2026:BHC-AS:848

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3946 of 2016

[redacted] } … Petitioner

Versus

1. [redacted]

[redacted] … Respondents

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Mr. Narayan G. Rokade a/w Mr. Swapnil S. Kalokhe, for the Petitioner.
Mr. Sujay H. Gangal a/w Mr. Swaraj M. Savant, for the Respondents.
Ms S. S. Kaushik, APP, for the Respondent-State.

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CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 11th DECEMBER 2025
PRONOUNCED ON : 09th JANUARY 2026

:J U D G M E N T:

. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The issue that falls for consideration of this Court in the present Writ Petition is, whether the Petitioner who married Respondent No.

1, during the subsistence of his marriage with Respondent No. 2 is entitled for the reliefs under the provisions of the Protection of Women from Domestic Violence Act, 2005, (for short "PWDVA, 2005") by treating her relationship with Respondent No. 1 as a 'relationship in the nature of marriage'?

3. The Petitioner filed a Domestic Violence complaint against the Respondents before the 33rd Court, JMFC, Pune. Criminal Misc. Application No. 2081 of 2011, filed by the Petitioner was allowed by the JMFC, Pune, vide order dated 31st March 2015. The Petitioner has been granted certain reliefs; directing Respondent No. 1 to pay Rs.28,000/- p.m. towards maintenance of the Petitioner; Rs.5,00,000/- was awarded by way of compensation; awarding compensation of Rs.10,000/- towards expenses of the litigation; Respondent Nos. 1 to 3 were restrained from causing her any physical or mental harassment. This order came to be assailed by the Petitioner as well as the Respondents before the Sessions Court, Pune, by invoking Section 29 of the PWDVA, 2005.

Both the Appeals, i.e. Criminal Appeal Nos. 263 of 2015 and 262 of 2015, have been decided, vide common Judgment and Order dated 26th July 2016, whereby the order granting various reliefs to the Petitioner in Criminal Misc. Application No. 2081 of 2011, has been quashed and set aside. Thus, being aggrieved by the said Judgment and Order, the Petitioner has approached this Court in its supervisory jurisdiction by invoking Article 227 of the Constitution of India.

4. The brief facts of the present case shorn of unnecessary details can be summarized as under:

The Petitioner was a student in Engineering College at Pune. While pursuing her Bachelors Degree, she was introduced to Respondent No. 1 in capacity as the Professor serving in the same Engineering College. It is alleged by the Petitioner that Respondent No. 1 started love affair with the Petitioner by gaining her sympathy on the ground that, his wife is mentally ill (insane). It is her case that Respondent No. 1 forcefully initiated sexual relations with the Petitioner from 2001 onwards in his private office at Shivajinagar, Pune, with a false assurance that he intended to marry the Petitioner, after obtaining divorce from his wife.

The Petitioner completed her education in the year 2004. Respondent No. 1 misrepresented that he had already filed divorce proceedings against Respondent No. 2. In view of the opposition of her parents for her marriage to Respondent No. 1 due to his married status, the Petitioner and Respondent No. 1 secretly got married on 18th June 2005, at Mahad. Respondent No. 1 had also purchased gold and diamond ornaments for the Petitioner.

After their marriage the Petitioner and Respondent No. 1 cohabited together at Bandra, Mumbai, as husband and wife. When the Petitioner shifted to Abu Dhabi in 2006 due to her employment, she used to visit Pune every month to meet Respondent No. 1 till November 2008. The Petitioner had appointed Respondent No. 1 as mandate holder for her bank account, in the ICICI Bank. Respondent No. 1 has accompanied the Petitioner during her treatment in the Infertility Clinic and has also signed various documents in capacity of the husband of the Petitioner during the IVF treatment. When the

Petitioner was pregnant, all of a sudden Respondent No. 2, i.e. wife of Respondent No. 1 assaulted and abused the Petitioner in the month of December 2008, due to which, she had filed NC in the Police Station. It is only then the Petitioner came to know that Respondent No. 2 is not insane or mentally ill person. The Petitioner and Respondent No. 1 started residing together in a flat, i.e. Flat No. C-202, Pushpa Emrald, Katraj, Pune, from January 2009. It is also alleged by the Petitioner that, Respondent No. 2 has assaulted her along with Respondent No. 3 on 03rd March 2009, as a result of which, she suffered a miscarriage.

5. To support her claim of 'relationship' in the nature of marriage with Respondent No. 1, the Petitioner is relying on the 'Agreement of Sale' of a jointly purchased flat at Bhekarainagar, Fursungi, Taluka Haveli, Pune, dated 27th October 2009. The Petitioner also claims that they together have purchased two vehicles, namely a Skoda and a Wagon-R respectively. When the Petitioner came to know that Respondent No. 1 was in relationship with Respondent No. 3 as well, and Respondent No. 3 has also given birth to a girl child due to the said illicit relations, quarrel between the Petitioner and Respondent No. 1 took place, during which he had assaulted the Petitioner. As a result, the Petitioner was constrained to file NC in the Uruli Devachi Police Station, Pune. It is alleged by the Petitioner that, she has been ill-treated by the Respondents for which she had also filed a complaint against them under Section 498A of the IPC at Loni Kalbhor Police Station, which is pending before the JMFC, Pune.

6. On this background, the Petitioner had filed complaint under the PWDVA, 2005. Though her application was allowed by granting

her relief to some extent, the said order has been set aside by the learned Sessions Judge, Pune, hence she has approached this Court. On the background of the aforementioned facts, this Court is called upon to decide the correctness of the judgment and order passed by the Sessions Judge, Pune, in its Appellate jurisdiction.

7. Mr. Narayan Rokade, learned counsel for the Petitioner submits that, acting on the misrepresentation of Respondent No. 1, the Petitioner agreed to perform marriage ceremony with him and, accordingly, the marriage ceremony between the Petitioner and Respondent No. 1 has taken place at Ganapati Temple, Mahad on 18th June 2005. Pursuant to their marriage they have also resided together as husband and wife at various places including the government quarters at Bandra-Mumbai; rented premises at Shivajinagar, Pune and also during the frequent visits made by Respondent No. 1 to meet the Petitioner while she was employed at Abu Dhabi. As such, their relationship very well comes within the definition of 'Domestic relationship', more particularly a 'relationship in the nature of marriage'.

In support of her claim about 'relationship in the nature of marriage', the Petitioner has placed reliance on the NRI account of the Petitioner, wherein Respondent No. 1 was a mandate holder and exercised control over her finances.

8. The learned counsel for the Petitioner has drawn attention of this Court to the documents of joint ownership of the flat purchased by the Petitioner with Respondent No. 1. A registered document has been executed for the purchase of flat, jointly owned by the Petitioner

and Respondent No. 1.

It is submitted that, there is voluminous evidence produced by the Petitioner to support her claim of relationship with Respondent No. 1. In all the documents relating to the IVF treatment of the Petitioner, Respondent No. 1 has affixed his signature on the consent forms, in capacity of her husband. Respondent No.1 has affixed his signatures on the printed form required to be filled in for the IVF treatment. These documents have been exhibited and proved by the Petitioner. All those documents clearly indicate that, the consent forms have been filled in by Respondent No. 1 in capacity of husband of the Petitioner.

It is submitted that, these documents have been proved by examining the doctor attached to the hospital, who gave treatment to the Petitioner. It is submitted that the very conduct of Respondent No. 1 shows that, though Respondent No. 1 was previously married, he has performed marriage with the Petitioner during subsistence of his first marriage by misrepresenting the Petitioner. He has also resided with the Petitioner at various places for a considerable period. His relationship was not restricted to the extent of sexual intimacy, but he has gone further and taken the Petitioner to the IVF Centre with an intention to have a child with her. During which he projected himself as the husband of the Petitioner, which eventually led to birth of their son.

9. The learned counsel for the Petitioner has also drawn my attention to the deposition of a witness, namely, Jalinder Anant Kunjir, who happens to be the cousin brother of Respondent No. 1, who has

categorically stated that, the Petitioner is the wife of Respondent No.1 and they were married as per Hindu rites on 18th June 2005 at Mahad. The said witness has also stated that his brother, i.e. Respondent No. 1 used to visit his house along with the Petitioner frequently. The Petitioner and Respondent No. 1 attended all the functions in the family as husband and wife. He was also aware about the IVF treatment taken by the Petitioner. He has supported the Petitioner by narrating the incident of assault made by Respondent No. 2, due to which, the Petitioner had to suffer miscarriage.

10. The Petitioner further relies on the birth certificate of her son Master Digvijay Chandrakant Kunjir at Exhibit-92, which shows name of Respondent No.1, as his father. He submits that not only was there a marriage ceremony between the Petitioner and Respondent No. 1, but the Petitioner has taken the IVF treatment with the co-operation of Respondent No. 1, and later on gave birth to a male child, which is proved from the birth certificate at Exhibit-92. It is contended that, all these facts are sufficient to establish, that the relationship of the Petitioner and Respondent No. 1 is a 'relationship in the nature of marriage', therefore, the Petitioner is very much entitled for the reliefs granted to her by the trial Court.

It is submitted that the learned Sessions Judge, Pune has failed to appreciate, that the Petitioner has entered into relationship with Respondent No. 1 due to his misrepresentation and false assurances. Assuming that Respondent No. 1 was already married, however the fact remains that he has performed marriage with the Petitioner as per Hindu rites and customs and has resided along with her for a

considerable length of time by projecting himself as her husband. He has conducted himself as the husband of the Petitioner by purchasing a flat in their joint names, signing all the mandatory documents of IVF treatment, and giving his consent for the IVF treatment; therefore, Respondent No. 1 cannot be allowed to be left scot-free. Respondent No. 1 has to take responsibility of the Petitioner and their son.

11. Thus, according to the learned counsel for the Petitioner, the Petitioner had sufficiently established that her relationship with Respondent No. 1, is a 'relationship in the nature of marriage'. The learned Sessions Judge has committed a grave error in overturning the judgment and order passed by the JMFC, Pune. As such, the impugned order passed by the Additional Sessions Judge, Pune, deserves to be quashed and set aside by confirming the order of the JMFC, Pune.

12. While resisting the claim of the Petitioner, Mr. Sujay Gangal, learned counsel for the Respondents submits that, the law with regard to the 'relationship in the nature of marriage' has already been clarified by the Hon'ble Supreme Court long back in the case of ***Indra Sarma Vs. V.K.V. Sarma***[1]. He submits that the learned JMFC, Pune has committed a grave error in coming to the conclusion that the Petitioner fulfills all the eight conditions laid down in paragraph 56 of the said judgment, which are treated as guiding factors for deciding "whether a particular live-in relationship, will come within the sweep of a 'relationship in the nature of marriage' under Section 2(f) of the PWDVA, 2005?"

1 (2013) 15 SCC 755

13. According to the learned counsel, the duration of the relationship has not come on record. The Petitioner has not adduced any substantial evidence to prove, that she resided with Respondent No. 1 in a 'shared household'. It is contended that there was no Domestic arrangement between the parties to reside together in the flat jointly purchased by them at any point of time. No such evidence has been produced by the Petitioner. The birth certificate of her son at Exhibit-92 produced by the Petitioner is disputed by Respondent No.1.

There is no substantial evidence produced by the Petitioner to prove that since inception there is a 'relationship in the nature of marriage' between the parties as contemplated under the provisions of PWDVA, 2005. In fact, the Petitioner intended that Respondent No. 1 should divorce Respondent No. 2 and should marry the Petitioner.

14. It is submitted that the JMFC, Pune has totally failed to appreciate that, the Petitioner is a highly educated women and has worked in renowned companies in India and abroad. Her income is much more than Respondent No. 1, therefore she does not need any kind of financial assistance from Respondent No. 1. There is no harm caused to the Petitioner, therefore, she is not entitled for any kind of compensation. Therefore, the order granting compensation to the Petitioner has been rightly quashed and set aside by the learned Sessions Judge.

It is submitted that although the Petitioner claims that the Respondent No. 1 has forced himself on her, and has kept sexual relation with her against her wish, these allegations are unbelievable for the reason that, had there been a substance in such allegations, the

Petitioner would have immediately taken appropriate legal action against the Respondent. Hence, such claim which is bereft of any proof needs to be ignored.

15. Similarly, the claim of the Petitioner about performing marriage at Ganpati Temple, Mahad, Raigad is also unsubstantiated. The Petitioner has failed to examine the witnesses present during the ceremony of marriage. Thus, the Petitioner has failed to prove the performance of marriage with Respondent No. 1. Merely purchasing property in the joint name by virtue of registered agreement itself would not make the relationship, 'a relationship in the nature of marriage' as alleged. Merely visiting the Petitioner and spending some days with her also, is not sufficient to hold that there was existence of a 'live-in relationship'.

16. It is submitted that, at the most the relationship with the Petitioner can be termed as an 'extramarital relationship'. Such relationship does not come within the purview of a 'relationship in the nature of marriage'. With the full knowledge that Respondent No. 1 is a married person, the Petitioner has entered into relationship with Respondent No. 1 with open eyes. Merely having sexual relationship does not bring such relationship within the ambit of section 2(f) of the PWDVA, 2005. Thus, according to learned counsel, since the Petitioner has miserably failed to prove that her relationship with Respondent No. 1 is a 'relationship in the nature of marriage', the provisions of PWDVA, 2005, would not be attracted to the facts of the present case. As such, the order passed by the Additional Sessions Judge, Pune, in the Appeal filed by the Petitioner does not deserve any

interference.

17. I have heard the respective parties and perused the papers produced on record with the assistance of the parties. Upon careful consideration of the submissions and scrutiny of documents, the question that needs to be addressed is, whether there exists a 'relationship in the nature of marriage' so as to grant relief to the Petitioner under the provisions of PWDVA, 2005?

18. The Petitioner has produced various documents and examined witnesses to prove that she has married Respondent No. 1 during subsistence of his first marriage. She has also produced on record documents to prove that she has resided with Respondent No. 1 at regular intervals and has also given birth to a boy child after receiving treatment at the IVF Centre with the consent and cooperation of Respondent No. 1. Reliance is also placed on certain documents to prove that Respondent No. 1 was handling her bank accounts and finances.

19. Upon appreciation of the evidence, the trial Court has come to a conclusion that, there exists a 'Domestic relationship' and this relationship is in the nature of marriage. Having once come to the conclusion that there exist a 'relationship in the nature of marriage' the reliefs claimed by the Petitioner has been granted to her by partly allowing her application. This very finding on the basis of which the consequential reliefs were granted to the Petitioner have been overturned by the learned Sessions Judge in the impugned judgment and order. Therefore, in order to determine the correctness of the judgment and order, this Court will have to decide, whether the

relationship between the Petitioner and Respondent No. 1, is a 'relationship in the nature of marriage'? Therefore, without delving deeper into the details of the evidence produced by the parties and the findings recorded by the Court, it would be appropriate to decide at the threshold, whether the relationship between the Petitioner and Respondent No. 1 comes within the purview of Section 2(f) of the PWDVA, 2005, which provides definition of 'Domestic relationship', and reads thus:

> *"**Section 2(f):** "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 in the nature of marriage, adoption or are family members living together as a joint family."*

20. The Protection of Women from Domestic Violence Act, 2005, has been enacted with an laudable object to provide protection to the women against the abusive treatment given to her while residing with her relatives in a shared household. The relationship with such persons can be by consanguinity, marriage or through relationship in the nature of marriage or adoption. In addition to these relationships, there are various other relationships shared by family members who reside together under the same roof in a shared household. This enactment aims at providing protection to a woman residing in a 'shared household' and facing violence and abusive treatment by the other members of the household. The term 'Domestic Violence' encompasses various abuses and threats, it also includes sexual, physical, verbal, emotional or economic abuse.

21. The very definition of 'Domestic relationship' includes a 'relationship in the nature of marriage', therefore the protection under the PWDVA, 2005, is not restricted to a relationship through marriage only. Although there are various provisions under various enactments providing remedies to a married woman to claim maintenance against her husband, however, for the first time, the law has recognized right of a women, who is not married to her male counterpart and is in abusive relationship, to seek various protection orders under the provisions of the PWDVA, 2005. This Act aims at providing protection to the victims of domestic violence including women who are in a live-in relationship. A live-in relationship is not a socially accepted phenomena in India as yet. However, with the urbanization and industrialization, the social fabric has undergone a change to a great extent during the past few years. Consequent to the changing society, it was found necessary to provide some protection to the women who are in such kind of relationship, by providing protection and remedies under the PWDVA, 2005.

22. In a landmark decision in the case of ***D. Velusamy Vs. D. Patchaiammal[2],*** the Hon'ble Supreme Court has held that, in order to attract the definition of 'relationship in the nature of marriage', four criterias laid down by the Hon'ble Supreme Court are required to be fulfilled. The Hon'ble Supreme Court was of the view that, considering the large number of cases filed in our country, involving interpretation of the expression 'relationship in the nature of marriage', which was nowhere defined under the Act, there was a need of some authoritative decision to guide the Courts. Accordingly certain guiding

2 (2010) 10 SCC 469

factors have been culled out by the Hon'ble Supreme Court. The relevant paragraph of the said judgment is reproduced hereinbelow, which reads thus:

> *"**31.** In our opinion a "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages 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.*
>
> *In our opinion a "relationship in the nature of marriage" under the 2005 Act must also fulfil the above requirements, and in addition the parties must have lived together in a "shared household" as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a "domestic relationship"*

23. In a subsequent judgment in the case of ***Indra Sarma*** *(supra),* the Hon'ble Supreme Court has cleared all the ambiguity existing about the right of a woman, who is in a 'live-in relationship', to invoke provisions of the PWDVA, 2005. In this Judgment, the Hon'ble Supreme Court has distinguished 'live-in relationship' that could qualify as a 'relations in the nature of marriage'. While examining the issue, the Hon'ble Supreme Court has taken a view, that to qualify as 'relationship in the nature of marriage', it should have some inherent or essential characteristics of a marriage, though parties might not

have legally married.

24. Applying these characteristics to the given facts of the case, it is held that, alleged 'live-in relationship' between unmarried woman and married male is not a 'relationship in the nature of marriage'. If any maintenance or monetary relief is granted, it would be against the interest of legally wedded wife and children. After examining the various social facets and the judgments of the Australian, American and British Courts, along with the other relevant material, applying it to the Indian social standards, the Hon'ble Supreme Court has culled-out some guidelines for testing, whether a 'live-in relationship' will fall within the expression a 'relationship in the nature of marriage' under Section 2(f) of PWDVA, 2005? The relevant paragraph of the judgment of Hon'ble Supreme Court in the case of ***Indra Sarma*** *(supra)* reads as under:

> *"**56.** We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships:*
>
> ***56.1. Duration of period of relationship**.—Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.*
>
> ***56.2. Shared household**.—The expression has been defined under Section 2(s) of the DV Act and, hence, needs no further elaboration.*
>
> ***56.3. Pooling of resources and financial arrangements**.—Supporting each other, or any one of them, financially,*

sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long-term investments in business, shares in separate and joint names, so as to have a long-standing relationship, may be a guiding factor.

***56.4. Domestic arrangements**.—Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.*

***56.5. Sexual relationship**.—Marriage-like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring, etc.*

***56.6. Children**.—Having children is a strong indication of a relationship in the nature of marriage. The parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.*

***56.7. Socialisation in public**.—Holding out to the public and socialising with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.*

***56.8. Intention and conduct of the parties**.—Common intention of the parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship."*

25. Applying the aforementioned parameters to the present case, it cannot be denied, that some of the conditions laid down in the guidelines *supra* are attracted in the present case, such as owning of property in the joint name, and sexual relationship which is not denied by the Respondent No. 1. Though there is a child born out of

their relation, it is disputed by Respondent No. 1. The Petitioner has not proved that the Respondent no. 1 has projected her to be his wife in public, and while socializing with his friends and relatives.

Be that as it may, even if some of the aforementioned conditions/guidelines are fulfilled in the present case, yet the fact remains that, the Petitioner was very much aware about the marital status of the Respondent No. 1, and that he was also having a child. It is admitted by the Petitioner that she was aware that Respondent No. 1 is married and having a child, however due to his misrepresentation, she has entered into a relationship with him. It is admitted by her that it was represented to her that the wife of Respondent No. 1 is having some mental illness and the Respondent No. 1 was under the process of obtaining divorce from her. It is therefore evident that knowing it fully well that Respondent No. 1 is married, the Petitioner has entered into a relationship, which has no legal sanctity.

26. In similar situation, the Hon'ble Supreme Court in case of ***Indra Sarma*** (*supra*) has taken a view that, since the appellant therein was aware that the respondent was a married person, prior to the commencement of their relationship, the status of the relationship would be that of a concubine or mistress, who cannot be treated as a 'relationship in the nature of marriage'. A long standing relationship of concubine though requires some kind of protection, but the D.V. Act does not take care of such contingency and perhaps requires for amendment of the definition of Section 2(f) of the PWDVA, 2005, which is restrictive and not exhaustive. It is held that there is neither any express statutory protection for such kind of relationship, nor any

regulation to regulate the live-in relationships, upon its disruption or termination. Finally it is held that all live-in relationships are not 'relationships in the nature of marriage', unless such relationship has an essential characteristic of marriage.

27. The Hon'ble Supreme in its previous judgment in the case of ***D. Velusamy*** (*supra*) has already laid down the necessary conditions/requirements, required to be fulfilled to hold, that a particular relationship is 'relationship in the nature of marriage'. In the present case the Respondent No. 1, who is already married does not qualify condition No. (c), which requires that the parties must be otherwise qualified to enter into a legal marriage, including being unmarried.

28. Thus, in view of the interpretation of the expression 'relationship in the nature of marriage' given by the Hon'ble Supreme Court in both the judgments referred supra, the relationship of the Petitioner and Respondent No. 1, fails to qualify the characteristic and requirements of 'relationship in the nature of marriage'. As a result, the relationship of the Petitioner does not come within the purview of Domestic relationship as defined under Section 2(f) of the PWDVA, 2005, and consequently, the Petitioner is not entitled for the protection under the said Act. Hence, the Writ Petition fails. No interference is warranted in the Judgment and Order dated 26th July 2016, passed by the learned Additional Sessions Judge, Pune.

29. Rule is discharged. No order as to costs.

(MANJUSHA DESHPANDE, J.)

Rushikesh

RUSHIKESH VISHNU PATIL

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