

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 1331 of 2014

Yusufkhan s/o. Abbaskhan Pathan,
Age : 40 years,
Occupation : Agriculture,
R/o. Ajawanagar Near Masjid,
Waluj Kamlapur Road, Waluj,
Taluka : Gangapur,
District : Aurangabad.

.. Applicant.

versus

1. The State of Maharashtra,
Through Department of Home,
Mantralaya, Mumbai.
2. Nasibabi w/o. Abbaskhan Pathan,
Age : 60 years,
Occupation : Agriculture,
R/o. Near Masjid and Urdu School,
Waluj, Taluka : Gangapur,
District : Aurangabad.

.. Respondents.

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Mr. Hiraji T. Gaikwad, Advocate, for the applicant.

*Mr. S.D. Kaldate, Additional Public Prosecutor, for
respondent no.1 - State.*

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CORAM : A.M. BADAR, J.

DATE : 3RD MARCH 2015

PER COURT :

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, applicant / respondent in Misc. Criminal Application No. 453/2013, filed by respondent / mother under Section 12 of the Protection of Women From Domestic Violence Act, 2005 [**For short, hereinafter referred to as “D.V. Act”**], is praying for quashing and setting the said proceedings.

2. Heard the learned Counsel for the applicant and the learned Additional Public Prosecutor for respondent no.1 - State. Perused the application under Section 12 of the D.V. Act.

3. According to the learned Counsel for the applicant, his mother / original applicant was residing separately and was not in domestic relationship with him in shared household. As such, according to the learned Counsel for the applicant, the application itself is not maintainable. He has placed reliance on the judgment of this Court, in the case of *Johnson Fernandes Vs. Mrs. Maria Fernandes & others*, reported in *2011 Cri.L.J. 1505*.

3. Perusal of Misc. Criminal Application filed by respondent no.2 / mother, against the present applicant / son, goes to show that she along with the present applicant were residing in House No.258 at Mouje Waluj, Taluka Gangapur. It is averred by respondent no.2, that she was occupying two rooms of that house, whereas the present applicant was occupying two other rooms in the said house. She further averred that the present applicant, on 19-9-2013, had assaulted her as well as his sister,

resulting in lodging report by her. She further alleged that the petitioner is attempting to take possession of the entire house. With these averments, she has made several prayers under various Sections of this beneficial legislation.

4. Perusal of the application under Section 12 of the D.V. Act, as such, shows that respondent no.2 and the applicant are living together in a shared household and they are living in consanguinity and are family members. The averment do show that the parties are residing in shared household. We are not concerned with truthfulness or falsity of averments made in the application under Section 12 of the D.V. Act. However, the averments made therein do reflect that the provisions of D.V. Act are attracted in the matter, and as such, it cannot be said that the application under Section 12 of the D.V. Act is not at all maintainable.

5. Hence, we do not find any substance in the Application. Accordingly, the Application is rejected.

(A.M. BADAR)
JUDGE

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