marriage'. Here admittedly, petitioner No.1 was staying with the respondent No.1 when her first marriage was in existence and therefore, at the interim stage it is difficult to ascertain whether she is entitled for maintenance or not. But as far as the petitioner No.2 is concerned, she is entitled for grant of maintenance. Both the Courts below have not considered this aspect that the respondent No.1 has already admitted his relationship with petitioner No.2 and being a biological father, he is responsible to pay the maintenance as far as the petitioner No.2 is concerned. Admittedly, respondent No.1 is serving in a private company and drawing salary of Rs.50,000/-. He also owns a shop by Kapil Provisions and getting income from the said shop also. He also holds immovable property. Though respondent No.1 has opposed the application, but has not denied that he is serving in a private company. Even accepting his contention that he is shouldering the family responsibility of his parents then also he cannot deny the responsibility of the petitioner No.2. Admittedly, there is no documentary evidence to show that he is drawing the salary of Rs.50,000/- but considering he is serving in a Pharmaceutical company and even accepting that he is earning even accepting the guesswork that he is earning Rs.25,000/- to Rs.30,000/-. Considering the fact that petitioner No.1 has to incur the expenses towards the education and day-to-day maintenance of the petitioner No.2. Petitioner No.2 is entitled for grant of

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maintenance. On the basis of guesswork, it would be appropriate to grant the maintenance to the petitioner No.2 at the rate of Rs.10,000/- per month from the date of application. In view of that, I proceed to pass following order:

ORDER

- (i) The writ petition is partly allowed.
- (ii) The judgment and order passed by the Judicial Magistrate First Class, Court No.13, Amravati, below Exh.7 in PWDVA No.191/2019 dated 20.08.2022 and confirmed by the learned Additional Sessions Judge, Amravati, in Criminal Appeal No.166/2022 dated 30.11.2023, are partly hereby quashed and set aside.
- (iii) The respondent No.1 shall pay interim maintenance to the petitioner No.2 at the rate of Rs.10,000/- per month from the date of application.
- (iv) The respondent No.1 shall also pay the costs of the petition of Rs.10,000/- to the petitioners.
- (v) The prayer of petitioner No.1 for grant of interim maintenance is hereby rejected.

Rule is made absolute in the above terms.

(URMILA JOSHI-PHALKE, J.)