

Sreerangaraju.R vs Usha on 28 December, 2022

KABC010038622018

Presented on : 06-02-2018
Registered on : 06-02-2018
Decided on : 28-12-2022
Duration: 4 years, 10 months, 22 days

BEFORE THE LXVI ADDL.CITY CIVIL & SESSIONS
JUDGE, BENGALURU CITY.
(CCH-67)

DATED: This the 28th day of December, 2022
PRESENT

Sri.S.Nataraj, BAL.,LL.B.,
LXVI Addl.City Civil & Sessions Judge,
Bengaluru.
Crl.A.No.199 of 2018
C/W
Crl.A.No.412 of 2019

Crl.A.No.199/2018

Appellant : Sreerangaraju.R.
S/o Rangaiah,
Aged about 55 years,
R/at No.2918, "Shanthala"
2nd Stage, Rajajinagar,
Bengaluru 560 010.
(By Sri.Rama R Iyer Advocate.)

/Vs/

Crl.A.199/2018 &
Crl.A.412/2019

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Respondent : Usha,
Aged about 38 years,
R/at No.520/8, 35th Main Road,
SAS Road, Sarakki Garden,
JP Nagar 6th Phase,
Bengaluru 560 078.

Also at
No.202, Banashankari Nilaya,
5th A Cross, Jakkuru Layout,

Yelahanka,
Bengaluru.
(By Sri.MY Lokesh, Advocate.)

Crl.A.No.412/2019

Appellant : Usha,
Aged about 38 years,
R/at No.520/8, 35th Main Road,
SAS Road, Sarakki Garden,
JP Nagar 6th Phase,
Bengaluru 560 078.
(By Sri.MY Lokesh, Advocate.)

/Vs/

Respondent : Sreerangaraju
S/o Rangaiah,
Aged about 55 years,
R/at No.2918, "Shanthala"
2nd Stage, Rajajinagar,
Bengaluru 560 010.
(By Sri. Rama R Iyer Advocate.)

JUDGMENT

Both appeals are filed under Section 29 of the Protection of Woman from Domestic Violence Act (herein Crl.A.199/2018 & Crl.A.412/2019 after referred to as PWDV Act) challenging the judgment in Crl.Mis.69/2010 dated 5.01.2018 (herein after referred to as impugned judgment) passed by The Metropolitan Magistrate Court□V, Bengaluru (herein after referred to as trial court). Both appeals are arising out of same judgment, hence taken together for common order.

2. The appellant in Crl.A.199/2018 is respondent, the appellant in Crl.A.412/2019 is the petitioner in Crl.Mis.69/2010 before the trial court. For the sake of convenience, the parties herein after referred to as per their ranks before the trial court.

3. The brief facts of the case leading to filing of these appeals are as follows:

The petitioner Smt.Usha has filed petition under Section 12 of PWDV Act 2005 against respondent for the relief of maintenance of Rs.9,000/□per month and to direct the respondent to arrange for rented house for her shelter.

It is averred that her marriage was solmenasized with respondent in Kunigal Rangaswamy temple on 24.3.2002.

From their wedlock, the daughter by name Manasi was Crl.A.199/2018 & Crl.A.412/2019 born to them. After the marriage, the petitioner was left in respondent sister place at Kunigal, had promised to take her to his house. The

respondent has not disclosed that he has already married and having one child. The petitioner came to know about respondent marriage after 6 months of her marriage. The respondent took the petitioner to Bangalore and lived in outhouse with the respondent within the compound of respondent father house, where the respondent elder sister and brother used to ill treat her, the respondent harassed her for money, she had paid Rs.2,00,000/- in cash at the time of marriage, 160 gms of gold was presented to the respondent, the respondent in order to marry another girl by name Sujatha and to get more dowry had thrown her out of his house on 16.1.2007, thereafter she along with her daughter went to her parents house in JP Nagar. The petitioner has no alternative has filed the petition for divorce. The child was granted maintenance. The respondent ill treated the petitioner and deprived of her right to maintenance. As such he filed the petition.

Crl.A.199/2018 & Crl.A.412/2019

4. The respondent has filed objections denying the relationship with the petitioner and marriage with her. He has specifically contended he was married to one Padma on 14.5.1993 due to dispute he filed divorce petition in MC.857/2002, it was decreed, the marriage was dissolved by decree of divorce in the year 2005. The alleged marriage with the petitioner is not valid and it is void. It is further contended that he was staying at Kunigal, the petitioner came as a domestic servant and blackmailed him saying that he had outraged her modesty and would inform the people of village, he was forced to keep quite about the seduction of the petitioner. Later on he came to know the petitioner was pregnant and he was forced to accept the child. The relationship between the petitioner and respondent will not come within the meaning of relationship in the nature of marriage and he prayed to dismiss.

5. The petitioner in proof of her case examined herself as PW1, in her support her brother M.N.Anjina Reddy examined as PW2 and daughter Manasi examined as PW3. Crl.A.199/2018 & Crl.A.412/2019 3, Ex.P1 to 8 documents are marked. The respondent examined himself as RW1 in his support no documents are marked.

6. After hearing arguments of both sides, by considering the material on record, the trial Court vide impugned judgment has held that the petitioner relationship with respondent has not come within the definition of 2(f) of PWDV Act 2005 and not entitled for any relief. However, the trial Court has held the child belongs to respondent and ordered maintenance of Rs.4,000/- per month to the child of petitioner Kum.Manasi from the date of petition till she attains the age of majority.

7. Being aggrieved by the impugned judgment of the trial court the respondent filed appeal No.189/2018 on various grounds that;

a) The judgment of the trial Court is contrary to material on record.

b) The trial court had failed to consider that the petitioner is not the aggrieved person who was a domestic servant, there was no domestic relationship between them and they have not shared house

hold as per the definition of the Act.

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c) The trial Court has failed to consider that the respondent has not subjected the petitioner to any domestic violence as she is not the aggrieved party or she has lived in any domestic relationship with the respondent.

d) The trial Court has not considered the facts and applied the law erroneously and no relief can be granted.

e) That the trial court has not considered that the respondent already paying Rs.8,000/□ towards the maintenance of the child as ordered by V Additional Prl.Judge, Famiy Court and prayed to allow the appeal and set aside the impugned judgment of the trial Court.

8. The petitioner is challenging the judgment of the trial court in partly allowing the petition on various grounds that;

a) That the trial Court has failed to consider that herself and respondent having domestic relationship.

b) That the daughter of the petitioner has given evidence regarding relationship with respondent and resided together at Rajajinagar.

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c) The trial Court failed to consider that the petitioner has proved the marriage with the respondent through oral and documentary evidence.

d) The trial Court has not properly appreciated that the order passed by the family Judge in MC 355/2007 wherein it has held the petitioner has proved the marriage with respondent but it is not valid marriage and prayed to set aside the judgment of the trial court of the trial court and allow the petition.

9. After registering both appeals notice has been ordered to respondents. The respondents in both appeals are represented by their respective counsels.

10. The petitioner Smt.Usha has filed IA.No.I in Crl.A.412/2019 under Section 5 of Limitation Act to condone delay of 318 days, she has sworned an affidavit stating that due to financial problem she was not able to bear the legal expenses, with the help of brother and relatives she managed to get money, meanwhile she was not feeling well, under the circumstances she was not able to file the appeal in time.

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11. The respondent has filed objections that the reasons are not accepted and prayed for dismissal.
12. The trial court records are secured in Crl.A.199/2018.
13. The appellant/petitioner Smt.Usha filed written arguments with certified copy of the judgment in MC 355/2007. heard arguments of respondent/Srirangaraju counsel.
14. Out of above said facts and circumstances of the case, the points that arose for the due consideration of this Court are;

Point No.1: Whether petitioner/appellant made out sufficient grounds to condone delay in filing of appeal 412/2019?

Point No.2: Whether the trial court findings that the petitioner/Smt.Usha is not in the relationship in the nature of marriage with the respondent, is justified ?

Point No.3: Whether the appellants/petitioner Smt.Usha has made out grounds to interfere in the judgment of the trial Court?

Crl.A.199/2018 & Crl.A.412/2019 Point No.4: Whether the appellant respondent Srirangaraju made out grounds to interfere in the judgment of the trial Court?

Point No.5: What order ?

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15. The answer of this Court to the above points are;

Point No.1	: Affirmative
Point No.2	: Not justified
Point No.3	: Partly Affirmative
Point No.4	: Negative
Point No.5	: As per the final order for the following reasons.

REASONS

16. POINT NO.1 : The petitioner Smt.Usha sought for condonation of delay of 381 days in filing the appeal on the ground that due to financial problem she could not file the appeal in time. After taking financial help from her brother and relatives she fell ill due to health issues she could not file appeal in time. It is also stated that the delay is not intentional. The respondent in his application has contended that the reasons are not acceptable, the delay is not properly explained and he prayed for dismissal. After considering the affidavit and objection the petitioner being Crl.A.199/2018 & Crl.A.412/2019 the aggrieved person has filed the appeal challenging the judgment of the trial court. There is no presumption that the delay is deliberate. The meritorious appeal cannot be dismissed on

technicality. The sufficient cause has to be construed liberally. There is no inaction or negligence on part of the petitioner in filing appeal belatedly. Therefore, the reason for delay is to be accepted sufficient and answer point No.1 in affirmative.

17. POINT Nos.2 to 4:□Since these points are interlinked with each other, they are taken up together for discussion in order to avoid repetition.

The learned counsel for petitioner/Smt.Uma argued that the evidence of PW□ to 3 would clearly establishes that the petitioner marriage was solmonized with the respondent, they are the husband and wife, the trial court based on the suggestion made by the counsel has wrongly disbelieve the evidence and come to conclusion that the petitioner was aware of 1st marriage of the respondent and she failed to prove the marriage with respondent. The learned counsel submits the suggestion of the counsel will Crl.A.199/2018 & Crl.A.412/2019 not bind the party, it is not an admission. It is further argued the proof of marriage under PWDV Act is not required only the domestic relationship has to be established. The respondent admitted that PW□ Kum.Manasi is the daughter, there is no reason to disbelieve the testimony of Pws 1 to 3 that after marriage she lived with respondent in a shared household. Both having domestic relationship in the nature of marriage and prayed for setting aside the order of the trial court.

18. The learned counsel for respondent/Srirangaraj argued that the trial court has rightly come to a conclusion that there is an suggestion by the counsel for the petitioner about admitting earlier marriage of respondent, the said suggestion is binding on the petitioner. There is no relationship in the nature of marriage within the definition of Section 2(f) of PWDV Act. At no point of time the petitioner has lived with the respondent. Due to seduction the respondent forced to admit Kum.Manasi is his daughter. It is further argued that the trial court has wrongly allowed the petition in part and granted Crl.A.199/2018 & Crl.A.412/2019 maintenance to daughter. The trial Court has not considered that in the MC 355/2007 the respondent was maintenance of Rs.8000/□per month which has not been considered by the trial Court and prayed for allowing the appeal and set aside the judgment of the trial Court.

19. In view of above said rival contentions the first question that requires determination is as to whether the petitioner Smt.Usha falls within the meaning and definition Section 2(a) of 'aggrieved person'. The 'aggrieved person' is defined under sub clause (a) of Section 2 of the Act 2005 which means;

" 2(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."

Section 2(f) defines 'Domestic Relationship' " 2(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 Crl.A.199/2018 & Crl.A.412/2019 relationship in the nature of marriage, adoption or are family members living together as a joint family."

Section 2(q) defines 'Respondent' " 2(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."

20. Section 3 deals with domestic violence. Having regard to the relevant provisions of PWDV Act 2005, it is needs to examine whether the petitioner Smt.Usha was involved in domestic relationship with the respondent Srirangaraju . Section 2(f) refers to 5 categories of relationship such as

(a) related by consanguinity

(b) marriage

(c) Relationship in the nature of marriage Crl.A.199/2018 & Crl.A.412/2019

(d) Adoption

(e) Family members living together as a joint family. In the present case we are concerned with an alleged relationship in the nature of marriage. Admittedly the petitioner and respondent are Hindus and are governed by the Hindu Marriage Act 1955. The condition for Hindu Marriage are dealt with Section 5 of the Hindu Marriage Act and Section 7 deals with ceremonies for Hindu Marriage. Hon'ble Supreme Court in Indira Sharma Vs VKV Sharma reported in (2013) 15 SCC 755 explained what is meant by the phrase 'relationship in the nature of marriage' and the marital relationship. Paragraphs 37, 38, 39 and 53 are reproduced as follows:

" 37. The Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. 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 Crl.A.199/2018 & Crl.A.412/2019 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:

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 CrI.A.199/2018 & CrI.A.412/2019 aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women 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.

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".

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.

e) Domestic relationship between same sex partners (Gay and Lesbians): DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act.

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, CrI.A.199/2018 & CrI.A.412/2019 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

39. Section 2(f) of the DV Act though uses the expression "two persons", the expression "aggrieved person" under Section 2(a) takes in only "woman", hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

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.* [AIR 2006 SC 2522] 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 Crl.A.199/2018 & Crl.A.412/2019 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."

21. Hon'ble Supreme Court culled the guidelines for testing what circumstances, a live in relationship will fall within the expression 'relationship in the nature of marriage' under Section 2(f) which would include para 56 of the said judgment reads as follows:

" 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.

Crl.A.199/2018 & Crl.A.412/2019 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 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 Crl.A.199/2018 & Crl.A.412/2019 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.

22. In the latest judgment of Hon'ble Apex Court 2022 Live Law (SC 474) Prabha Tyagi Vs Kamalesh Devi has considered the right of a woman to reside in a shared household under Section 17(1) of the Act read with 19 of the DV Act. It is held that there should be subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. Even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the DV Act but has at any point of time lived Crl.A.199/2018 & Crl.A.412/2019 so or had the right to live and had been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship is entitled to file an application under Section 12 of the DV Act.

23. In the present case, it is not the case of the respondent that he is in living relationship with the petitioner nor is the case of the petitioner, on the contrary the petitioner has categorically stated that she was married to the respondent on 24.03.2002 at Kunigal Rangaswamy Temple, they led marital life in the respondent sister house at Kunigal and thereafter the respondent has taken her to Bengaluru and resided in a shared household where the respondent sister had alleged to have caused domestic violence. It is also her case from the marriage PW-3 Kum.Manasi was born to them. It is the specific case of the petitioner that she was not aware of the respondent first marriage and she came to know after six months about his marriage. As per Indira Sharma case stated supra para 38.4.(d) has held:

Crl.A.199/2018 & Crl.A.412/2019 "Domestic relationship between 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, fall within definition of Section 2(f) of DV Act and such a relationship may be a relationship in "nature of marriage", so far as the aggrieved person is concerned."

24. The respondent husband in his evidence as well as objections and in the cross examination of PWs 1 to 3 tried to contend that he had already married with one Padma on 4.05.1993, he filed divorce petition in MC 857/2002 which was pending till 2005 and settled before Lok Adalath by granting decree of divorce, therefore he contended the alleged marriage between him and petitioner on 4.3.2002 is void marriage. It is not the case of respondent in his objections and evidence that when the petitioner alleged to have engaged by her as a maid servant, she was aware of his first

marriage. The petitioner PW□ in her evidence as well as petition has clearly stated, she was unaware of respondent first marriage at the time Crl.A.199/2018 & Crl.A.412/2019 of her marriage and she came to know the first marriage of respondent after six months.

25. In the cross□examination of PW□ she denied she was aware of earlier marriage of respondent. It is true in the cross□examination of RW□ the counsel for the petitioner in page No.10 has suggested as follows:

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26. The above said suggestion was considered by the trial court and held that it is an admission on part of the petitioner regarding her knowledge about the respondent first marriage and came to conclusion that the petitioner marriage with respondent is not proved. Now the question for consideration whether the suggestion of an advocate is an admission and it binds on party. In this regard it is useful to refer the judgment in Pavan Kumar Vs State reported in 2019 SCC Online Del. 10452 para 24 reads as follows:

Crl.A.199/2018 & Crl.A.412/2019 " 24. The question whether a suggestion given by the counsel on behalf of the accused can be considered as an admission and bind the accused under Section 18 of Indian Evidence Act came before the Supreme Court in Koli Trikam Jivraj (supra), where it was held as under:

" Therefore, the accused is entitled to the benefit of the plea set up by the lawyer but it cannot be said that the plea or defence which his lawyer puts forward must bind the accused. The reason is that in a criminal case a lawyer appears to defend the accused and has no implied authority to make admission against his client during the progress of the litigation either for the purpose of dispensing with proof at the trial or incidentally as to any facts of the case. See Phipson's Manual of Evidence, Eighth Edition Page 134. It is, therefore, evident that the role that a defence lawyer plays in a criminal trial is that of assisting the accused in defending his case. The lawyer has no implied authority to admit the guilt or facts incriminating the accused. The argument of Mr.Nanavati that suggestion put by the lawyer of the accused in the cross□ Crl.A.199/2018 & Crl.A.412/2019 examinations of the prosecution witnesses amounts to an admission under Section 18 of the Indian Evidence Act cannot be accepted."

27. In view of above said judgment the suggestion given by the counsel on behalf of party cannot be considered as an admission and it is not binding on the party. Therefore in the present case the suggestion of counsel on behalf of petitioner about admission of respondent first marriage is not binding on petitioner. Once the admission is not binding on the petitioner. Unknowingly she enters into a relationship with the respondent married adult male and it is a relationship within the definition of 2(f) of DV Act in the nature of marriage as per the Indira Sharma Case.

28. Even otherwise, admittedly the petitioner had filed divorce petition against the respondent before the V Additional Prl.Judge, Family Court, Bengaluru in MC 355/2007, wherein the respondent has also by way of counter claim sought the nullity of marriage. After trial on merits the Family court by the Judgment dated 16.11.2016 Crl.A.199/2018 & Crl.A.412/2019 has dismissed the divorce petition filed by the petitioner and counter claim of the respondent was allowed, holding that the marriage between the petitioner and respondent solemnized on 24.03.2002 at Kunigal Ranganatha Swamy temple was declared as null and void. In the judgment of the Family court there is clear observation on the date of marriage of petitioner with the respondent, the first marriage of respondent with Smt.Padma was subsisting and it is further observed that the petitioner was not aware of the respondent first marriage, the respondent married the petitioner without disclosing his first marriage with Padma. Therefore, there is clear finding by the Family court the petitioner marriage was solemnized with respondent however, it was performed during subsistence of first marriage of respondent, on that ground it was held that the marriage of petitioner was void. Nevertheless, the petitioner who enters into relationship with respondent married man, her relationship is in the nature of marriage within the definition of 2(f) of DV Act. From their Crl.A.199/2018 & Crl.A.412/2019 relationship in the nature of marriage the daughter was also born to them.

29. It is also come in the evidence of petitioner and respondent, the petitioner lived with the respondent first at Kunigal, subsequently she led marital life with the respondent at Bengaluru, where she was subjected to domestic violence and she was thrown out from the house on 16.1.2007. As per the latest judgment of Hon'ble Apex court even at the time of filing petition, it is not necessary that the domestic relationship should be subsisting. Even an aggrieved person is not in a domestic relationship with respondent in a shared household at the time of filing application but has at any point of time lived or had right to live and has been subjected to domestic violence and entitled to file the petition. In this background, coupled with the fact that the petitioner and her daughter were resided in the house of respondent at Bangalore, where the domestic violence was caused on petitioner and sent out from the house. The photograph at Ex.P□, Ex.P□5 is the birth certificate of Kum.Manasi wherein the name of Crl.A.199/2018 & Crl.A.412/2019 respondent is shown as father, Ex.P□6 is the transfer certificate of Kum.Manasi, the father name is shown as respondent. Ex.P□8 is the bank challan counter file, it disclose sum of Rs.20,000/□ was deposited on 30.05.2006 in the account of respondent. The respondent admitted the receipt of above said amount from the brother of petitioner, according to respondent that the brother of petitioner had borrowed loan and repaid the amount, but there is no such averments in the objections of the respondent. Therefore, not possible to accept the plea raised by the respondent that they are not married which is not tenable in the admitted facts. The trial court finding that there was no marriage and there was no domestic relationship in the nature of marriage between them is erroneous and contrary to material on record.

30. The second point whether the trial court has committed error in not awarding maintenance to the petitioner. Chapter IV of PWDV Act provides for procedure for obtaining orders of relief under Section 12 and other provisions contained thereunder, an aggrieved person or Crl.A.199/2018 & Crl.A.412/2019 any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more relief under the Act.

31. Section 17 confers right upon the woman to reside in a shared household under Section 18 the aggrieved person can obtain protection order from the Magistrate to prohibit the respondent from committing act of domestic violence. Section 19 the aggrieved person can obtain residence orders, Section 20 while disposing of an application under Section 12(1), the Magistrate may direct the respondent to pay monetary relief to the aggrieved person to meet the expenses incurred and losses suffered by the aggrieved person as a result of domestic violence and such relief may include;

(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 CrI.A.199/2018 & CrI.A.412/2019

(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 CrPC or any other law for the time being force.

32. As per the judgment of Hon'ble Apex Court in case of Ranjish Vs Neha, in CrI.A.730/2020 dated 4.11.2022, the Hon'ble Apex Court has held:

" If any maintenance is awarded in other proceedings as to be taken into consideration. The maintenance has to be granted from the date of filing of application. The Hon'ble Apex Court has also made mandatory for filing both parties declaration of assets and liabilities."

33. In the present case during pendency of the proceedings the respondent was ordered to pay Rs.8000/□per month as maintenance to the daughter Kum.Manasi. The trial court has not considered while awarding Rs.4000/□per month maintenance to Kum.Manasi, the assets and liabilities filed by the respondent disclose that he has paid the amount till Kum.Manasi has attained majority. She has already attained majority in the month of CrI.A.199/2018 & CrI.A.412/2019 November 2021. The trial court has awarded maintenance to Kum.Manasi till she attained majority, therefore consideration on this aspect does not survive.

34. Regarding the claim of petitioner for awarding maintenance she has claimed Rs.9000/□per month maintenance and also sought for respondent to provide rented house for the petitioner, before the court in the appeal the petitioner has filed application under Section 20 seeking monetary relief of Rs.10,00,000/□to the petitioner and her child to meet their expenses incurred losses suffered. However, no such relief is sought in the original petition filed under Section 12 of PWDV Act. Just merely because in the original petition the monetary relief is not sought cannot be a ground to deny the relief if the petitioner is entitled to meet the expenses incurred and losses suffered by the aggrieved person and child as a result of domestic violence. The aggrieved person/petitioner has also filed medical documents of Manasi.B.S. under Section 2(b) of PWDV Act child means any person below the age of 18 years. Here in this case the CrI.A.199/2018 &

Crl.A.412/2019 daughter of petitioner and respondent Kum.Manasi has already attained majority. On reading of Section 2(a) and 2(f) of DV Act would show that a daughter who is or was living with her father in a domestic relationship by way of consanguinity, is entitled to seek relief including monetary relief on her right as a aggrieved person under Section 2(a) of the DV Act irrespective of the fact whether she is a minor or major. In the present case, the relationship between the parties as father and daughter is admitted. The evidence of petitioner establishes Kum.Manasi has stayed with respondent father and with mother/petitioner in a shared household, in view of the fact that the respondent was neglected to maintain the petitioner and daughter Kum.Manasi. The petitioner had instituted MC 355/2007 proceedings before the Family Court for divorce, during pendency of that proceedings the interim maintenance was also granted by the Family Court to Kum.Manasi. Therefore, it cannot be said the Kum.Manasi had become major and she cannot seek a monetary relief through her mother petitioner.

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35. The Family Court in MC 355/2007 has directed the respondent/husband to pay Rs.5,00,000/□ as permanent alimony to the petitioner. In the assets and liabilities filed by the respondent, nowhere he has stated that he has paid the said amount. The petitioner on account of domestic violence residing separately, the respondent is a retired employee of SBI and he drawing pension of Rs.37,535/□ as on October 2021. The respondent in his assets and liabilities, he has also mentioned that he has taken personal loan of Rs.6,00,000/□ from SBI and paying EMI, he has also produced income tax returns for the year 2020□21, 2021□

22. It is further disclosed the respondent had paid Rs.5,67,500/□ in MC 355/2007, Rs.2,18,400/□ in Crl.Mis.215/2017, he has paid Rs.1,56,930/□ towards school and college fees totally Rs.9,42,830/□. The respondent being a pensioner, periodically he would get dearness allowance once in 6 months and his pension would be increased. The petitioner has not having her own source of income. She is entitled to live to the status of her Crl.A.199/2018 & Crl.A.412/2019 husband, if she would have lived with him. The petitioner has not filed her assets and liabilities, she has filed assets and liabilities of her daughter wherein she has stated the house rent is Rs.4000/□ per month. The respondent is aged about 55 years, the petitioner is aged about 38 years in the year 2019, considering the entire facts and circumstances the financial status of both parties. The petitioner is residing separately with her daughter now she has attained majority and she is studying. The respondent has also drawing pension, he has also paid the maintenance as per the orders passed by the trial court during pendency of petition and also as per the orders of Family court. The respondent has not paid the permanent alimony of Rs.5,00,000/□ awarded by the Family Court. Taking into over all material on record if the maintenance of Rs.9000/□ per month is awarded to the petitioner Usha from the date of petition i.e., 3.11.2010 filed under Section 12 of PWDV Act after deducting interim maintenance if any paid to her. Further the monetary relief of Rs.5,00,000/□ is awarded to the petitioner and her daughter Kum.Manasi to Crl.A.199/2018 & Crl.A.412/2019 meet the expenses incurred and the loss suffered by the petitioner and her child. Accordingly to that extent the appeal filed by the petitioner/appellant Smt.Usha in Crl.A.412/2019 is to be allowed. There is no grounds in the appeal filed by the appellant/respondent Srirangaraju in Crl.A.199/2018 accordingly answer point No.2 not justified, point No.3 Affirmative , point No.4 Negative.

36. POINT No.5: In view of findings given on point Nos.1 to 5, this Court pass the following order.

ORDER

The Crl.A.199/2018 filed by the appellant/respondent Srirangaraju under Section 29 of PWDV Act is dismissed.

The application under Section 5 of Limitation Act filed by the Appellant/petitioner Smt.Usha in Crl.A.412/2019 is allowed.

The delay of 381 days in filing the appeal is condoned.

Crl.A.412/2019 filed by the appellant/petitioner Smt.Usha under Section 29 of PWDV Act is allowed in part.

Crl.A.199/2018 & Crl.A.412/2019 The trial Court judgment dated 5.01.2018 in Crl.Mis.69/2010 in so far as refuse to award maintenance to the petitioner is set aside.

The petitioner Smt.Usha is entitled monthly maintenance of Rs.9,000/- per month from the date of petition i.e. 3.11.2010 including the interim maintenance if any paid by the respondent during pendency of proceedings before the trial Court. The respondent is directed to pay the maintenance amount to the petitioner.

The respondent is directed to pay monetary relief of Rs.5,00,000/- to the petitioner and her daughter Kum.Manasi under Section 20 of PWDV Act.

Office to transmit the records to the trial Court with the copy of this Judgment.

Keep the original judgment in
Crl.A.199/2018 and copy thereof in
Crl.A.412/2019.

(Dictated to the Judgment Writer directly on computer, corrected by me and then pronounced in the open Court on this the 28th day of December, 2022).

(S.NATARAJ), LXVI Addl.CC & SJ, Bengaluru.

Crl.A.199/2018 & Crl.A.412/2019 38 The Judgment is pronounced in the open Court vide separate Judgment with following operative portion.

ORDER The Crl.A.199/2018 filed by the appellant/respondent Srirangaraju under Section 29 of PWDV ACT is dismissed.

The application under Section 5 of Limitation Act filed by the Appellant/petitioner Smt.Usha in Crl.A.412/2019 is allowed.

The delay of 381 days in filing the appeal is condoned.

Crl.A.412/2019 filed by the appellant/petitioner Smt.Usha under Section 29 of PWDV Act is allowed in part.

The trial Court judgment
dated 5.01.2018 in

Crl.Mis.69/2010 in so far as refuse to award maintenance to the petitioner is set aside.

The petitioner Smt.Usha is entitled monthly maintenance of Rs.9,000/□per month from the date of petition i.e. 3.11.2010 including the interim maintenance if any paid by the respondent during pendency of proceedings Crl.A.199/2018 & Crl.A.412/2019 39 before the trial Court. The respondent is directed to pay the maintenance amount to the petitioner.

The respondent is directed to pay monetary relief of Rs.5,00,000/□to the petitioner and her daughter Kum.Manasi under Section 20 of PWDV Act.

Office to transmit the records to the trial Court with the copy of this Judgment.

Keep the original judgment in Crl.A.199/2018 and copy thereof in Crl.A.412/2019.

LXVI Addl.CC & SJ,