* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07th JUNE, 2021

IN THE MATTER OF:

\+ **CRL.M.C. 264/2021 & CRL.M.A. 1352/2021 (Stay)**

PARVEEN TANDON ..... Petitioner
Through Mr. Utkarsh and Ms. Anshu Priyanka, Advocates

versus

TANIKA TANDON ..... Respondent
Through Mr. Kamal Anand, Advocate

AND

\+ **CRL.M.C.420/2021 & CRL.M.As. 2196/2021 & 8859/2021 (Stay)**

PARVEEN TANDON ..... Petitioner
Through Mr. Utkarsh and Ms. Anshu Priyanka, Advocates

versus

TANIKA TANDON ..... Respondent
Through Mr. Kamal Anand, Advocate

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. CRL.M.C. 264/2021 is directed against the order dated 14.01.2021, passed by the learned Additional Sessions Judge-03, West, Tis Hazari Courts, Delhi in CA No. 110/2020 and CRL.M.C. 420/2021 is directed against the order dated 14.01.2021, passed by learned Additional Sessions Judge-03, West, Tis Hazari Courts, Delhi in CA No. 171/2020. Both the

petitions have been filed under Section 482 Cr.P.C.

2. Facts, in brief, leading to the present petitions are as under:

a) The respondent herein filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV Act") before the Chief Metropolitan Magistrate, Tis Hazari Court, stating *inter alia* that she was married when she met the petitioner herein in the year 2009. She got married to him in the year 2014 after obtaining a divorce from her husband. It is stated that the applicant/respondent herein has a son namely, Master Jatin, aged 13 years, from her previous marriage. The child is presently studying in Shadley Public School, Delhi. It is stated that the petitioner herein is running a business of motor-parts from his shop. It is also stated that the petitioner herein has other shops which he has given on rent and he earns about Rs.10 lakhs per month from his business. It is stated that the petitioner herein had not disclosed his marital status to the applicant/respondent herein when they both met so as to induce the respondent to marry him. It is further stated that the petitioner herein executed a Marriage Agreement to show his genuineness and responsibility towards the applicant/respondent herein and her child. It is stated that in the agreement it was mentioned that the applicant/respondent herein was married and has a son from her previous marriage. It is stated that later the petitioner herein told the respondent that his wife is on dialyses and would not survive long and therefore he is looking for a life partner and that he

is going to marry the applicant/respondent herein. It is stated that the applicant/respondent herein took divorce from her husband and got married to the petitioner herein on 21.11.2014. It is stated that another Agreement-cum-Marriage Deed was entered into between the petitioner herein and the applicant/respondent herein on 22.11.2014. It is stated that the petitioner herein had arranged a rental accommodation and both of them were living as husband and wife. It is further mentioned that the name of the petitioner herein is shown as the father of the child of the applicant/respondent herein in the school records. It is also stated that in the bank accounts of the respondent herein, the petitioner is shown as a nominee. It is stated that differences arose between the parties and the applicant/respondent was subjected to physical and mental abuse by the petitioner herein. It is stated that the applicant/respondent herein filed an FIR against the petitioner herein. The applicant/respondent herein therefore prayed for an order restraining the petitioner herein from evicting the applicant/respondent herein from the rented accommodation. An application for grant of interim maintenance has also been filed by the respondent herein.

b) Summons were issued to the petitioner herein. The learned Metropolitan Magistrate by an order dated 31.07.2020 restrained the petitioner herein from dispossessing the applicant/respondent herein from the property bearing House No.435, Indra Vihar, Mukherjee Nagar, Delhi. An application for the rectification of the said order was

filed stating that the address in the order was not correct.

c) The petitioner herein prayed for recall of summons and dismissal of the application filed by the respondent herein contending that the respondent herein is not entitled to any relief under the DV Act because the respondent herein is not an aggrieved person inasmuch as the petitioner and the respondent had never been in a domestic relationship which is the *sine qua non* for maintaining an application under the DV Act.

d) On 17.08.2020, the learned Metropolitan Magistrate corrected the address and restrained the petitioner herein from dispossessing the respondent herein from property bearing No. B22, First Floor, Hari Nagar, New Delhi 110064. However, the learned Metropolitan Magistrate rejected the plea of the petitioner herein to dismiss the case on the ground of maintainability stating that the question as to whether the respondent herein is an aggrieved person or not and whether she was in a domestic relationship with the petitioner herein or not cannot be decided at the present stage without leading evidence. The learned Metropolitan Magistrate also directed the parties to file their income certificates along with supporting documents as warranted by the judgment of this Court in Kusum Sharma v. Mahinder Kumar Sharma, **2015 SCC OnLine Del 6793.**

e) By an order dated 26.10.2020, the learned Metropolitan Magistrate directed the petitioner herein to pay an ad-interim maintenance of Rs.10,000/- per month from 26.10.2020, to the

respondent herein towards maintenance of child and also towards the rent/accommodation.

f) The order dated 17.08.2020, dismissing the prayer of the petitioner for recalling his summoning order under the DV Act was challenged by the petitioner herein by filing an appeal being CA No.110/2020 before the Sessions Court. The order dated 26.10.2020, directing the petitioner herein to pay ad-interim maintenance of Rs.10,000/- to the respondent herein, was challenged by the petitioner by filing an appeal being CA No.171/2020 before the Sessions Court.

g) The learned Additional Session Judge, *vide* order dated 14.01.2020 dismissed CA No.110/2020 and upheld the order dated 17.08.2020 by observing that the issue as to whether the parties were residing in a shared household and were enjoying a domestic relationship in the nature of marriage, could not be decided without leading evidence.

h) By another order of the same date, the learned Additional Session Judge refused to interfere with the order dated 26.10.2020 and dismissed CA No.171/2020 and upheld the order dated 26.10.2020 directing the petitioner herein to pay ad-interim maintenance of Rs.10,000/- per month to the respondent herein for the maintenance of the child and also for the rent/accommodation.

i) CRL.M.C. 264/2021 is directed against the order dated 14.01.2021 in CA No. 110/2020 and CRL.M.C. 420/2021 is directed against the order dated 14.01.2021 in CA No. 171/2020.

3. The learned counsel for the petitioner contends that an application under Section 12 of the DV Act can be filed only by an aggrieved person. An aggrieved person has been defined under Section 2(a) of the DV Act. An aggrieved person has been defined as any woman who is, or has been, in a domestic relationship with a person and who alleges to have been subjected to any act of domestic violence by that person. He states that the term domestic relationship is defined in Section 2(f) of the DV Act. Domestic relationship has been defined as 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. He states that shared household has been defined in Section 2(s) of the DV Act which states that a shared household would mean a household where the aggrieved person has lived in a domestic relationship with the other person. He states that the respondent herein in her application has admitted that both the parties were married when they met. He states that when the respondent knew that the petitioner was married to somebody else the respondent cannot claim any relief under the DV Act. He states that till the issue of maintainability is not decided, the learned Metropolitan Magistrate ought not to have directed the petitioner herein to pay ad-interim maintenance of Rs.10,000/- per month to the respondent. It is also contended by the learned counsel for the petitioner that when the application filed by the respondent itself stated that the petitioner is married to somebody else, the summons ought not to have been issued to the petitioner. The learned

counsel for the petitioner places strong reliance on the judgments of the Supreme Court in Indra Sarma v. V.K.V. Sarma, **(2013) 15 SCC 755,** and D. Velusamy v. D. Patchaiammal, **(2010) 10 SCC 469.**

4. *Per contra*, Mr. Kamal Anand, learned counsel for the respondent contends that the petitioner and the respondent got together in the year 2009 and got married in the year 2014 and they resided together for six years before the disputes arose between them in the year 2020. He contends that it was not as if the petitioner was a casual visitor to the house. He contends that the petitioner had proclaimed to the world at large that they are both husband and wife. The learned counsel for the respondent states that the petitioner has filed an affidavit and entered into agreement with the respondent stating that he has married the respondent and that he would take care of the respondent and the child. He further states that in school records the petitioner is shown as the father of the child. He further states that in the bank accounts of the respondent, petitioner is shown as the nominee. The learned counsel for the respondent therefore contends that the application filed by the respondent was maintainable and the orders of the learned Metropolitan Magistrate and the Additional Sessions Judge rejecting the application of the petitioner for recalling the summons and directing the petitioner herein to pay ad-interim maintenance of Rs.10,000/- per month to the respondent, does not warrant any interference.

5. Heard Mr. Utkarsh, learned counsel for the petitioner and Mr. Kamal Anand, learned counsel for the respondent and perused the material on record.

6. Sections 2(a), 2(f), 2(q) and 2(s) of the DV Act reads as under:

> *"**2**. Definitions.—In this Act, unless the context otherwise requires,—*
>
> ***(a)** "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;*
>
> *****
>
> ***(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;*
>
> *****
>
> ***(q)** "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.*
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> *****
>
> ***(s)** "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of*

which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

7. The DV Act has been enacted to provide a remedy in civil law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The DV Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family. The Act enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner. The Act is meant to provide for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by a Magistrate.

8. In order to maintain a petitioner under the DV Act the aggrieved person has to show that the aggrieved person and the *respondent* (man) lived together in a shared household and this could be even from a relationship in the nature of marriage. The material placed on record shows that the petitioner had entered into a marriage agreement in the year 2012 wherein it is stated that both the parties intend to marry each other. The agreement shows that the petitioner undertook to discharge all liabilities/obligations towards the respondent herein and similarly the respondent undertook to

discharge all liabilities/obligations towards the petitioner herein. The affidavit has been signed by both the parties. After the respondent herein obtained divorce from her husband, another agreement-cum-marriage deed was entered into between the parties on 22.11.2014, wherein it is stated that the petitioner and the respondent are residing together for the last five years in a live-in relationship and are now getting married to each other according to Hindu rites and ceremonies and the marriage was solemnized in an Arya Samaj Mandir at Delhi. The marriage deed also records that after solemnization of marriage both the parties will reside together as husband and wife and will be faithful towards each other. The marriage deed has been signed by both the parties. There are photographs of the petitioner and the respondent which gives an impression that the parties were living together as husband and wife and have married each other. The school records of the child have been filed wherein the petitioner has been shown as the father of the child. Copies of the bank accounts have been filed wherein the petitioner has been shown as a nominee of the account held by the respondent.

9. Great emphasis has been placed by the learned counsel for the petitioner on para 31 of the judgment of the Supreme Court in D. Velusamy v. D. Patchaiammal, **(2010) 10 SCC 469**, which reads as under:

> ***"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.

(See "Common Law Marriage" in Wikipedia on Google.)

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"."

Other relevant paras of the abovementioned judgment read as under:

***"32**. In our opinion not all live-in relationships 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.*

***33**. No doubt the view we are taking would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression "relationship in the nature of marriage" and not "live-in relationship". The Court in the garb of interpretation cannot change the language of the statute.*

***34**. In feudal society sexual relationship between man and woman outside marriage was totally taboo and*

regarded with disgust and horror, as depicted in Leo Tolstoy's novel Anna Karenina, Gustave Flaubert's novel Madame Bovary and the novels of the great Bengali writer Sharat Chandra Chattopadhyaya.

35. *However, Indian society is changing, and this change has been reflected and recognised by Parliament by enacting the Protection of Women from Domestic Violence Act, 2005."*

10. The Supreme Court in Indra Sarma v. V.K.V. Sarma, **(2013) 15 SCC 755,** has observed as under:

"Relationship in the nature of marriage

34. *Modern Indian society through the DV Act recognises in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:*

(a) Consanguinity

(b) Marriage

(c) Through a relationship in the nature of marriage

(d) Adoption

(e) Family members living together as joint family.

35. *The definition clause mentions only five categories of relationships which exhausts itself since the expression "means", has been used. When a definition clause is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression "include" so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression "relationship in the nature of*

marriage"

36. *We have already dealt with what is "marriage", "marital relationship" and "marital obligations". Let us now examine the meaning and scope of the expression "relationship in the nature of marriage" which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category, that is, "relationship in the nature of marriage" which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognised, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.*

37. *The distinction between the relationship in the nature of marriage and marital relationship has to be noted first. The relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest, etc., even if they are not sharing a shared household, being based on law. But live-in relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of".*

38. *Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section*

2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

38.1.(a) *Domestic relationship between an unmarried adult woman and an unmarried adult male.—Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.*

38.2.(b) *Domestic relationship between an unmarried woman and a married adult male.—Situations may arise when an unmarried adult woman knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.*

38.3.(c) *Domestic relationship between a married adult woman and an unmarried adult male.—Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".*

38.4.(d) *Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male.—An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the*

definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.

38.5.(e) *Domestic relationship between same sex partners (gay and lesbians).—The DV Act does not recognise such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. The legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (UK), have recognised the relationship between the same sex couples and have brought these relationships into the definition of domestic relationship.*

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41*. We have, therefore, come across various permutations and combinations, in such relationships, and to test whether a particular relationship would fall within the expression "relationship in the nature of marriage", certain guiding principles have to be evolved since the expression has not been defined in the Act.*

42*. 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 de facto relationship, marriage-like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship), etc.*

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53. *Live-in relationship, as such, as already indicated, is a relationship which has not been socially accepted in India, unlike many other countries. In Lata Singh v. State of U.P. [(2006) 5 SCC 475 : (2006) 2 SCC (Cri) 478] it was observed that a live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in civil law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages, etc. We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations.*

54. *Section 125 CrPC, of course, provides for maintenance of a destitute wife and Section 498-A IPC is related to mental cruelty inflicted on women by her husband and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members. The Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnisation of marriage also deals with the provisions for divorce. For the first time, through, the DV Act, Parliament has recognised a "relationship in the nature of marriage" and not a live-in relationship simpliciter.*

55. *We have already stated, when we examine whether a relationship will fall within the expression "relationship in the nature of marriage" within the*

meaning of Section 2(f) of the DV Act, we should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. We cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved.

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."*

11. The Supreme Court in Lalita Toppo v. State of Jharkhand, **(2019) 13 SCC 796,** has observed as under:

***"3**. In fact, under the provisions of the DVC Act, 2005 the victim i.e. estranged wife or live-in partner would be entitled to more relief than what is contemplated under*

Section 125 of the Code of Criminal Procedure, 1973, namely, to a shared household also.

4. *The questions referred to us by the Referral Order were formulated on the basis of the decisions of this Court rendered in Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav [Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, (1988) 1 SCC 530 : 1988 SCC (Cri) 182] and Savitaben Somabhai Bhatiya v. State of Gujarat [Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636 : 2005 SCC (Cri) 787] which were rendered prior to the coming into force of the DVC Act, 2005. In view of what has been stated hereinbefore, it is, therefore, our considered view that the questions referred would not require any answer. We, therefore, decline to answer the said questions. The appellant is left with the remedy of approaching the appropriate forum under the provisions of the DVC Act, 2005, if so advised. If in the event the appellant moves the appropriate forum under the provisions of the DVC Act, 2005, we would request the said forum to decide the matter as expeditiously as possible."*

12. The documents placed before this Court shows that the couple has held themselves out in the society as being akin to spouses which fact is evident from the marriage-cum-agreement deed, affidavits, the school records of the child and the bank statements of the respondent. The parties are majors, they have voluntarily cohabited for a significant period of time. The respondent has already taken divorce from her husband.

13. The tests laid down in Indra Sarma (supra) i.e. the duration of the period of the relationship, the question as to whether there was a shared household or not, the pooling of the resources and financial arrangements,

the domestic arrangements, the socialisation in public, the intention and the conduct of the parties, are all questions of fact which have to be established by leading evidence. In Indra Sarma (supra), the judgment of the High Court, which denied protection of the DV Act to the lady on the ground that the lady knew that the man, with whom she was living in a relationship, was already married, can be distinguished on facts. In that case the wife of the man/respondent therein had opposed the relationship of the respondent therein and the petitioner therein. The evidence led in that case showed that the family of the lady/petitioner therein including her father, brother and sister had also opposed the live-in relationship. After evidence was led, it was found that the lady/petitioner therein had not given any evidence of mutual support and companionship between the parties. There was no projection of their relationship in the public. It was the specific case of the respondent therein (man) that he never held out to the public that the petitioner therein (lady) was his wife. There was no evidence of pooling of resources or of financial arrangements between the parties. The specific case of the respondent therein (man) was that no joint account was opened and no document was executed in jointly and that the petitioner therein (lady) was never permitted to affix the name/surname of the respondent therein. The conclusions were arrived at after the parties led evidence.

14. In the present case, the specific allegation is that the respondent herein was told that the wife of the petitioner is on dialysis and that she would die soon. It is the specific case that for six long years the petitioner and the respondent were living as husband and wife. Materials in the form of

photographs and other documents showing that the petitioner and the respondent have married each other have been produced. The school records of the child show that the petitioner herein is shown as the father of the child. The petitioner herein is shown as a nominee in the bank account held by the respondent. All these materials have to be examined. It is the contention of the petitioner that he has not entered into any rental agreement and that the agreements, affidavits and the photographs produced by the respondent herein are not genuine. All these facts can be established only after evidence is led. The question as to whether the respondent herein has been duped by the petitioner or whether she was a party to an adulterous and bigamous relationship or not and whether her conduct would not entitle her for any protection under the DV Act can be determined only after the evidence is led, as was done in the case of Indra Sarma (supra).

15. The learned Metropolitan Magistrate *vide* order dated 26.10.2020, has directed the petitioner to pay a sum of Rs.10,000/- per month to the respondent herein as an interim arrangement. The memorandum of grounds does not challenge the figure of Rs.10,000/- awarded by the learned Metropolitan Magistrate. The principle challenge is that the order could not be passed since the application under the DV Act was not maintainable as the respondent is not an aggrieved person. Since the case is only at an interim stage this Court is not inclined to interfere with the direction of the courts below awarding interim maintenance to the respondent herein towards maintenance of child and also towards the rent/accommodation.

16. The scope of the revision petition under Sections 397/401 Cr.P.C.

read with Section 482 Cr.P.C. is narrow. In State v. Manimara**n,** reported as **(2019) 13 SCC 670,** the Supreme Court observed as under:

> ***"16. As held in State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452 : 1999 SCC (Cri) 275] , ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained."*** (emphasis supplied)

In State of Haryana v. Rajmal**,** reported as **(2011) 14 SCC 326,** the Supreme Court observed as under:

> ***"14. In State of A.P. v. Pituhuk Sreeinvanasa Rao [(2000) 9 SCC 537 : 2001 SCC (Cri) 642] this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting the concurrent finding of the facts cannot be accepted when it was without any reference to the evidence on record or to the finding entered by the trial court and the appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.***
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> ***It has been also held by this Court in Amar Chand Agarwalla v. Shanti Bose [(1973) 4 SCC 10 : 1973 SCC (Cri) 651 : AIR 1973 SC 799] that the revisional jurisdiction of the High Court under Section 439 CrPC is to be exercised, only in an exceptional case, when***

there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. (SCC p. 20, para 17 of the Report.)" (emphasis supplied)

In State of Kerala v. Puttumana Illath Jathavedan Namboodiri**,** reported as **(1999) 2 SCC 452,** the Supreme Court observed as under:

"5. *Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order.* ***In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice****. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the*

> *Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence."*
>
> (emphasis supplied)

It cannot be said that the order of the courts below warrants interference of this Court by exercising its revisional jurisdiction.

17. In case the Metropolitan Magistrate, after evidence is led, comes to a conclusion that the respondent herein was not entitled to the protection of the DV Act then adequate safeguards must be made to ensure that the respondent returns the amount received by her as interim maintenance in terms of the order dated 26.10.2020, passed by the learned Metropolitan Magistrate back to the petitioner with interest. The rate of interest is to be fixed by the Metropolitan Magistrate. The learned Trial Court is directed to hear the matter and decide the matter finally within a period of one year.

18. With these observations, the petitions are dismissed along with all the pending applications.

SUBRAMONIUM PRASAD, J.

JUNE 07, 2021
Rahul