

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

CRIMINAL APPLICATION NO. 1340 OF 2016

Sayyad Asif Sayyad Abbas,
Age: 45 years, Occ: Service,
R/o. Sahyadri Building,
4th floor, Dr. Maheshwari Road,
Dongri, Bombay 400 009

...Applicant

versus

1. Maherunnisa Mohammed Badshah,
Sayyed, Age: 39 years, Occ: Household,
2. Abrar Asif Sayyed,
Age: 18 years, Occ: Education,

Both R/o. Dhanora, Tq. Ashti,
Dist. Beed.

3. The State of Maharashtra.

...Respondents

.....
Mr. S.M. Pathan, Advocate for applicant
Mr. D.V. Tele, A.P.P. Advocate for respondent No. 3
.....

CORAM : N.W. SAMBRE, J.

DATE : 30th MARCH, 2016

ORAL ORDER :

This proceedings are under the provisions of Section 482 of Code of Criminal Procedure read with Article 227 of the Constitution of India, questioning the legality and validity of the proceedings initiated by the respondents-wife and son vide Misc. Application No. 217 of 2014 on the file of learned Judicial Magistrate, First Class, Ashti, District Beed, under the provisions of Sections 12,

18, 19, 20, 22 and 23 of the Protection of the Women from Domestic Violence Act, 2005 (for short, 'Domestic Violence Act').

2. Learned Counsel for the applicant-husband, while questioning the proceedings, has invited attention of this Court to the certain facts, which according to him, are germane for the purpose of deciding the present case. He would submit that the parties to the proceedings have already entered into divorce way back and as such, the proceedings in question initiated under the provisions of Domestic Violence Act were time barred. He would submit that in view of provisions of Section 28 of the Domestic Violence Act, the provisions of Code of Criminal Procedure and Limitation Act are applicable. According to him, the proceedings are barred by limitation.

3. The next limb of the submissions of the learned Counsel for the applicant is, the Domestic Violence Act has no retrospective effect, as the respondent-wife has parted the company of the applicant in the year 1996, whereas the Domestic Violence Act came into existence in 2005. Apart from above, he would submit that the delay of about more than 10 years is required to be taken into account for the purpose of ascertaining and dealing with the issue about alleged domestic violence, particularly in the background of

Section 3 of the Domestic Violence Act. While relying upon the judgment of the Apex Court in the matter of ***Inderjit Singh Grewal vs. State of Punjab & anr.*** reported in ***2012 Cr.L.J. 309***, learned Counsel for the applicant has submitted that the limitation is very much attracted to the case in hand.

4. Heard learned A.P.P. for the State.

5. With the assistance, I have perused the entire evidence brought on record by learned Counsel for the applicant. From the perusal of the findings recorded by the Court below, it is required to be noted that initially the parties entered into civil dispute bearing Regular Civil Suit No. 121 of 2005 at the behest of respondent-wife. The said suit was for getting monthly maintenance allowance.

6. The preliminary issue came to be raised in the said proceedings and learned Civil Judge, Junior Division, Ashti, District Beed, on 14/08/2008 has inferred that the Civil Court has no jurisdiction to entertain the suit.

7. It is further required to be noted that the statement is made at bar by learned Counsel for the applicant-husband that he is already paying maintenance to wife and as such, the maintenance

ought not to have been ordered. The perusal of the application preferred by respondent-wife depicts that she has narrated events from the date of marriage and thereafter from 1996, particularly after she reached at her parental house. The application further narrates about illegal demands and acquisition of certain properties by the applicant.

8. Learned Magistrate, thereafter, having regard to the provisions of Domestic Violence Act, has called report of the Protection Officer and based on that, has taken cognizance of the complaint by issuing process against the present applicant. The applicant has already filed his appearance and has suffered the order, particularly under Section 19 of the Domestic Violence Act in the matter of payment of maintenance. It is claimed by the applicant that he is regularly paying maintenance.

9. So far as the issue as regards belated filing of the complaint, which is barred by limitation is concerned but for the statement in the application, there is hardly any material on record, which rather invited attention of the Court, to infer that the application was barred by limitation. Furthermore, the fact remains that in view of provisions of Section 28 of the Domestic Violence Act, provisions of Code of Criminal Procedure and Limitation Act are very much

applicable. Learned Counsel for the applicant was right in relying upon the judgment of the Apex Court in the matter of ***Inderjit Singh Grewal*** (supra), particularly paragraph-24 of the said judgment. However, so as to infer as to whether the application under Domestic Violence Act was time barred or not, there is hardly any material.

10. *Prima facie* from the reading of the complaint preferred under the Domestic Violence Act and the fact that the applicant has already participated in the said proceedings, in my opinion, in the facts and circumstances of the present case, hardly calls for invoking the provisions of Section 482 of Code of Criminal Procedure or Article 227 of the Constitution of India so as to entertain the said proceedings. It is always open for the applicant to raise the issue of limitation at appropriate stage before the Court below.

11. With the above observations, no case for interference is made out. As such, the application fails and stands rejected.

[N.W. SAMBRE, J.]