IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 82 OF 2017

Reshma Begum W/o Gajanfar Kazi, **APPLICANT**
Aged 30 years, Occ. Household,
R/o. At present N-6, A, 120 CIDCO,
Aurangabad, Taluka & Dist. Aurangabad

V E R S U S

[1] The State of Maharashtra **RESPONDENTS**

[2] Gajanfar Kazi @ Jawed S/o Kazi
Qaiseruddin, Aged 41 years, Occ.
Mechanic, R/o. Katkatgate,
Aurangabad, Taluka & Dist. Aurangabad

Mr. N.R. Shaikh, Advocate for the Applicant
Mr. A.R. Kale, A.P.P. for the Respondent No.1-State
Mr. H.I. Pathan, Advocate for the Respondent No.2

CORAM : MANGESH S. PATIL, J.

Reserved On : 29 June 2018
Pronounced On : 25 July 2018

J U D G M E N T :

Rule. Rule is made returnable forthwith. By consent, the matter is heard finally.

2. Very short issue that arises for determination in this Revision is as to the interpretation of provision of Section 2 [f] of the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as 'the D.V. Act']. The factual matrix leading to revision can be put in a short compass.

3. The applicant who belongs to Jain Hindu community was married to one Shantaram Mahadu Ughade and the couple begotten a child out of the wedlock. It was averred that, that marriage was brought to an end by virtue of a customary divorce on 15.10.2011. It is averred that she thereafter came in contact with the respondent No.2 who is a Muslim by religion. The acquaintance blossomed into an affair. He was already married and was having children. She got converted to Islam and the couple entered into a marital tie in presence of a Kazi on 21.07.2012. The couple also got a child out of such relation on 29.04.2013. However, a dispute arose and the couple separated. She filed a proceeding under Section 12 of the D.V. Act against him in the Court of Judicial Magistrate First Class at Aurangabad bearing Criminal Misc. Application No.28 of 2013.

4. The respondent No.2 contested the proceeding primarily on

the ground that the applicant was already married and so was he. The marriage between the two was not legally possible, since they were already having subsisting marital relation. He also denied even that she was staying with him in some kind of relation.

5. The learned Magistrate allowed the application holding that the relationship between the two was in the nature of marriage and was covered by Section 2 [f] of the D.V. Act and granted various reliefs.

6. Being aggrieved, the respondent No.2 preferred Appeal under Section 29 of the D.V. Act bearing Criminal appeal No. 156 of 2015. The learned Addl. Sessions Judge by the impugned Judgment and order dated 12.01.2017 relying upon Judgment of the Supreme Court in the case of ***Velusamy Vs. D. Patchaiammal; 2010 (3) Bom. C.R. (Cri.) 764 (S.C.)*** concluded that the applicant and the respondent No.2 were not qualified to enter into a legal marriage since they were already married and their marriages were in subsistence. The relationship was not covered by Section 2 [f] of the D.V. Act. She was not entitled to take recourse to the provision of Section 12 of the D.V. Act. The appeal was allowed and the Judgment and order passed by the Magistrate was set aside. Hence, this Revision.

7. The learned Advocate for the applicant submitted that since the applicant had already got the customary divorce in the form of execution of Notarized Deed on 15.11.2011, her first marriage had come to an end. Since the respondent No.2 is Muslim, his personal Law permits him to solemnize the second marriage. Since there is evidence in the form of testimony of Kazi and a Nikahnama demonstrating that the marriage was solemnized between the applicant and respondent No.2, the relationship between the two was in the nature of marriage within the meaning of Section 2 [f] of the D.V. Act. The couple had also has a child out of the relation. There was a birth certificate of the child which demonstrated that the couple was holding themselves out as husband and wife and the relationship was duly covered under that provision. The observation and the conclusion drawn by the Magistrate was unassailable. The learned Addl. Sessions Judge has ignored these aspects and without any cogent and convincing reason, quashed and set aside the Judgment of the Magistrate. There is no sufficient legal basis to substantiate the interpretation of the learned Addl. Sessions Judge. The impugned Judgment and order is not tenable in law and be quashed and set aside, thereby restoring the Judgment and order passed by the Magistrate.

8. Though the respondent No.2 has been disputing all the

averments, there is enough material to show that the applicant and the respondent No.2 had established a kind of relationship. They had entered into marriage ceremony in presence of a Kazi [PW 2]. A Nikahnama was executed [Exhibit 35]. There is also a Birth Certificate showing that a child was born to the applicant and the respondent No.2 was shown as the father of the child.

9. However, it is necessary to ascertain, whether such kind of relationship is covered by the definition of domestic relationship as contained in Section 2 [f] of the D.V. Act. The definition reads thus :

> "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.

It is important to note that the interpretation put on the definition and particularly the words 'relationship in the nature of marriage' by the Supreme Court in the case of Velusamy [*supra*] to mean :

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

[b] They must be of legal age of 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.

Even in the case of ***Indra Sarma v. V.K.V. Sarma; AIR 2014 S.C. 309***, a comparison has been made between the relations which are in the nature of marriage and live in relationship and guidelines have been culled out to distinguish between the two.

10. Perusal of these decisions makes it abundantly clear that not all the live in relationships are covered by the provision of Section 2 [f] of the D.V. Act. It is only those which qualify to be the relationship in the nature of marriage which are governed by that provision. In order to constitute such relationship, a legal marriage between the two must be possible.

11. There is one more aspect which needs such an interpretation to be put to words 'relationship in the nature of marriage' contained in Section 2 [f] of the D.V. Act. It is well recognized principle of interpretation of statute that a statute should be interpreted in a manner which would not promote illegality. It has made a provision to enable a woman in a relationship in the nature of marriage to seek various remedies under the D.V. Act. One cannot put an interpretation to Section 2 [f] of the D.V. Act which would promote an adulterous relationship which is an offence punishable under Section 494 of the Indian Penal Code. Therefore, these words will have to be interpreted in a conducive and harmonious manner so as not to offend a penal provision contained in the Code. Therefore looked at from this angle, one cannot interpret this provision which would offend any law. The legislature in its wisdom has enacted the Law so as to cover and protect not only a legally wedded wife but has gone a step further to bring in its ambit a woman who has been in a relationship in the nature of marriage. Use of word 'marriage' to qualify the relationship is conspicuous and the only interpretation that can be put is that the marriage between the couple must be legally possible. Any other interpretation which would offend any other law would not be permissible.

12. Once it is clear that in order to enable the applicant to claim

any relief under the D.V. Act the relation between her and the respondent No.2 was not in the nature of marriage, she is clearly not entitled to claim any relief under that Act. Admittedly, on her own admission, her first marriage was still in subsistence, and if that be so, she could not have married legally with the respondent No.2 albeit he is a Muslim and his personal law permits him to solemnize the second marriage. In view of such state of factual matrix and the evidence, the observation and the conclusion drawn by the learned Addl. Sessions Judge that the relationship between these two did not fall into the 'domestic relationship' as defined under Section 2 [f] of the D.V. Act is unassailable. The Revision is dismissed.

The rule is discharged.

[MANGESH S. PATIL, J.]

SRM/25/7/18