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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF JULY, 2018

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL REVISION PETITION NO. 282 OF 2018

BETWEEN

MRS. NEELAM MANMOHAN,  
W/O MANMOHAN ATTAVAR (AVOUCHEDED)  
AGE 60 YEARS  
R/AT PARK, OPPOSITE 38/1  
30<sup>TH</sup> CROSS, 3<sup>RD</sup> MAIN  
7<sup>TH</sup> BLOCK, JAYANAGAR  
BENGALURU 560 082.

... PETITIONER

(BY SMT. NEELAM MANMOHAN (PARTY-IN-PERSON))

AND

SRI. MANMOHAN ATTAVAR DIN 00053270  
S/O MUTTHAPPA ATTAVAR  
AGE 83 YEARS  
R/AT 38/1, 30<sup>TH</sup> CROSS  
3<sup>RD</sup> MAIN, 7<sup>TH</sup> BLOCK, JAYANAGAR  
BENGALURU 560 082.

DECEASED.

LEGAL REPRESENTATIVES

1(a) ARTHUR SANTHOSH ATTAVAR DIN 00564983  
MANAGING DIRECTOR  
INDO-AMERICAN HYBRID SEEDS (INDIA) PVT. LTD  
SURVEY NO. 13/4 & 14  
7<sup>TH</sup> KM, BANASHANKAR-KENGERI LINK ROAD  
CHANNASANDRA VILLAGE

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RAJESHWARINAGAR  
BENGALURU 560 098

1(b) JANE RUHAMARASHMI ATTAVAR DIN 00066557  
JOINING MANAGING DIRECTOR  
INDO-AMERICAN HYBRID SEEDS (INDIA) PVT. LTD  
SURVEY NO. 13/4 & 14  
7<sup>TH</sup> KM, BANASHANKAR-KENGERI LINK ROAD  
CHANNASANDRA VILLAGE  
RAJESHWARINAGAR  
BENGALURU 560 098

... RESPONDENTS

(BY SRI. S.SHAKER SHETTY, ADVOCATE FOR R1A & R1B)

CRL.RP FILED U/S.397 R/W 401 CR.P.C BY THE PARTY-IN-PERSON PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO EXP 51 DATED 07.02.2001 EMPHASIZES ON RECORD BEFORE DCP SOUTH WHO IS NOW COMMISSIONER POLICE, BOTH PERSONAL AND PROFESSIONAL ASPECTS OF RELATIONSHIP BETWEEN PETITIONER AND DR.

TRIAL COURT ORDER DATED 30.07.2015:

FALTERS ON MISREADING OF AND INCORRECT WEIGHTAGE TO EVIDENCE ON RECORD. RANDOM CHECK WILL REINFORCE THIS CONTENTION.

ALL THROUGH, THE ORDER FLAGS PETITIONER'S CALIBER AND COMPETENCE. DR HIMSELF IN SMS EXCHANGE ON 13.08.2010 (EXP 80) STATES: YOU ARE SO UNREASONABLE IN SPITE OF ALL YOUR BRILLIANCE.

A STRONG MOTIVE FOR SELF GAIN IS EVIDENT IN DOC 10 APPENDED WITH CLOSING COUNTER ARGUMENTS WHICH IS ALSO PART OF CRL.P.6126/2013 U/S 482 CRPC. THE SAME IS ALSO ON FILE OF TRIAL COURT AS ACCOMPANYING DOC IN EXP 86 WHEREIN THE YEARS HAVE BEEN DELIBERATELY REMOVED TO SUPPRESS GAINS MADE IN ASSOCIATION WITH PETITIONER. A MATTER OF SEWAT EQUITY THAT CORROBORATES... RESPONDENT GAINED IN STATUS,

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STATURE AND FINANCE AS STATED IN SWORN AFFIDAVIT.

PARA 87 OF ORDER DOES NOT ACCORD STATUS OF RELATIONSHIP IN NATURE OF MARRIAGE BECAUSE DR WAS A MARRIED MAN AND RELIES ON INTERPRETATION IN PARA 86 WITH RESPECT TO CITED CASE.

PARA 33-55 OF THIS CITATION ARE BARE ACT FOR RELATIONSHIP IN NATURE OF MARRIAGE THAT NEEDED TO BE REFERRED TO; PARA 37B WHICH HINGES ON FACTS IN INDIVIDUAL CASE OF UNMARRIED WOMAN AND MARRIED MAN. HOW SHOULD LAW BE APPLIED IN SUCH CASES WAS ELABORATED IN PARA 34,50,54,55 OF THE SAID CITATION. EXP 2/46/45/50 IS STAND ALONE ON CONCLUSIVE FACTS. GROSS ERROR IN INTERPRETATION AND IN DISMISSAL OF PETITION UNDER DOMESTIC VIOLENCE ACT IS, THEREFORE.

1ST APPELLATE ORDER DATED 17.02.2018 IS BASICALLY CONTEMPT OF COURT BY PRESIDING OFFICER FOR NOT TREATING CASE AS DE NOVO HEARING AS DIRECTED BY THE CONSTITUTION COURTS.

AND, FURTHER FALTERING IN LAW AND INTENT TO DO JUSTICE IS ELABORATED IN MEMORANDUM TO HON'BLE CHIEF JUSTICE KARNATAKA.

WHEREFORE, IT IS MOST HUMBLY SUBMITTED BOTH ORDERS BE SET ASIDE THE JUDGMENT DATED 17.02.2018 PASSED BY THE III ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-25) IN CRL.A.NO. 1070/2015 AND THE JUDGMENT DATED 30.07.2015 PASSED BY THE III-M.M.T.C., BANGALORE IN CRL.MISC.NO. 139/2015 AND RELIEF AND ACTION PRAYED FOR BE TAKEN IN ACCORDANCE WITH PROVISIONS OF LAW IN FORCE.

THIS CRL.R.P. U/S 397 R/W 401 CR.P.C. BY THE PARTY-IN-PERSON PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE TRIAL COURT

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ORDER PASSED BY M.M.T.C.-2 IN CRL.MISC.NO. 139/2015 DATED 30.07.2015 AND 1<sup>ST</sup> APPELLATE ORDER PASSED IN CCH-25 IN CRL.A.NO. 1070/2015 DATED 17.02.2018 BEFORE THE III ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE. THE FOLLOWING ORDERS BE PASSED UNDER PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005.

SEC.17: RIGHT TO RESIDE IN A SHARED HOUSEHOLD.

SEC.19: RESIDENCE ORDERS FOR: 38/1, 30<sup>TH</sup> CROSS MAIN, 7<sup>TH</sup> BLOCK, JAYANAGAR, BANGALORE – 560 082.

302, BRIGADE PETUNIA, 17<sup>TH</sup> CROSS, 2A MAIN, K.R.ROAD, BANASHANKARI II STAGE, BANGALORE – 560 070.

MM FARMS, 7<sup>TH</sup> KM BANASHANKARI-KENGERI LINK ROAD, SUBRAMANYAPURA PO, BANGALORE – 560 061.

THEY ARE PERSONAL PROPERTIES OF RESPONDENT AS DISCLOSED IN RW1 CROSS EXAMINATION, LRS HAVE INDEPENDENT PERSONAL ASSETS AND HOLDINGS.

SEC.20: MONETARY RELIEF: LOSS OF EARNINGS; MEDICAL EXPENSES; LIABILITIES (BORROWINGS PAST 17 YEARS FOR SURVIVAL ARE 75 LAKHS), SWEAT EQUITY FROM RESPONDENTS STAKES IN INDO AMERICAN HYBRID SEEDS INDIA PRIVATE LIMITED OF WHICH HE WAS FOUNDER CHAIRMAN DIN 00053270.

SEC.22: COMPENSATION ORDERS: FOR 21 YEARS OF PRIME LIFE LOST.... HARD TO WORD.

RESPONDENT HAS LEFT PERSONAL ASSETS AND BANK BALANCE AND DEPOSITS AND FINANCIAL ASSETS FROM WHICH MONETARY RELIEF AND COMPENSATION

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ORDERS CAN BE COMPLIED WITH IN ACCORDANCE WITH SETTLED LAW MANDATORY GUIDELINES IN J.R.MIDHA J JUDGMENT, THESE ARE NOT MERE LEGAL RIGHTS, BUT HUMAN RIGHTS.

A PERSONAL AUDIENCE IS REQUESTED (PG.IAST).

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.07.2018 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

This Criminal Revision Petition has been filed by the petitioner/appellant against the judgment passed by the III Addl. City Civil and Sessions Judge in CrI.A.No. 1070/2015 dated 17.02.2018 dismissing the appeal.

2. The factual matrix of the petition is as under:

The petitioner is said to be a Post Graduate in Botany with research in stress physiology and trained in media studies at the Bharathiya Vidya Bhavan and the Indian Institute of Mass Communication. It is further stated that she is a recipient of National Award for ICAR, NOW and AHEAD, published in 1996. Apart from that she was on the International Editorial Advisory Boards till 1996. In

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the year 2008 she had authored a book titled as "Sikkim, India, Sanctuary to Horticulture Estate" for the Government of Sikkim.

3. The respondent, namely Late Sri. Manmohan Attavar is said to be the Founder Chairman of Indo-American Hybrid Seeds India Pvt. Ltd., (in short referred to as IAHS) and also a Padmashree awardee. It is stated that the petitioner got acquainted with him during her official period in the year 1986, while she was working in the ICAR (Indian Council of Agriculture Research) at New Delhi, as the respondent used to visit the said office regularly in his official capacity, as a Founder Chairman of IAHS. As such he came in touch with the petitioner and the said acquaintance is said to have gradually developed into a strong personal bond between the duo and it is stated that they spent time together publicly. The respondent used to give weekly visits to the working place as well as the residence of the petitioner and he used to make frequent calls and it is stated that they even exchanged letters. Among his friends circles and parties this petitioner was

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introduced by him as his partner. At the same time the petitioner is said to have been going through a bad marital relationship coupled with divorce proceedings with her husband in 1997, when this respondent is said to have taken good care of her and supported her during her hardships. That both petitioner and respondent were eagerly waiting for culmination of divorce proceedings as the respondent is said to have promised that he would declare publicly the petitioner as his wife and would marry her after getting over the legal hurdles. Their relationship is said to have lasted for almost ten years and it had gone to such an extent that in the year 1998 after some rituals like applying Kumkum, the respondent started visiting the petitioner regularly and they started living together as husband and wife at No. 242, Pitampura Apartments, Pritampura, New Delhi and at No. 6A/46, 3<sup>rd</sup> Main Road, Jayanagar, 7<sup>th</sup> Block, Bangalore. They are said to have enjoyed their life to the maximum with consummation of their marriage. Moreover they are said to have moved among the community as husband and wife and the respondent had taken the petitioner to his friends houses

and is also said to have introduced her as his wife. Thus he is said to have gained her trust and confidence.

4. It is stated that despite the said bondage between the two, always he had a voice over her. As a result, he had also compelled her to resign her job at ICAR, so as to live with him at Bangalore. Though she was not willing to take such a drastic step in her progressing career, at the same time she was also not interested to put an end to their relationship. As a result and because of the convincing approach of the respondent and his magical words she is said to have tendered resignation to her prosperous job and started living with him at Bangalore. But to her utter shock, she realized that the respondent was already married to one Mrs. Mamtha and he had two children from the said marriage and when she questioned the same, he is said to have promised to marry her by convincing her that his marital life was not happy and he would take divorce soon. Thus she had to suffer in silence because of her love with him. However once the respondent realized that the petitioner has come to know



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about his marital life, he started behaving indifferently and having forced her to resign the job, he made her to suffer lonely life. He started avoiding her on one or the other pretext and gave lot of mental torture to her. He used to behave in different temperaments and at the same time he used to assure that he loves her so much so that he will marry her sooner or later and some times he used to say that his family is important for him and not this petitioner. Due to the said inconsistent attitude of the respondent, she was very much depressed and in order to end her life she is said to have consumed sleeping pills on 16.1.2007 and was hospitalized at Mallige Hospital, Bangalore, but due to timely intervention of the doctors she was saved. Subsequently the petitioner came to know that Mrs. Mamtha, wife of respondent breathed her last, on 22.2.2010 and the respondent also informed that he would marry her soon and his children will not interfere in their matter. The respondent called her from his mobile No. 9845955000 and this petitioner was also very sure that he will marry her, however yet again the respondent broke his promise without any reason and literally this petitioner

was forced to live on the streets. All the efforts made by the petitioner to get her rights went in vain. Because of his deceitful nature the respondent made her life like a hell, firstly by concealing the fact of his marriage, secondly by compelling her to resign her job and thirdly by his activities he made her to suffer, which it is stated that amounts to domestic violence. The petitioner suffered untold mental agony and depression when the respondent showed the symptoms of withdrawal. Further, it is stated that all the while the petitioner was interested to lead a happy marital life with the respondent and to join the matrimonial house, but as a rude shock she came to know that the respondent was interested only in his family. The petitioner states that she was in relationship with the respondent for nearly 15 years as husband and wife and they shared common household and their relationship was in the nature of married couple.

5. The petitioner / party-in-person has relied on the following citations relating to 'live-in' relationship, in order to substantiate her case.

**1. Badri Prasad vs. Dy. Director of Consolidation (AIR 1978 SC 1557)**

This was the first case in which the Supreme Court of India recognized live in relationship and interpreted it as a valid marriage. In this case, the Court gave legal validity to a 50 year live in relationship of a couple. It was held by Justice Krishna Iyer that a strong presumption arises in favour of wedlock where the partners have lived together for a long term as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy.

**2. Tuisa & Ors vs. Durghatiya & Ors. (Appeal Civil No.648/2002 Dt. 15.01.2008)**

The Supreme Court provided legal status to the children born from live in relationship. It was held that one of the crucial pre-conditions for a child born from live-in relationship to not be treated as illegitimate are that the parents must have lived under one roof and co-habited for a considerably long time for society to recognize them as husband and wife and it must not be a “walk in and walk out” relationship. Therefore, the court also granted the right to property to a child born out of a live in relationship.

**3. Velusamy vs. D.Patchaiammal (CrI.A.2028-2029/2010 dated 21.10.2010)**

The Judgment determined certain pre-requisites for a live in relationship to be considered valid. It provides that the couple must hold themselves out to society as being akin to spouses and must be of legal age to marry or qualified to enter into a legal marriage, including being unmarried. It was stated that the couple must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. The court held that not all relationships will amount to a relationship in the nature of marriage and get the benefit of the Domestic Violence Act. It further clarified that, if a man keeps women as a servant and maintains her financially and uses mainly for sexual purposes, such relationship would not be considered as marriage in the court of law. Therefore to get such benefit the conditions mentioned by the Court must be satisfied, and has to be proved by evidence.

Here, the court relied on the concept of 'palimony' which was used in the USA for grant of maintenance in live in relationships. The concept of palimony was derived in the case of **Marvin vs. Marvin**, a landmark judgment of the California Supreme Court.

**4. Khushboo vs. Kanniammal & Anr, 2010  
(Crl.A.913/2010 dt. 28.04.2010)**

The Supreme Court in this case dropped all the charges against the petitioner who was a south Indian actress. The petitioner was charged under Section 499 of the IPC and it was also claimed that the petitioner endorsed pre-marital sex and live in relationships. The court held that living together is not illegal in the eyes of law even if it is considered immoral in the eyes of the conservative Indian Society. The court stated that living together is a right to life and therefore not 'illegal'.

It is stated that the respondent being the founder and Chairman of IAHS was earning crores of rupees by way of sale of seeds, plants and also was engaged in dealing of lands and properties. On the other hand, it is stated that the petitioner had no source of income to maintain herself. The respondent having forced her to resign her job, was duty bound to maintain her and to provide shelter, food and clothing to her. Since he has failed to maintain her, the petitioner states that she is managing her life by taking shelter and help from her friends and well-wishers. Thus it is stated that respondent has subjected her to domestic violence in the form of

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mental and economical abuse. Hence, by way of this petition she seeks protection order under Section 18, residence under Section 19, to pay monetary relief under Section 20 and to grant compensation or damages under Section 22 of the Protection of Women from Domestic Violence Act, 2005.

6. Per contra, disputing the very maintainability of the petition, the respondents who are the legal representatives of Late Sri. Manmohan Attavar contend that their father and the petitioner were never in matrimony and they never co-habited and as such, the question of desertion of their marital life or commission of domestic violence against her would not at all arise. The petition is a clear abuse of judicial process and is solely intended to threaten him with a frivolous litigation, and if possible to defame him and thereby make wrongful gain. The respondent who is a Padmashree Awardee and a highly reputed and respected individual is now no more. The qualification of the petitioner was of no consequence and he never gained acquaintance nor came in touch with

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her regularly nor did he spend time with her publicly. Moreover he never called her over phone, never exchanged letters with her nor declared or proclaimed that she was his partner amongst his friends and social circle. Further, there was no occasion for him to support her in her divorce proceedings and moreover when he himself was married and his wife was very much alive and when there was no divorce proceedings between him and his wife, there was no question of applying Kumkum to her in proof of the fact that he led any marital relationship with her for 15 years as claimed. The allegations of alleged marriage and consummation of it are all vague and are specifically denied. He contends that there existed no trust or confidence between them, and hence all other contrary claims made by her are denied in toto. Further it is contended that he was not instrumental nor was the cause for her alleged quitting of her job at ICAR and he was unaware of her residence and he never insisted her to reside in any specific location. Further that he had not promised to co-habit with her as he was already married to Mrs. Mamtha Attavar and they were blessed with two

children, the fact which was known to one and all. Having collected the details of his family, it is stated that somehow she has created a story of imagination and this respondent had no occasion to discuss with her about his marital issues nor he represented that he would divorce his wife and marry this petitioner. The allegation of the petitioner that she attempted to commit suicide and she was saved by the doctors etc., are unknown to him and it is denied that he promised to her marry on the death of his wife. Moreover, it is contended that the deceased Attavar did not hold the alleged phone number in his individual capacity and as such making calls to the petitioner through that number is denied. It is stoutly denied that he committed any domestic violence, fraud and deceived her. It is also denied that he was earning crores of rupees as income every month and the petitioner has no source of income.

7. It is contended that due to the fact that the deceased respondent was the Chairman of IAHS and has been instrumental in achieving various research and developments in the field of agriculture, as a result the



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petitioner had evinced interest to join IAHS and accordingly she had sent her profile along with covering letter dated 14.12.1998 and after considering the said application, it was informed that there was no scope in their organization for her line of activity and the company was unable to accommodate her. Then realizing the standing of this petitioner in the society and with an intention to intimidate and exploit him, she has engineered all these things by falsely claiming that she was his wife and made frivolous complaint to the Women and Child Development Department, Government of Karnataka, but could not withstand her case. Once again in the year 2011 the petitioner made attempts to exploit the respondent and approached the police department claiming that she was his wife, but after verification her claim was rejected. Having failed in her attempt, she filed a C.Misc.139/2015 before the Court of the MMTC, Bangalore which came to be dismissed and again CrI.A.1070/2015 before the III Addl. City Civil & Sessions Judge, Bengaluru, which again was dismissed. Hence, the petitioner is before this court in revision challenging the orders passed by the Trial Court

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as well as the Appellate Court. The description of her profile in her job application dated 14.12.1998 is a clear indication of her status. Her application claims show the clear contradiction in them and certainly, she cannot be said to be an aggrieved person under the provisions of DV Act. The very monetary claims made by her manifestly show her intention to exploit the legal heirs of the deceased respondent and expose her true motive behind the petition. The learned counsel for the legal representatives of the respondent has relied on the following citations, to support his case:

1. Japani Sahoo Vs. Chandra Sekhar Mohanty (2007 (7) SCC 394)
2. Inderjit Singh Grewal Vs. State of Punjab and Anr. (2011 (12) SCC 588)
3. Crl. Appeal 1545/2015
4. Kishor Vs. Shalini (Crl.WP No. 37/2008)
5. S.R. Batra and Anr. Vs. Taruna Batra (AIR 2007 SC)
6. Johnson Fernandes Vs. Maria Fernandes (Crl.R.P. No. 14/2010 in the High Court of Bombay at Goa)
7. D. Velusamy Vs. D. Patchaiammal (AIR 2011 SC 479)
8. Hiral P. Harsora and Ors. Vs. Kusum Narottajmdas Harsora and Ors. (2016(10) SCC 165)
9. Indra Sarma Vs. V.K.V. Sarma (AIR 2014 SC)

10. K. Narasimhan Vs. Rohini Devanathan (Cr1.P. 807/2009)
11. V.K.V. Sarma Vs. Indra Sarma (ILR 2012 KAR 218)
12. Ashish Chadha Vs. Asha Kumari and Anr. (2012(1) SCC 680)
13. Rabindra Nath Singh vs. Rajesh Ranjan and Anr. (2010(6) SCC 417)
14. In Re Dr. D.C. Saxena and Dr. D.C. Saxena, Contemnor Vs. Hon'ble the Chief Justice of India (AIR 1996 SC 2481)
15. Ram Rati Vs. Mange Ram (Dead) through LRs. And Ors. (2016 (11) SCC 296)
16. Ratna Bai Vs. N. Narayan (AIR 1973 Mysore 174)
17. Union of India and Ors. Vs. Vasavi Cooperative Housing Society Limited and Ors. ((2014) 2 SCC 269)
18. Ganpat Ladha Vs. Sashikant Vishnu Shinde (AIR 1978 SC 955)
19. Roop Singh Negi Vs. Punjab National Bank and Ors. ((2009) 2 SCC 570)

The learned counsel has emphasized on the judgment of the Apex Court in the case of **Velusamy vs. Patchaiammal (2010 AIR SCW 6731)** wherein it is held as follows:

*“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'.*

Thus, the learned counsel for the respondent submits that it is very candid that the deceased respondent had not lived with the petitioner in a 'shared household' as defined in Section 2(s) of the DV Act and hence the court below as well as the appellate court were right in rejecting the reliefs prayed for by the petitioner. Thus on these grounds urged, the counsel for the respondents prays dismissal of this revision petition outrightly.

8. On hearing the petitioner party-in-person as well as the learned counsel Shri Shaker Shetty for the respondent, I find that the following facts require to be noticed in order to decide this petition.

9. During trial the petitioner examined herself as PW1 and got exhibited as many as 94 documents and one document as Ex.C1. Whereas the deceased respondent / Manmohan Attavar examined himself as RW1 and got marked 9 documents. After hearing both the parties, the court below namely the MMTC II, court by its order dated 30.7.2015 dismissed the application on merits. Being aggrieved by the said order the petitioner had filed an appeal before the Appellate Court in CrI.A.1070/2015. The trial court had framed four points for its consideration namely,

i) Whether the petitioner proves that she has married the respondent / Manmohan Attavar on 10.1.1998 and thereafter she was under domestic relationship with him?

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ii) Whether the petitioner in the alternative proves that her relationship with the respondent falls under the purview of relationship in the nature of marriage?

iii) Whether the petitioner proves that she has suffered any acts domestic violence in the hands of respondent?

iv) Whether this petitioner proves that she is entitled for the reliefs as prayed for by her?

Having framed the said points and appreciating the oral and documentary evidence produced by the parties and referring to the provisions of Domestic Violence Act, Hindu Marriage Act and Special Marriage Act as well as various decisions relied by the parties, the court below answered all the four points in the negative and ultimately dismissed the application. The above order was carried in appeal before the Appellate Court in CrI.A.1070/2015, which again came to be dismissed by judgment dated 17.02.2018, discussing in detail all the points and referring to the documents meticulously. The petitioner

has come up in revision by way of the present petition being aggrieved by the orders passed by the Trial Court as well as the Appellate Court.

10. The petitioner has taken me through her evidence wherein she was examined as PW-1 and it is seen that Exhibits P1 to P94 were got marked. The said documents have been produced by her in order to establish that she had a domestic relationship with the deceased respondent Manmohan Attavar. She had stated that he had forced her to write her name as 'Neelam Manmohan Attavar'. But at this juncture, going by the evidence of PW-1 if really the deceased respondent had insisted her to write her name as 'Neelam Manmohan Attavar', question arises as to why she had not changed her name officially either when she was working with ICAR or after she resigned her job. There is no material forthcoming to evidence the fact that she had changed her name officially. Nor she has not explained the same by placing acceptable evidence in order to prove that the deceased respondent insisted her to write her name as 'Mrs. Neelam Manmohan Attavar'.

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Exhibit P-2 is the certified copy of the decree of divorce obtained by her from her ex-husband Shri Harishchandra Chabbra on 10.10.1996.

Exhibits P3 to P5 are photocopies evidencing the petitioner having attended various functions in ICAR and Exhibit P6 is the CD containing the photocopies of Exhibits P3 to P5. There is no dispute about these Exhibits submitted by the petitioner. Exhibit P7 is the copy of the e-mail sent by Mr. P. Saktivel to PW-1 dated 17.02.2015. On a careful reading of Ex.P7, it appears that PW-1 had sought information regarding one Smt. Shakun, who worked in ICAR, through her e-mail dated 13.02.2015. The said Saktivel had not provided the address of Smt. Shakun due to the reason that PW-1 had not furnished the actual purpose for which the address was sought.

The petitioner had produced various documents marked as exhibits, but to no avail. On marshalling the pleadings and the evidence of PW-1, it is seen that she herself was not firm in her say regarding her actual residence. There is no documentary proof to evidence the



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fact that she ever lived with the respondent. Moreover, she has not at all mentioned in her evidence the period or length that she stayed with the respondent. It is well settled law that the length of staying together by a man and woman has to be proved before this court prima facie, by producing vital and clinching evidence, which has not been done.

Moreover, she had referred in her evidence with regard to their relationship that after 10 years of their relationship, that in the year 1998, the respondent had after performing some rituals like applying 'kumkum' to the petitioner, started visiting her regularly and lived together as husband and wife at No.242, Pitampura Apartments, Pitampura, New Delhi and No.6A/46, 3<sup>rd</sup> Main Road, Jayanagar 7<sup>th</sup> Block, Bengaluru. However, the deceased Mannohan Attavar had not at all lived with her consistently at the said addresses over a long period of time, since there is no proof to evidence the same. Hence, the contention that she lived in the 'shared household', cannot be accepted by this court. Moreover, her pleading

does not mention the exact date when 'kumkum' was applied by the deceased respondent on her forehead. However during the course of her evidence she has improved her version and has mentioned the date of applying 'kumkum' as 10.01.1998. It is to be seen that PW-1 had neither pleaded nor deposed the place where exactly the respondent had applied 'kumkum' to her forehead nor has she mentioned the names of witnesses who were present there to evidence the said fact. Moreover, the deceased respondent being a 'Christian' by religion, the question of he marrying her by applying 'kumkum' as per the Hindu rituals, would not at all arise. A Christian would certainly not have married a woman by applying 'kumkum', which submission itself is absurd. Therefore, clearly, an adverse inference requires to be drawn against the petitioner to the effect that no such marriage ceremony had taken place as on 10.01.1998 as alleged by the petitioner.

Further, after the so-called 'kumkum' applying ceremony, PW-1 had written a letter to one Dr. Barghouti

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which is produced at Ex.P10. In the said letter, she had mentioned her name as 'Miss. Neelam' and her address has been shown as 'C/o.#16/532, Faridabad, Haryana'. According to her evidence when she was said to be married to Manmohan Attavar on 10.01.1998, there is no explanation forthcoming as to what prevented her from writing her name as 'Neelam Manmohan Attavar' in the said letter. Further, as alleged if at all she was residing at No.242, Pitampura Apartments, Pitampura, New Delhi and No.6A/46, 3<sup>rd</sup> Main Road, Jayanagar 7<sup>th</sup> Block, Bengaluru, she would have mentioned the said addresses in the said letter. However, since she has not mentioned the said address as well, it can be presumed by this court that her allegation that the deceased respondent had applied 'kumkum' as well as that she resided with him at Pitampura and Jayanagar 7<sup>th</sup> Block, have no legs to stand.

Even Exhibit P-9 the photographs produced by her along with the deceased respondent cannot be believed in totality, since both of them were meeting each other officially either in official functions or gathering and

clicking of photos were a usual happening. A person being in a photo along with a celebrity or a person of fame, cannot be considered that the said person is in some way related to the celebrity. Moreover, when negatives pertaining to the photos have not been produced, the same cannot be taken to be material piece of evidence and the court below has rightly rejected the same, which does not call for any interference.

11. It is to be seen that the court below as well as the First Appellate Court have not passed any orders in favour of the petitioner. In view of the fact that Manmohan Attavar is no more, this revision petition filed by her against the Legal Representatives of the deceased respondent Manmohan Attavar challenging the order of dismissal passed by the Appellate Court under Section 29 of the DV Act, would stand abated. On that ground also the petition requires to be dismissed.

12. In this petition, the petitioner has sought relief under Sections 17, 19, 20 and 22 of the DV Act. In order to appreciate the controversy arising in this revision

petition, it is relevant to reproduce the provisions under Section 17 and Section 19, which reads as under:

“17. Right to reside in a shared household.—

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”

“19. Residence orders.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the

Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.”

A reading of the aforesaid provisions indicates that it creates an entitlement in favour of the women to right of residence under a shared household only to establish her

case against the respondent for seeking the relief under the relevant provision. The above sections namely Sections 17 and 19 of the DV Act would apply only if it is proved that the petitioner had resided in a 'shared household' as defined in Section 2(s) of the DV Act. Since she has not at all proved that she had lived along with the deceased respondent for a considerable period of time at a particular address, which was in the knowledge of the neighbours and other people who resided in that locality, it cannot be said that she had lived along with the deceased respondent in a 'shared household'. Hence, the question of providing the petitioner a residence by way of shared household, does not arise.

13. When the main concept of a 'shared household' under Section 2(s) of the DV Act itself has not been proved, the question of paying monetary relief under Section 20 and compensation under Section 22 of the DV Act, also does not arise.

The Trial Court as well as the Appellate Court in Crl.A.1070/2015 have assessed the entire evidence as a



whole and not in isolation wherein PW-1 the petitioner herein has been examined and also cross-examined. The evidence produced by her even though taken as a whole, it falls short of the legal requirements under the provisions of the DV Act. If there had been an earlier order passed by the Trial Court or the Appellate Court under Sections 18 or 31 of the DV Act against the respondent, then the same requires to be enforced. But however, no such order has been passed against the deceased respondent Manmohan Attavar under the provisions of the DV Act.

14. The petitioner in person has taken various contentions in this revision petition, against the order passed by the Appellate Court relating to the petition filed by her seeking relief under the Domestic Violence Act, 2005. She had filed an application under Section 12 of the DV Act, seeking for an order of grant of maintenance from the first respondent late Manmohan Attavar and also seeking residence by way of 'shared household' and such other reliefs as damages, which came to be rejected by the court below. The appeal preferred by the petitioner in

Crl.A.1070/2015 also came to be dismissed on 17.02.2018.

In the instant petition, there is strong dispute relating to the marriage which is alleged to have taken place between this petitioner and the first respondent late Manmohan Attavar. It is an admitted fact that the said Manmohan Attavar was already married to Mrs. Mamatha and had two children, who have come on record in this petition as his legal representatives. But, in the evidence of the petitioner herein and even in the documents at Exhibits P-1 to P-94 produced by the petitioner, it has not been specifically stated and also it is not found in her evidence any proof relating to the marriage of this petitioner and the first respondent late Manmohan Attavar and also there is no evidence to prove the allegation that the present petitioner as well as late Manmohan Attavar ever lived together and their relationship was in the concept of 'live-in' relationship also. Domestic relationship means, the relationship between two persons who live or have at any point of time, lived together in a shared

household. This concept has not been established by the petitioner even though she has been examined as PW-1 and also produced several documents at Exhibits P1 to P94. Her evidence as well as the documents which were placed by her have been appreciated by the court below in C.Misc.No.139/2015 which was filed by her before the Court of the MMTC, Bangalore, wherein that petition came to be dismissed. Against that order, CrI.A.1070/2015 was preferred by her, which also came to be dismissed. It is against the said order that this revision petition has been preferred by her urging various grounds and also by producing various citations which have been referred to supra.

The interpretation given to the 'domestic relationship' relating to the petitioner as well as the first respondent late Manmohan Attavar in the instant case, has not been established by the petitioner for seeking the relief under the provisions of the Protection of Women From Domestic Violence Act, 2005.

Whereas the petitioner herein has taken a contention regarding availability of civil remedies and that contention has been taken by her even for having adduced evidence as PW-1 in her petition and also produced the documents at Exhibits P1 to P94 as a plethora of the contentions taken by her. But, as regards the civil remedies concept is concerned, the same would not arise in relation to the issues involved in between the petitioner and late Manmohan Attavar, as civil remedies is required to be agitated, only if the law permits.

Section 29 of the Protection of Women From Domestic Violence Act, 2005 relates to preferring an appeal against the order passed by the Magistrate as the appeal would lie within 30 days from the date of the order. Whereas in the instant petition, no order has been passed against the first respondent late Manmohan Attavar even to the extent of 'live-in' relationship concept and the same has not been established by her to seek the remedies under the provisions of the DV Act, as she has sought for.

Section 31 of the DV Act relates to breach of protection order or of an interim protection order by the respondent. In the instant petition, an order under Section 31 does not arise, for the reason that no order has been passed against the first respondent late Manmohan Attavar, despite which the petitioner has stoutly addressed arguments in this petition without having any basis to seek the remedies under the provisions of the DV Act.

15. Whereas the learned counsel for the legal representations of the respondents while addressing arguments relating to the scope and object of Section 31 of the DV Act, submitted that the appeal itself would stand abated for the reason that the first respondent late Manmohan Attavar died during the course of the proceedings and moreover, no order has been passed against him by the court below in CrI.Misc.No.139/2015 under the provisions of the DV Act. Moreover, passing an order even under the scope and object of Section 18 of the Protection Order also, does not arise, as this aspect was also observed even by the Appellate Court in

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CrI.A.1070/2015 and so also the court below in CrI.Misc.139/2015. The same is reflected in their order itself which has been challenged by the petitioner by urging various grounds.

Therefore, this revision petition does not hold any legal force to proceed against the impugned order passed by the First Appellate Court in CrI.A.1070/2015 to call for any interference. Consequently, the revision petition stands dismissed.

**SD/-  
JUDGE**

KS