

**THE HIGH COURT OF MADHYA PRADESH**  
**PRINCIPAL SEAT AT JABALPUR**

**Hon'ble Shri Justice Rajendra Kumar Srivastava**

**Cr.R. No. 2299/2019**

Smt. Shikharani

**Vs**

Hitendra Chudasma

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Shri Shafiqullah, learned counsel for the petitioner.  
Shri Abhishek Acharya, learned counsel for the respondent.  
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**ORDER**  
**(27.02.2019)**

Petitioner has filed this Criminal Revision under Section 397/401 of Cr.P.C. against the order dated 23.04.2019, passed by the Additional Sessions Judge, Jabalpur (MP), in Criminal Appeal No. 432/2017 & 450/2017 arising out of the order dated 02.11.2017 in criminal Case No. 3200024/12, passed by JMFC Jabalpur, whereby the learned JMFC has considered the application filed by the petitioner under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as 'Act 2005') and order to pay maintenance amount of Rs. 3000/- per month to the petitioner and Rs. 2000/- per month to her son. Further, it is also directed that the respondent shall also pay Rs. 5000/- as compensation and Rs. 1000/- per month for arranging the residence of the

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petitioner. In appeal, the learned Appellate Court has set aside the order dated 02.11.2017.

2. According to case, petitioner/applicant has preferred an application under Section 12 of Act, 2005 stating that her marriage was solemnized with the respondent/non-applicant on 13.04.2011 according to Hindu rites and rituals and they have been blessed with one male child namely Ayush Kumar. The respondent and his family members maltreated the petitioner and they demanded one Maruti Car, one gold Chain and Rs.7,00,000/- as dowry. She further contended that the respondent has blamed on her character and committed sexual assault with her. The respondent has not fulfilled basic need of the petitioner. Her son- Ayush is studying and she has no source of income to take care of him properly. She further stated that the respondent restricted her to go out from the house, moreover, without taking her consent, the respondent had sold her stridhan and other valuable article. She further alleged that the respondent tried to throw her son from the terrace. She also prays to give interim compensation under the act.

3. On reply, the respondent stated that the petitioner has filed a false case against him and the facts narrated by her are concocted. The petitioner had suppressed the fact that she was already married with one Dhananjay Mandal and she is having two daughter to him. When this fact came to knowledge of the respondent, the petitioner started quarrel with him. He further stated that the petitioner demanded Rs. 4,00,000/- and threatened him to falsely implicate in the case. The family members of the

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respondent were not involved in the case in any manner even then the petitioner has also implicated them. He stated about his income saying that he is under suspension period whereas the petitioner is earning Rs. 20,000/- to 25,000/- from her beauty parlour work.

4. After evaluating the evidence available in the case, the learned JMFC found that the respondent committed domestic violence with the petitioner and her son. The JMFC has directed the respondent to pay the maintenance and compensation amount as aforesaid.

5. Being aggrieved by the order passed by learned JMFC, both the parties have approached the Appellate Court by filing the appeals. By the impugned order, the learned ASJ has allowed the appeal filed by the respondent and dismissed the another which was filed by the petitioner. The ASJ has set aside the order dated 02.11.2017 on the ground that the relation between the petitioner and respondent is not akin to marriage.

6. Learned counsel for the petitioner submits that the learned Appellate Court erred in reversing the order passed by the learned trial Court by giving the finding that there is no relation of marriage between the petitioner and respondent. The learned ASJ failed to consider that the parties have performed marriage on 13.04.2011 and they have been blessed with one child also. The order passed by the learned Appellate Court is based upon the assumption and presumption only. The Court has also overlooked the fact that the validity of marriage between the parties is still under adjudication before the High Court. In this

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proceeding of Domestic Violence Act, the Court cannot decide the validity of marriage, same is only be decided by appropriate Court of law. He further submits that the learned Appellate Court ignored the provision of Section 2(f), 20 and 26 of the Act 2005. Apart from that the petitioner have no source of income and she needs of money for welfare of her son. With the aforesaid, he prays for allowing this petition. In support of his contention, he has relied on the judgments of Hon'ble Apex Court in the case of **D. Velusamy Vs. D. Patchaiammal** reported in **2011 CRI. L. J. 320**, **Chanmuniya Vs. Virendra Kumar Singh Kushwaha & another** reported in **2011 Cri. L.J. 96** and **Lalita Toppo Vs. State of Jharkhan** reported in **2018 SCC Online SC 2301**.

7. On the other hand, learned counsel for the respondent opposes the submission made by learned counsel for the petitioner and submits that the learned Appellate Court has passed the order in accordance with law. He submits that undisputedly the petitioner is already married with one Dhananjay Mandal even then she performed second marriage with the respondent without taking legal divorce from her earlier husband. Thus , the marriage of petitioner performed with the respondent, is void. He further submits that when the respondent has sent a legal notice of divorce to the petitioner, the petitioner has filed a false complaint against the respondent. The petitioner herself admitted that she has not taken divorce from her earlier husband and two daughter of her is residing at Andhra Pradesh. Since the petitioner and respondent are not living as husband and wife in society as well as the petitioner is already married with

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another man, her marriage with the respondent, without taking divorce, cannot be recognized. He submits that the Appellate Court has rightly relied on the pronouncement of Hon'ble the Supreme Court in the case of **D.Velusamy Vs. D Patchaiammal** reported in **(2010) 1 SCC 469**. Section 5(1) of Hindu Marriage Act bar the marriage between the two in case of a spouses living at the time of marriage. In the case, earlier husband of the petitioner namely Dhananjay Mandal is still alive. Apart from that to establish the case under Section 12 of Domestic Violence Act it is necessary to prove that the women was tortured mentally and physically, merely to say that women was tortured, is not sufficient to bring the case under the Act 2005. The complaint filed by the petitioner is also time barred as same was filed after one year whereas the time limit of one year is prescribed for filing the complaint under the Act 2005. Under Section 2(a), the definition of aggrieved person is provided and under the same, the child does not come, thus the child of petitioner is not entitled to get any maintenance under the Act 2005. He also submits that vide the judgment and decree dated 29.10.2018, the Court has declared, the marriage void ab intio of the petitioner and respondent. With the aforesaid he prays for dismissal of this petition. In support of his contention, he has relied on the judgments of Hon'ble Apex Court in the case of **D. Velusamy (Supra), Gullipilli Sowria Raj Vs. Bandaru Pavani @ Gulli Pilli Pavani** reported in **2009(1) MPWN 76**. He has also relied on the judgments of Bombay High Court in the case of **Narayan Janluji Thool and other Vs. Sou. Mala** passed in **W.P. No.**

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**773/2014 and Reshma Begum Vs. The State of Maharashtra and another** passed in **Criminal Revision Application No. 82/2017.**

**8.** Heard both the parties and perused the record.

**9.** As the learned counsel for the respondent raised the ground of limitation, It would be appropriate to decide the same first. According to respondent, there is limitation period of one year is prescribed for filing the application under Act 2005. On careful reading of the Act, there is no limitation period is prescribed for filing the same. In the case of **Anthony Jose Vs. State of NCT**, reported in **2018 SCC Online Del 12956** the High Court of Delhi held that the matrimonial offences are continuing offences and can not be discarded on the ground of limitation. It is held by the High Court of Delhi that not giving the maintenance is continuing offence and wife can not be debarred from seeking maintenance under the Act 2005 even after three years.

**10.** Now I shall consider other merits of the case. On perusal of record, undisputedly, the marriage of respondent was solemnized with the petitioner on 13.04.2011 and they have been blessed with one male child. It is also not in dispute that the petitioner was already married with one Dhananjay Mandal and she had not taken a valid divorce from him. Although, she stated that under the mutual consent, according to her conventions, she had taken divorce from earlier husband. On perusal of order passed by learned JMFC, it appears that the JMFC found that the petitioner was residing at shared household of the respondent's

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family and there was well domestic relationship was established between the petitioner and respondent. The learned Magistrate does not find prove any case against the family members of the respondent but the Magistrate found that the respondent has committed domestic violence against the petitioner. In appeal the learned Appellate Court has reversed the order of the learned JMFC by relying the several pronouncements of the Hon'ble Supreme Court as well as various High Court. By relying the judgment of the Hon'ble Supreme Court in the case of **D.Velusamy (Supra)**, it is observed that the relationship of the petitioner and respondent not in the nature of marriage to get the benefit of Act 2005. Herein necessary to mention that the learned JMFC has also relied on the judgment of **D.Velusamy (Supra)** but the Magistrate has overlooked the fact that the earlier husband of the petitioner is still alive and she performed marriage without taking divorce to him which violated the condition No. 3 of said pronouncement.

**11.** Before proceeding further, it is necessary to consider the legal aspects first. Under the Act 2005, Section 2(a), 2(f) and 2(s) defines the definition of aggrieved person, domestic relationship and shared household, which are relevant to this case and quoted as under:-

*“(a) "aggrieved person".- In the Act the “aggrieved person” denotes 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 as described under the Act by the respondent;*

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*(f) "domestic relationship"- Any 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;*

*(s) "shared household"- According to Section 2(s), a household where the aggrieved person lives in a domestic relationship, either singly or along with the respondent, is a shared household.*

*This applies whether the household is owned or tenanted, either jointly by the person aggrieved and he respondent, or by either of them, where either the person aggrieved or the respondent or both jointly or singly have any right, title, interest or equity.*

*Share household also includes a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or person aggrieved has any right, title or interest in the share household."*

**12.** On careful reading of the above definition, it seems that the Act has wider scope for women and not only covers those women who are or have been relationship with the accused/abuser but it also covers those women who have lived together in a shared household and are related by consanguinity, marriage, relationship in the nature of marriage. Further, on perusal of definition of "shared household", it appears that a shared household would only mean belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The another one definition of domestic relationship says about the relationship between two person



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who lives or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage, or through a relationship akin to marriage, adoption or are family members living together as a joint family.

**13.** The both Courts below have relied on the pronouncement of the Hon'ble Apex court in the case **D.Velusamy (Supra)**, but gave a different finding, thus, it is necessary to read the same, relevant para is quoted as under :

*33. 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'.*

**14.** In the above referred case, the Hon'ble Supreme Court describes a wider meaning of aggrieved person and observed that not all live-in-relationship will amount to a relationship in the nature of marriage to get the benefit of Domestic Violence Act. The learned Appellate Court has given its findings that there was no marital relationship between the aggrieved person and respondent and to establish the relationship in the nature of marriage, they must be fulfilled the

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four conditions as enumerated in the case of **D.Velusamy (Supra)**. The learned Appellate Court has reversed the finding of the trial Court on the point that the relationship between the parties is not akin to marriage as the condition enumerated in point 3 for being un-married, was not fulfilled.

**15.** Subsequently, In the case of **Indra Sharma Vs. V.K.V. Sharma** reported in **2013(15) SCC 755**, the Hon'ble Apex Court has relied on the D. Velusamy's case and laid down some guidelines for testing under what circumstance, a live in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the D.V. Act, same are quoted herein 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, need 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*

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*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. 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) Socialization in Public-** *Holding out to the public and socializing 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 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.”*

16. Herein, the Hon’ble Apex has not observed the condition of being unmarried as essential ingredients to fall a live in relationship within the expression of relationship in the nature of marriage.

17. Now, I examine the facts of the case whether the petitioner and her son are entailed to get the shadow of the Act, 2005 ?

18. On perusal of statements of the respondent, it appears that the respondent admitted the fact that their marriage was fixed through publication and the petitioner has shown her marital status as “divorcee”. He also admitted that the petitioner has disclosed about her two daughter. He has also not disputed the fact that the petitioner was in cohabitation with him for certain period and they have blessed with one child. In his reply, in point No. 6, respondent himself admitted that he has sent a notice to the petitioner for dissolution of marriage. In such

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circumstance, it can not be said that the respondent was not aware about the marriage and two daughter of the petitioner. Although, under Hindu Law, a women can't marry again until and unless she takes divorce from earlier one but the petitioner has been saying since beginning that he took the divorce from his husband under her conventions, moreover, it is informed by the petitioner's counsel that the petitioner has preferred an appeal against the judgment and decree dated 29.10.2018, which has been admitted for final hearing. Even then if it is presumed that the petitioner had not taken the mutual divorce from her earlier husband and living with the respondent after performed marriage, in my opinion, the petitioner was living the status of "not legally wedded wife" not "live-in-relationship". The learned counsel for the respondent does not argue that the earlier husband of the petitioner had initiated any proceeding against the petitioner under any law that the petitioner left him without any reason, thus, possibility of her conventions divorce can also not be ruled out, same is subjected to outcome of the first appeal, filed by the petitioner. The status of not legally wedded wife does not affect the remedies of aggrieved person under Act, 2005 if the condition of domestic relationship and shared household is fulfilled. In a recent verdict of larger bench of the Hon'ble Apex Court in the case of **Lalita Toppo (Supra)**, it is held by the Hon'ble Court that **"under the provisions of the DV Act, 2005, the estranged wife or live-in-partner would be entitled to more relief than what is contemplated under Section 125 of the Cr.P.C, namely, to a shared household also."**

19. Undisputedly, the petitioner was residing in the shared household of the respondent and by their co-habitation, she had born a child. In view of the pronouncement of the Hon'ble Apex Court in the

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case of **Lalita Toppo (Supra)** and **Indra Sharma (Supra)**, prima-facie, her relation with the respondent is not appeared like a marriage but not less than marriage, thus, she is entitled to get the relief under DV Act 2005.

**20.** Now, the questions remain, first, whether there is any domestic violence committed by the respondent towards the petitioner if yes then is she entitled to get the maintenance ? Second, the son of the petitioner can get the maintenance under the Act 2005 ?

**21.** On perusal of statements of the petitioner, it appears that after her marriage with the respondent, she delivered one child, who used to ill and the respondent would not take care of him. It also appears from her statements that the respondent did not come to take her to his home, the respondent has also not challenged this fact. It is also stated by the petitioner that the respondent and his family members came her parental house and tried to throw her child from terrace. After considering all the evidence available on the record, I am persuaded with the findings of the learned JMFC that the petitioner has sufficient reason to live separate with the respondent as well as looking to the other circumstance of the case, I am of the opinion that the learned JMFC has rightly decided that the act of the respondent, not providing maintenance and other basic need like medical facility etc. would comes under the purview of domestic violence, thus she is entitled to get the maintenance.

**22.** So far as maintenance to the child of the petitioner is concerned, there is specific provision of Section 20 under the Act 2005 therein while disposing of an application under Section 12(1), the Magistrate may direct the respondent to pay monitory relief to meet the

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expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence. The provision is also quoted as under:-

20. Monetary reliefs.—

(1) *While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—*

(a) *the loss of earnings;*

(b) *the medical expenses;*

(c) *the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and*

(d) *the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.*

(2) *The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.*

(3) *The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.*

(4) *The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.*

(5) *The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under subsection (1).*

(6) *Upon the failure on the part of the respondent to make payment in terms of the order under subsection (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.*

23. Accordingly, the judgment of the Appellate Court dated 23.04.2019 in Criminal Appeal No. 432/2017 & 450/2017 is hereby set

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aside. Consequently, the judgment passed by learned JMFC dated 02.11.2017 in Criminal Case No. 3200024/2012 is hereby by restored.

**24.** Accordingly, this petition is hereby allowed. The respondent is directed to pay the maintenance amount as awarded by the learned JMFC vide order dated 02.11.2017 without making any fault. He shall also pay the arrears, if any, within a period of 6 months. I also make it abundantly clear that any findings of this Court does not effect any other proceeding, pending between the parties, before any authority or Court of Law.

**(Rajendra Kumar Srivastava)**  
**Judge**

**L.R.**