



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

CRIMINAL WRIT PETITION NO.209/2024

1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

...PETITIONERS

VERSUS

1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

...RESPONDENTS

Mr. A.R. Fule, Advocate for petitioner.
Mr. J.A. Anthony, Advocate for respondents.

CORAM : M. M. NERLIKAR, J.
DATE : 20.01.2026

ORAL JUDGMENT :

Heard the learned counsel for petitioners and the learned counsel for respondents.

2. By this petition, the petitioners seek quashing and setting aside of the entire proceedings including impugned orders dated 08.09.2022 and 19.10.2023 in [REDACTED] filed by respondent under the Protection of Women from Domestic Violence Act, 2005 ("D.V Act") before Judicial Magistrate First Class, Chamorshi.

3. The principal challenge is to the proceedings initiated by the present respondents under Section 12 of the D.V. Act. The learned counsel for the petitioners submits that there is no relationship in the nature of marriage between the parties. The FIR was lodged by the present respondent No.1 on 07.05.2022 alleging sexual abuse by the present petitioner No.1. After completion of investigation, charge sheet was filed on 26.06.2022. The petitioner No.4 got married with petitioner

No.1 on 06.07.2022. He further submits that the couple never lived in a shared household and therefore the relationship cannot come within the purview of definition of Domestic Relationship. As the petitioner No.1 and respondents do not have any relationship, therefore even their relationship does not fall under the said definition of 'Domestic Relationship and Relationship in the nature of marriage'. He invited my attention to the FIR which was registered, wherein the present respondent No.1 has made allegations against the present petitioner No.1 stating that at the relevant time, she was residing with her brother at Alapalli and at Aheri with her friend. Therefore, he submits that it cannot be said that they lived in a shared household. By relying on the decision of the Supreme Court in case of *D. Velusamy Vs. D. Patchaiammal, 2010 DGLS(SC) 835*, though the relationship in the nature of marriage is not defined, however the Supreme Court in the said judgment has carved out certain guidelines in order to interpret the 'relationship in the nature of marriage'. The following

guidelines has been laid down by the Apex Court to identify ‘relationship in the nature of marriage:-

a] The couple must hold themselves out to the society as being akin to spouses.

b] They must be of legal age to marry.

c] They must be otherwise qualified to enter into legal marriage including being unmarried.

d) They must have voluntarily co-habited and held themselves out to the world as being akin to spouses for significant period of time.”

My attention was invited to the first ingredient that is the couple must hold themselves out in society as being akin to spouses. He has mainly harped upon the fact that the parties have not portrayed themselves as spouses to the society and therefore the very first ingredient for establishing ‘relationship in the nature of marriage’ is not made out. He submits that merely spending weekends together or a one night stand would not come under the purview of domestic relationship as was observed by the Supreme Court in the case of D. Velusamy (*supra*). The complaint is nothing but a revengeful act and therefore the complaint is required to be quashed.

4. On the other hand, the learned counsel appearing for the respondents vehemently opposed the petition and invited my attention to the contents of the complaint filed by the respondents under Section 12 of the D.V. Act. The learned counsel pointed out the order passed below Exh-5 in PWDVA No.20/2022, wherein the Court has already considered the first ingredient as laid down in D. Velusamy (*supra*) whether the applicant has proved that she had a relationship with non-applicant No.1 in the nature of marriage and a finding to that effect was rendered in positive and accordingly after considering prima facie case, the Court has granted interim maintenance of 5000/- per month to the applicant/respondent No.1 and Rs. 2000 to the applicant/respondent No.2 who is born out of the relationship between the petitioner No.1 and respondent No.1 Accordingly she submits that unless the final proceedings are decided and the evidence is led the present petition may not be entertained. Lastly, she submits that respondent No.1. conceived pregnancy, however the petitioner No.1 had forced her to abort first child. Even thereafter, second

time she had conceived the pregnancy out of their relationship and she declined to abort it and accordingly a female child was born out of said relationship, therefore she submits that liberal interpretation is necessary to be given to the definition of domestic relationship in order to bring all these relationships within the definition of Section 2(f) of the D.V. Act. In view of the above, it is submitted that there is no merit in the petition and the same deserves to be rejected.

5. Upon hearing the learned counsel for petitioners as well as respondents and after going through the record placed before this court, admittedly it appears from the complaint filed under Section 12 of the D.V Act that it was averred in the complaint filed by the respondent No.1 that both were living as husband and wife and there was sexual relationship between the parties. It is further averred that petitioner No.1 had acknowledged the relationship between the couple as husband and wife which could be gathered from the complaint.

6. Admittedly, it appears from the complaint that initially due to sexual intercourse between the petitioner No.1 and the respondent No.1, she conceived pregnancy. However, it was aborted at the insistence of the petitioner No.1. Even, thereafter, the relationship continued and accordingly second time also she became pregnant and thereafter a female child was born i.e. respondent No.2. It is averred in the complaint that the relationship between couple was in the nature of marriage. As the petitioner No.1 declined to marry with her, she has lodged the FIR dated 07.05.2022 under Section 376(2) (n) of the Indian Penal Code and under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

7. From the above chronology of events prima facie it appears that there was a relationship between the couple. Initially, the couple had lived together at Alapalli and Aheri. During subsistence of the relationship, the respondent conceived a pregnancy. However, that pregnancy was aborted. Later on, again she conceived and a female child was born. The

judgment of the Supreme Court in the case of ***Indra Sarma Vs. V.K. Sarma, (2013) 15 SCC 755*** is relevant wherein after referring to several judgments, the Supreme Court in paragraph 56 has carved out guidelines so as to establish 'relationship in the nature of marriage' three conditions are relevant in the present case which are:-

*“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.*

*56.5. **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.”*

Considering the above, prima facie, it could be gathered that Petitioner No.1 and Respondent No.1 were having a

relationship in the nature of marriage, as they were in relationship for long time and out of the said relationship, a child was born. Further, prima facie the guidelines laid down in D. Velusamy (*supra*) are also satisfied. Not only that, even the trial court while granting interim maintenance has framed this points which reads as under:-

“10. Now the question arose as to what is the relationship between the applicant and non-applicant no.1. It is a matter of record that FIR was filed by the applicant against the non-applicant no.1 for offence p/u/s 376 of IPC. Hence, establishing the physical relationship by the non-applicant no.1 with applicant cannot be ruled out. Hence, it can be said that the relationship between the applicant no.1 and non-applicant no.1 is akin to relationship in the nature of marriage. The meaning of domestic relationship includes not only the relationship of marriage but also the relationship in the nature of marriage to be akin to common law marriage. It is a well settled that common law marriage required the following condition to be satisfied although not being formally marriage:-

- a] The couple must hold themselves out to the society as being akin to spouses.*
- b] They must be of legal age to marry.*
- c] They must be otherwise qualified to enter into legal marriage including being unmarried.*

d) They must have voluntarily co-habited and held themselves out to the world as being akin to spouses for significant period of time.”

8. Considering the above facts and circumstances, I am not inclined to quash the complaint at this threshold where the fact has emerged that out of the relationship a female child was born. I am of considered opinion that evidence is required to be led by the parties so as to make an informed decision in the interest of justice. Further, the relationship between petitioner No.1 and petitioner No.4 though would be decided by the Trial Court after the parties lead the evidence, however prima facie the alleged date of marriage which is 06.07.2022, demonstrates that the relationship between petitioner No.1 and respondent No.1 was first in point of time. Therefore I do not see any force in the submissions made by the counsel for the Petitioners so far as Petitioner No 1 is concerned. He further submits that so far as respondent No.2 i.e. second child born is concerned, at the relevant time, it was contended in the FIR that the pregnancy is of six weeks. However, the child was born on 19.10.2023, and DNA report is awaited. Therefore, it is

doubtful whether child born is of petitioner No.1 or not. At this juncture, this submission needs no consideration as the main complaint is pending before the Court and the evidence is yet to be led. However, so far as the other Petitioners are concerned, that is Petitioner Nos. 2 to 4, admittedly there are no allegations against Petitioner Nos. 2 to 4 in the entire complaint so as to invoke the provisions of the D.V. Act. In this view of the matter, I am inclined to allow the petition partly by quashing and setting aside the complaint in respect of Petitioner Nos. 2 to 4. However, I am not inclined to grant any relief so far as Petitioner No.1 is concerned. Hence, the following order:

(I) The petition is partly allowed.

(II) The complaint filed by the present Respondent under Section 12 of the D. V. Act, so far as petitioner No.1 is concerned, it is dismissed, and so far as petitioner Nos. 2 to 4 is concerned, is allowed.

9. At this juncture, the learned counsel appearing for Petitioners seeks stay of the present order for the reason that

the main complaint is pending. I am not inclined to grant any stay to the present order, hence the request is rejected.

(M. M. NERLIKAR , J.)

Gohane