

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

Criminal Writ Petition No.307 of 2015

- 1) Shaik Feroz S/o Shaik Isaak,
Age 42 years,
Occupation : Agriculture,
R/o Rehmaniya Colony,
Kiradpura, Aurangabad.
- 2) Parvin Bi W/o Shiak Feroz,
Age 31 years,
Occupation : Housewife,
R/o Rehmaniya Colony,
Kiradpura, Aurangabad.
- 3) Shaikh Shakil S/o Shiak Gulam Rasul
Age 45 years,
Occupation : Agriculture,
R/o At Village Sanav,
Taluka Gangapur,
District Aurangabad.
- 4) Rihana Begum W/o Shaik Shakil,
Age 37 years,
Occupation : Housewife,
R/o As above.
- 5) Shaik Javed S/o Shaik Shakil
Age 21 years,
Occupation Agriculture,
R/o As above.

.. Petitioners.

Versus

- 1) The State of Maharashtra.
- 2) Runiba W/o Naser Pathan,
Age 27 years,
Occupation : Housewife,
R/o Presently residing at

C/o Amina bi Wd/o Nasir Shaik
At Sanav, Taluka Gangapur,
District Aurangabad.

.. Respondents.

Shri. Vishal S. Gayake, Advocate, for petitioners.

Shri. P.N. Mule, Additional Public Prosecutor, for
respondent No.1.

Shri. A.S. Bajaj, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 7th JULY 2015

JUDGMENT:

1) Rule. Rule made returnable forthwith. By consent heard both sides for final disposal.

2) The petition is filed for relief of quashing of the proceedings of Criminal Misc. Application No.270/2014 presently pending in the Court of the Judicial Magistrate, First Class, Gangapur. The proceeding is filed under section 12 of the Protection of Women from Domestic Violence Act, 2005 for getting reliefs under the said Act. The proceeding is filed against husband and his parents and also against present petitioners. Order of notice is made by the learned Judicial Magistrate.

3) The submissions made and the contents of the application show that original respondent No.4 is maternal uncle of the husband, original respondent No.5 and 8 are step sisters of the original applicant and respondent No.6 is the son of respondent No.4. respondent No.7 is husband of sister-in-law of the husband of the original applicant.

4) In the proceeding filed under section 12 of the D.V. Act the wife has claimed reliefs of direction that two rooms should be given to her for residential purpose and if two rooms are not given direction to the respondents to pay Rs.5,000/- per month for rent, direction to the respondents to pay Rs.10,000/- for medical expenses per month and direction to the respondent to pay Rs. Ten lakh in respect of domestic violence to which she was subjected.

5) It was submitted for the petitioners, step sisters of the original applicant that some immovable property is left behind by the father of the original applicant and as the present petitioners are claiming share in the property,

the original applicant Rubinabano has taken such steps against them. It is their contention that they were never living with the family of husband of Rubinabano and they are not family members of the family of original respondent No.1 or his parents and so there is no question of giving any relief against them.

6) The submissions made show that the aforesaid contentions of the petitioner that two petitioners are step sisters of the original applicant are not disputed. Other contentions are also admitted by the original applicant though direct relationship of these step sisters and the original applicant is not given and attempt is made to give relations of these two ladies through original respondent No.4 Shaikh Shakil, maternal uncle of the husband. The other contentions in the petition also show that there is some dispute with regard to the immovable property left behind by the father of the original applicant.

7) Learned counsel for the original applicant submitted that there are other allegations against the present petitioners that by visiting the house of the

husband of original applicant they were harassing her, they were asking her to bring Rs. Three lakh from her parents and they were also playing part when she was driven out of the matrimonial house. It is contended that these petitioners were pressurizing her to see that the landed property is entered in their name and it is given to them.

8) If the reliefs which can be granted under sections 17, 19 and also 20 of the D.V. Act are seen it can be said that such relief apparently cannot be granted as against the present petitioners. There is no specific contention even in the application that present petitioners had ever lived with the family of the husband of the original applicant in the same house and there was shared household. Though there is relationship which is covered by the Act, there was no shared household and there was no responsibility of the petitioners to make any provision of residence or maintenance for the original applicant Rubinabano. In view of these circumstances, this Court has no hesitation to hold that nothing can be achieved if the proceeding is allowed to continue as against present

petitioners. Allowing to continue the proceeding will be causing unnecessary harassment to the present petitioners. The allegations against them are very vague.

9) Learned counsel for the original applicant Rubinabano placed reliance on one case reported as **2012 Cr.L.J. 1413** Bombay High Court (**Mangesh v. Minal**). In this case, this Court had held that power under section 482 of the Code of Criminal Procedure cannot be invoked for quashing of the proceeding filed under section 12 of the D.V. Act. On this point, learned counsel for the present petitioners placed reliance on a case reported as **2013 (1) Bom C.R. (Cri) 626 (Ashish Dixit v. State of U.P.)**. The Apex Court gave relief of quashing of the proceeding and the Apex Court had allowed the proceeding against husband of the complainant and her father-in-law and mother-in-law to go on. In view of the decision of the Supreme Court on the point involved, this Court holds that the proceeding under section 482 of the Cr.P.C. and Articles 226 and 227 of the Constitution of India is tenable.

10) In the result, the petition is allowed. The proceeding bearing Criminal Misc. Application No.270 of 2014 *qua* the present petitioners is quashed and set aside. Rule is made absolute in the aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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