



**Jasmin Shaikh Vs. Imran Sayyed
& ors.**

Order Below Exh 15

By filing present application, the applicant Jasmin Shaikh is seeking interim maintenance under section 23 of the Protection of Women from Domestic Violence Act, 2005 (In short, DV Act).

02 Factual matrix of applicant's case is that the applicant is divorcee have been one son from first husband. She met the respondent and cordial relations were established between them. She told the respondent about her first marriage and child and the respondent agreed to look after them. The applicant and respondent started residing together as husband and wife and cohabited each other. The applicant further averred in the application that the respondent enticed her of marriage and maintained physical relations with her for almost four years. Afterwords, the respondent quarreled with her on trifle issues and deserted her without sufficient cause. When applicant tried to meet the respondent and his family members, they insulted her with filthy words and denied to maintain her. The applicant has no independent source of income and the respondent did not take responsibility of her in spite of sufficient source of income. Hence, present application is moved by her for interim maintenance.

03 The respondent filed his say at Exh.21 and resisted all allegations levelled against him. He contended that the applicant's fourth marriage is still in existence and she has son named Ahil from said wedlock. He further averred that applicant approached towards him through Facebook and friendly relations established between them.

Later on, applicant fall in love with him and wanted to marry with him. However, the respondent tried to convince her that their marriage is not possible due to her existing marriage. But the applicant threatened the respondent of false criminal cases and also insulted him with filthy words. The respondent approached the Ghoti Police Station. But they did not take any steps by stating that said matter is private and family matter. Hence, the respondent filed Cri.M.A No.242/2021 against applicant for offences punishable under sections 384, 504 and 506 of the Indian Penal Code, 1860 (In short, IPC) which is still pending in the Court. As per further averments of the respondent, the applicant filed complaint in Ghoti Police Station against respondent under section 376 of the IPC. However, the Sessions Court, Nashik granted anticipatory bail to the respondent in said offence.

04 The respondent further averred that the applicant defamed the respondent and his relatives publically by posting abusive and false statements and videos against them on Facebook and other media platforms. He further stated that the applicant beat the mother of him brutally and the complaint of said incident was filed by his mother and the respondent also filed suit for defamation against the applicant in the Court which is still pending. As per his contentions, the applicant did not reside with him for single day and there is no domestic relation between them. The applicant has no right to file said application against respondent under DV Act as there is no domestic violence caused to her at the instance of respondent or his relatives. Hence, he prayed for rejection of present application.

05 I have heard Ld. Advocates of both parties and perused documents filed on record. Considering rival arguments of both parties,

and evidence on record, following points arose for my determination to which my reasoned findings are as follows:

Sr. No.	Points	Findings
1)	Whether the applicant <i>prima facie</i> shows that domestic violence caused to her at the hands of respondents?	No
2)	Whether the applicant is entitled for interim maintenance as prayed?	No
3)	What order?	Application is rejected.

REASONS

As to Point No 1 and 2:

06 So as to prove domestic violence against applicant, firstly, it is required to prove that the applicant is aggrieved person as per definition under section 2(a) of DV Act. As per said section, '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*. Even those women who are sisters, widows, mothers, single woman, or living in any other relationship with the abuser are entitled to legal protection under the DV Act. As per section 2(f) of the DV Act, '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*. According to section 2(s) of the DV Act, *a household where the aggrieved person lives or lived in a domestic relationship, either singly or along with the respondent is a share household*. From the above legal provisions, it is clear that to substantiate the claim of

interim maintenance under section 23 of the DV Act, the applicant has to establish that she is an aggrieved person living or has lived with the respondent in the shared household.

07 To buttress his contentions, the Ld. Advocate for the respondent relied upon ruling of Hon'ble Supreme Court in case of ***D. Velusamy Vs. D. Patchalammal ; Criminal Appeal Nos.2028-2029 of 2010, decided on 21/10/2010*** in which it was held that *"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 fulfill 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'.

In our opinion not all live in relationship will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get 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.”

08 On point of live-in-relationship, the Ld. Advocate for the respondent relied upon case of Hon’ble Supreme Court in case of ***Indra Sarma Vs. V.K.V. Sarma ; AIR 2014 SC 309*** in which it was held that *“We are, in this case, concerned with a “live-in-relationship” which, according to the aggrieved person, is a “relationship in the nature of marriage” and it is that relationship which has been disrupted in the sense that the respondent failed to maintain the aggrieved person, which, according to the appellant, amounts to “domestic violence”. The respondent maintained the stand that the relationship between the appellant and the respondent was not a relationship in the nature of marriage but a live-in-relationship simplicitor and the alleged act, omission, commission or conduct of the respondent would not constitute “domestic violence” so as to claim any protection orders under section 18, 19 or 20 of the DV Act.”*

“Section 2(f) of the DV Act defines “domestic relationship” to mean, inter alia, a relationship between two persons who live or have lived together at such point of time in a shared household, through a relationship in the nature of marriage. The expression “relationship in the nature of marriage” is also described as defacto relationship, marriage like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship) etc.”

09 Further, the Ld. Advocate for the respondent relied upon case of Hon’ble High Court of Bombay in case of ***Narayan Jangluji Thool & ors. Vs. Sou. Mala ; Criminal Writ Petition No.773 of 2014, decided on 27/01/2015*** in which it was held that *“It is thus clear that*

*in order to attract the provisions of the Act, 2005, the applicant must not only show existence of a live-in-relationship with the non-applicant which is akin to a marriage which is visible from the fact that applicant and non-applicant are living together by holding out as husband and wife, and **should also show that they are otherwise legally qualified to marry.***”

“It is crystal clear that a woman, who is married, cannot enter into a domestic relationship as contemplated under section 2(f) of the Act, 2005 and even if she establishes a long standing relationship with a man as his concubine or mistress, she would not be entitled for protection under the provisions of the Act, 2005.”

10 Another ruling relied upon by the respondent is in case of *Satyendra Kumar Sharma & ors. Vs. Smt. Uma Sharma ; Criminal Revision Nos.312 of 2016 and 265 of 2018 decided on 16/05/2018* given by Hon’ble High Court of Rajasthan in which the principles given in case of *D. Velusamy Vs. D. Patchalammal* (Supra) is reiterated by said Court. Though the Ld. Advocate for the applicant relied upon said judgment for proving fact of domestic violence caused to the applicant, it is not applicable to the facts of case of applicant as she is not even *prima facie* aggrieved person in the present case.

11 In the backdrop of above legal position, the facts of the present case are required to be analyzed minutely. As far as the case of applicant is concerned, she averred that she was residing with the respondent under one roof for almost four years. She further spoke about abortions caused to her during said period. However, no other supportive evidence to that effect was brought on record by her to establish main fact that the applicant and respondent are residing together for considerable time. On the other hand, respondent

specifically denied contentions of applicant regarding shared household and asserted that the applicant wants to marry him in spite of his specific denial to do so. It is also brought on record by the respondent that there are four marriages took place of applicant and fifth marriage is still in existence from which the applicant has one son. The applicant did not deny the fact of her earlier marriage but stated that she took divorce from her husband Aminoor Islam Kazim Ali. To buttress said contention she filed on record photocopy of notarized divorce deed. The Ld. Advocate for the respondent filed on record other criminal proceedings initiated by applicant against respondent including offence of rape. He also brought on record copy of suit filed by the respondent and his relatives against the applicant for defamation and also put forth photocopy of threatening messages sent by applicant to the respondent through social media.

12 Considering above facts and circumstances, it appears that though the applicant contended that she took divorce from her husband, it is not proved by her with any other cogent or reliable evidence. The fact of shared household with respondent is also not proved by the applicant as there is no evidence to prove their common household for considerable time. Mere averments in the application regarding domestic violence are not sufficient to avail the benefit of interim maintenance under DV Act. The applicant is not seems to be “aggrieved person” as per provisions of DV Act. The requirements of “relationship in nature of marriage” as enumerated in case of ***D. Velusamy Vs. D. Patchalammal*** (Supra) are not fulfilled by the applicant to avail the benefit of interim maintenance as envisaged in the DV Act. It is settled principle of law that the applicant has to *prima facie* prove cause of domestic violence to her at the hands of respondent. However, in the present case as she is not appeared to be

the “aggrieved person” as per provision of said Act, there is no question of cause of domestic violence to her. As there is no domestic violence caused to the applicant, there is no relief of interim maintenance in favour of her under DV Act. Accordingly, I answered point No.1 and 2 in the negative and in answering to point No.3, I passed following order:

ORDER

The application at Exh.15 is rejected.

Date :- 15/06/2023

(S.G.Kuvalekar)
Judicial Magistrate F.C.,
Igatpuri
(J.O.Code – MH03248)