



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL WRIT PETITION NO. 939 OF 2021

SURESH CHANDRAKANT MEHETRE AND OTHERS

VERSUS

NITA W/O. RAHUL MEHETRE

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Advocate for the Petitioners : Mr. Kalani Pravin N.
Advocate for Respondent : Mr. Rahul M Gaikwad h/for Mr. P M
Gaikwad

CORAM : Y. G. KHOBRAGADE, J.

Dated : 03 December, 2024

Oral Judgment :-

1. Leave granted to amend the cause title of the Petition for invoking Section 482 of the Criminal Procedure Code with Article 227 of the Constitution of India for challenging the order dated 22.03.2021, passed by the Learned Additional Sessions Judge, Parbhani in P.W.D.V. Appeal No.33/2019. The necessary amendment be carried out within a period of two weeks from today.

2. Rule. Rule made returnable forthwith. With the consent of both sides, heard finally at the stage of admission.

3. The facts giving rise to the present petition are that, the Respondent aggrieved person within the meaning of Section

2(a) of the Protection of Women from Domestic Violence Act, 2005 (In short D.V. Act), filed a complaint through the Protection Officer in the prescribed form alleging that, the present Petitioners who are relatives of her husband have raised domestic violence against her within the meaning of Section 3 of the D.V. Act. Accordingly, the learned Judicial Magistrate First Class, Parbhani passed an order and issued notice to the Respondents therein.

4. The original Non-applicants Nos. 1, 6 and 7 i.e., husband and parental in laws have filed their reply and denied claim of the aggrieved person/wife. The Non-applicants 2 to 5, who are cousins-in-law and cousin brother-in-laws filed Exh-6 an application and prayed for dismissal of the complaint. The Non-applicants 2 to 5 contended that they have not raised domestic violence as against the Respondent/original Applicant. So also, they never resided with the Respondent/Complainant in one shared house. They further contended that, since 1996 they are residing separately from the non-Applicant No.6. So also, the non-Applicant nos. 2, 3, 4 and 5 are residing at Rangar Galli, Manwat. The non-Applicant No.6 and his wife non-applicant no.7 are residing at Barge Galli, Manwat. However, the Non-applicant No.1 stayed with Non-applicant Nos. 6 and 7 till completion of marriage

rituals and after marriage rituals, she visited at Pune. It is further contended that, the non-applicant Nos. 4 and 5 are aged persons and they are suffering from various ailments. The Non-applicant No.2 is serving as a Lecturer in B. Raghunath College, Parbhani. However, the Respondent/aggrieved person lodged a false complaint just to harass them. Hence, prayed for dismissal of the application under Section 12 of the D.V. Act.

5. The Respondent aggrieved person filed say and strongly resisted said Application. According to the Respondent/aggrieved person, the non-applicant No.4 is the real brother of non-applicant No.6. After marriage, she cohabited with her husband in one shared house and all the Ori. Non-applicants have raised domestic violence against her. She further stated that, Barge Galli and Rangar Galli are situated in one and the same area. So also, the non-applicant Nos. 4 and 6 are not residing separately but both of them are real brothers and all of them are taking all decisions jointly and performing all religious functions in one and the same house. Hence, prayed for dismissal of the said Application.

6. On 10.04.2019, the Learned Judicial Magistrate First

Class, Parbhani passed an order and allowed Exh. 6 Application but dismissed the Application under Section 12 as against the original non-applicant nos.2 to 5/present Petitioners. The Learned Trial Court observed that, the aggrieved person wife failed to give specific details about harassment, ill-treatment and as such omnibus statements have been made, which are not sufficient to establish involvement of the present Petitioners (Original non-applicant Nos.2 to 5) in the alleged Act of Domestic Violence. So also, they are discharged for the offence punishable under Section 498(A) of the Indian Penal Code as per the judgment and order dated 04.10.2018 passed by the Division Bench of this Court in Criminal Application No.1796/2018.

7. Being aggrieved by order of grant of maintenance in favour of the aggrieved person, the husband of the aggrieved person filed P.W.D.V.A Appeal No.30/2019, whereas the present Respondent/aggrieved person filed a P.W.D.V.A Appeal No.33/2019 and challenged the order of dismissal of complaint as against the original non-applicant Nos.2 to 5/present Petitioners.

8. On 22.03.2021, the learned Appellate Court passed the impugned judgment and order and set aside the order dated

10.04.2019 below Exh-06 by the Learned Judicial Magistrate First Class, Parbhani. Therefore, the present Petitioner/original non-applicant Nos.2 to 5 have filed present petition.

9. The learned Counsel appearing for the Petitioners vehemently canvassed that, the Petitioners/original non-applicant Nos.2 to 5 are residing separately and they are not having any access to the shared house of the Respondent/aggrieved person. So also in past, the Respondent had lodged a Report with the Nanal Peth Police Station, Parbhani on which basis Crime No.235/2018 was registered for the offences punishable under Sections 498(A), 323, 504 read with Section 34 of the Indian Penal Code. Therefore, the present Petitioners had instituted Criminal Application No.1796 of 2018 before this Court and prayed for quashment of F.I.R. Accordingly on 04.10.2018, the Division Bench of this Court passed the Judgment and quashed and set aside the said F.I.R., as against the present Petitioners/original non-applicant nos.3 to 6 i.e. Suresh, Pratibha, padmabai, Chandrakant. Therefore, the present Petitioners are not entitled for prosecution under Section 12 of the D.V. Act on the same set of facts. However, the learned Appellate Court failed to consider the same, hence, prayed for quashing and setting aside

the impugned judgment.

10. The learned Counsel appearing for the Petitioners placed reliance on the judgment and order dated 14.06.2022 passed by this Court in Criminal Application No.3058 of 2021 wherein, the complaint under Section 12 of the D.V. Act has been quashed by observing that the original Respondent Nos. 1 to 4 were residing in the same shelter house holding that the original non-applicants were not residing in the same shelter house but it has stated that they were residing in the neighbourhood. Only one statement has been made that they used to instigate original Respondent Nos. 1 and 2 and thereafter, suspicion was raised against the aggrieved person. However, those allegations were in respect of the period after the death of the husband of aggrieved person.

11. Per contra, the Learned Counsel appearing for the Respondent/aggrieved person strongly supported findings recorded by the learned Appellate Court. The learned Counsel appearing for the Respondent submits that, the present Petitioner along with others raised domestic violence as against the Respondent. The specific allegations as well as each and every act

played by the Petitioners have been described in the application under Section 12 of the Act. Therefore, acts of the present petitioners amounts to domestic violence within the ambit of Section 3 of the Act and merely the F.I.R. has been quashed for the offence punishable under Section 498(A), 323, 504 read with Section 34 of the Indian Penal Code, it does not absolve the Petitioners from the charges of domestic violence.

12. The scope of Section 498-A of the Indian Penal Code and Section 3 of the D.V. Act are too different from each other. Sec. 498-A provides punishment for harassment for demand of dowry. The scope and object of D. V. Act is a social legislature to prevent the married woman from domestic violence at the hands of her husband and relatives of husband of a married woman.

13. The learned Trial Court passed an order below Exh-6 on dated 10.04.2019 and dismissed the Application under Section 12 as against the present Petitioner only on the ground that same allegations are leveled against the present Petitioners which have been described in the F.I.R.. So also, these Petitioners and others are residing in the same locality and it is not sufficient to hold that these applicants raised harassment against the Respondent.

However, the Learned Appellate Court considered the fact that the present Respondent/aggrieved person cohabited with all the Respondents in one shared house and they were residing together. Therefore, at the preliminary stage, without evidence, it cannot be concluded that the Petitioners were residing separately.

14. Needless to say that, Section 3 of the D.V. Act provides definition of domestic violence against the aggrieved person. The Respondent aggrieved party instituted an Application under Section 12 of the D.V. Act through the Protection Officer. In the said Application, the Respondent specifically made averment about role played by each and every ori. non-applicants/present petitioners to show how domestic violence was raised at the hands of the present Petitioners and others.

15. The fact of solemnization of marriage of the Respondent on 09.05.2017 with her husband Rahul Mehetre is not in dispute. The Respondent aggrieved party specifically made averment that when she was residing in the shared house along with the Petitioner and others, domestic violence was raised against her. So also, she was not permitted to participate in the religious programme. The cousin mother-in-law and sister-in-law

were also taunting her and was insulting by saying that “तु आमच्या लायकीची नाही. इथे का राहते परभणीला काळपांढर कर,” चुलत सासरे— “तुझा नवरा इथे नाही तु इथे का राहतेस हे घर तुझ नाही परत आमच्या घराची पायरी चढु नकोस. तुला काय करायच ते कर आम्ही कोर्टात यायला तयार आहोत टाक केस”.

16. The Respondent/aggrieved person further alleged that her cousin nephew also broke her PAN CARD. He was insisting to drive her out from the house. So also, her parents-in-law were visiting at her parental house and issuing threats to keep her at Parbhani. So also, under the threshold her pregnancy was terminated.

17. The Petitioners/original non-applicants prayed for quashment of the Application under Section 12 of the D.V. Act on the ground that, they are residing separately and they have not raised any domestic violence against the present Respondent/aggrieved party. Further the F.I.R. registered against them for the offence punishable under Section 498(A) of the Indian Penal Code has been quashed. However, the ingredients of offence punishable under Section 498(A) are different than the allegations of raising domestic violence under Section 3 of the D.V. Act.

18. As per the Protection Officer's report, the Respondent Nos. 2 to 4 have played active role while aborting pregnancy of the present respondent/aggrieved person. She has given date wise incidents about raising domestic violence against her at the hands of the present Petitioners. The issue whether the present Respondent aggrieved person stayed together in the shared house along with the Petitioner and others or not cannot be decided without substantial evidence. The learned Additional Sessions Judge passed the impugned order and set aside the order dated 10.04.2019 passed by the Learned Judicial Magistrate First Class, Parbhani below Exh-6 in P.W.D.V Criminal Miscellaneous Application No. 70 of 2018 considering the fact that present Petitioners were residing in the common shared house with the Respondent. Therefore, the issue involved in the present matter cannot be adjudicated without evidence of the parties. Therefore, I do not find that the findings recorded by the learned Appellate Court are perverse, illegal, bad in law and no grounds are set out to interfere with the said findings. Therefore, present petition is liable to be dismissed. Rule is discharged.

(Y. G. KHOBRAGADE, J.)