

**THE 25th ALL INDIA MOOT COURT COMPETITION, 2014
FOR THE KERALA LAW ACADEMY TROPHY**

MOOT PROPOSITION

Ramila v Amalik

Dhashinanchal is a State in the Indian Union. Amalik and Ramila were IT professionals working together in a private company in Santhipur, the capital city of the State. Amalik was a married person having three children and the Ramila was unmarried. Constant contacts between them developed intimacy and in the year 1996 Amalik left the job from the company and started living with the Ramila in a shared household. Ramila's family members, including her sister, mother and also the wife of the Amalik were against their relationship. In 1997 Ramila resigned her job in the company and started a Beauty Parlour in her name with the help of Amalik and they were earning from that business. After some time, she shifted the business to their residence.

In October 2006 Ramila filed a petition (Criminal Misc. No. 320 of 2006 under Section 12 of the Protection of Women from Domestic Violence Act 2005 (DV Act) before the II Additional Chief Metropolitan Magistrate, Santhipur against Amalik.

It was alleged that due to her relationship with Amalik, Ramila became pregnant on two occasions, though all resulted in abortion. It was alleged that Amalik used to force her to take contraceptive methods to avoid pregnancy. Further, it was also stated that the respondent took a sum of Rs10,00,000/- from the petitioner stating that he would buy a land in her name, but the same was not done. He also took money from her for the admission of his son in the leading Management Institute . Petitioner also alleged that, during the year 1998, respondent took a loan of Rs.3,50,000/- from her and had not returned. Further, it was also stated that he was harassing her by not exposing her as his wife publicly, or permitting to suffix his name after the name of the petitioner. She also alleged that the respondent never used to take her anywhere, either to the houses of relatives or friends or functions. She sought the following reliefs:

- 1) Pass a Protection Order under Section 18 of the DV Act prohibiting the respondent from committing any act of domestic violence against the petitioner and her relatives, and further prohibiting the respondent from alienating the assets both moveable and immovable properties owned by the respondent;
- 2) Pass a residence order under Section 19 of the DV Act and direct the respondent to provide for an independent residence as being provided by the respondent or in the alternative a joint residence along with the respondent where he is residing presently and for the maintenance of Rs.25,000/-per month regularly ;
- 3) Pass a compensation order under Section 22 of the DV Act to a sum of Rs.15,00,000/- towards damages for misusing the funds, mental torture and emotional feelings; and
- 4) Pass an ex-parte interim order under Section 23 of the DV Act directing the respondent to pay Rs.75,000/- towards the medical expenses

Amalik filed detailed objections to the application stating that it was on sympathetic grounds that he gave shelter to her in a separate house after noticing the fact that she was abandoned by her parents and relatives, especially after the demise of her father. The respondent has admitted that he had cohabited with the petitioner since 1996. The fact that he was married and had three children was known to the petitioner. Pregnancy of the petitioner was terminated with her as well as her mother's consent since she was not maintaining good health. The respondent had also spent large amounts for her medical treatment and the allegation that he had taken money from the petitioner was denied. After examining ten witnesses the Magistrate took the view that the plea of "domestic violence" had been established, due to the non-maintenance of the petitioner and passed the order dated 21.7.2009 directing the respondent to pay an amount of Rs.20,000/- per month towards maintenance from the date of the petition. Respondent, aggrieved by the said order dated 21-7-2009 , filed an appeal before the Sessions Court under Section 29 of the DV Act. The Appellate Court, after having noticed that the Amalik had admitted the relationship with Ramila for over a period of 10 years, took the view that, due to their live in relationship for a considerable long period, non maintenance would amount to domestic violence within the meaning of Section 3 of the DV Act. The Appellate Court also concluded that the Ramila has

no source of income and that Amalik is legally obliged to maintain her and confirmed the order passed by the Magistrate.

Amalik filed an appeal against the Order of District Court . After hearing the arguments of the counsels for appellant and respondent on 19-11-2013 and 20-11-2013 the High Court of Dhashinanchal set aside the decisions of the subordinate courts through its decision dated 2-12-2013. The Court relied on the decision of the Supreme Court (dated 26-11-2013) in *Indra Sarma v VKV Sarma*, {CRIMINAL APPEAL NO. 2009 OF 2013 (@ SPECIAL LEAVE PETITION (CRL.) NO.4895 OF 2012)} . On the basis of the following guidelines given in Para 55 of the judgment of the Supreme court in *Indra Sarma* the High Court arrived at the conclusion that the relationship between Amilak and Rohila is not relationship in the nature of marriage.

(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.

(2) Shared household

The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(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 along standing relationship, may be a guiding factor.

(4) Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or up keeping the house, etc. is an indication of a relationship in the nature of marriage.

(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.

(6) Children

Having children is a strong indication of 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.

(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.

(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.

Against the decision Ramila approached the Supreme Court under Art 136 of the Constitution and on 12-12-2013 leave to file special leave appeal was granted. In the appeal petition following contentions were raised:

1. The High Court decision is based on a decision of the Supreme Court which was not considered at the time of argument.
2. The case was decided without properly appreciating the facts

Alternatively it was contented that the Guidelines contained in Para 55 of the decision in *Indra Sarma* may be reconsidered since most of the guidelines are irrational and guideline no 4 is against the concepts of gender justice and human rights of women embodied in part III of the Constitution and International Human Rights Instruments.

The case is posted to 2014 February 7th and 8th for final hearing by a three member Bench.