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

CRIMINAL APPLICATION NO. 2037 OF 2016

1. Bhagirathibai Santosh Sonwane (Patil),
Age: 60 years, Occu: Pensioner
2. Chandrakant Santoshrao Sonwane (Patil),
Age: 38 years, Occu: Business,

Both are residing at "Aai Niwas",
Survey No. 18, Mayur-Park, Harsool,
Taluka and District Aurangabad

3. Sou. Aruna w/o Subhash Patil,
Age: 40 years, Occu: Household,
R/o. Tal. Amalner,
Dist. Jalgaon

4. Sou. Pratibha w/o Anil Shinde,
Age: 42 years, Occu: Household,
R/o. Kannad, Tq. Kannad,
Dist. Aurangabad

..APPLICANTS

VERSUS

1. Sou. Jyoti Suryakant Patil,
Age: 32 years, Occu: Household,
Presently residing at Plot No. 66,
Flat No. A/3, Gurushree Apartment,
Ulkanagari, Aurangabad-431 005.

2. The State of Maharashtra

..RESPONDENTS

Mr S. R. Pande, Advocate for applicants;
Mrs Pratibha Bharad (Wankhede), Advocate for respondent No. 1;
Mr K.D. Munde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 23rd August, 2016

ORAL ORDER :

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The present application is taken out by respondents no.2 to 5 to Criminal Application No.708 of 2015, initiated under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "D.V. Act", for the sake of brevity), seeking action pursuant to the provisions of sections 19, 20 and 22 of the Act.

2. Petitioner no.1 is the mother-in-law, petitioner no.2 is brother-in-law, whereas petitioners no.3 and 4 are the sisters-in-law of respondent no.1 – original complainant Jyoti. Jyoti was married to original respondent Suryakant (advocate by profession) on 14th March, 2014.

3. It is claimed in the complaint under the Act, that all the applicants have meted out treatment, which according to complainant Jyoti could be termed as "domestic violence", within the meaning of the D.V. Act.

4. It is required to be noted that the father-in-law of Jyoti is not impleaded as party to the D.V. Act proceedings, as he had already expired.

5. In the above referred background, while seeking quashing of the complaint under the D.V. Act, learned Counsel appearing on behalf of the applicants, upon instructions of applicant no.1 Bhagirthibai, submits that he be permitted to withdraw the application, with liberty to take such steps as are available in law. Thus, the application to the extent of applicant no.1 Bhagirthibai stands dismissed as withdrawn.

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6. So far as applicants no.2 to 4 are concerned, it is the contention of the learned Counsel that upon plain reading of the contents of the complaint, there is hardly any cause of action or any right is created in favour of respondent no.1 – complainant to initiate the proceedings alleging domestic violence. For the said purpose, he would invite my attention to the contents of the complaint. He would then submit that, but for the late father-in-law, impleadment of all the family members as party – respondents, including that of married sisters, depicts the intention of the original complainant. Apart therefrom, according to him, upon plain reading of the contents of the complaint, no case could be made out under the provisions of D.V. Act against applicants no.2 to 4. According to the learned Counsel, applicant no.2 is unmarried brother-in-law of the complainant and there are hardly any allegations in the complaint. Applicants no.3 and 4 are the married sisters and are admittedly residing at Jalgaon and Kannad, respectively. According to him, assuming that there is domestic relationship, still the fact remains that there are hardly any direct allegations against applicants no.2 to 4 qua the domestic violence and according to him, this Court should exercise the powers under section 482 of the Code of Criminal Procedure, so as to quash the complaint.

7. Learned Counsel appearing on behalf of respondent no.1 – complainant would submit that the present proceedings, particularly under the D.V. Act are termed to be the civil proceedings and as such, the issue

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of availability of remedy under section 482 of the Code of Criminal Procedure is already settled in the matter of **Mangesh Sawant vs. Minal Vijay Bhosale & anr.**, reported in **2012 ALL MR (Cri) 1113**. Learned Counsel then would urge that upon perusal of the contents of the complaint, it could be gathered that there are sufficient pleadings so as to infer that the present applicants were in domestic relationship and the provisions of the D.V. Act are very much available to respondent no.1 as against the applicants, particularly in the background of the allegations in the complaint. She would then submit that the present application, in the above background, is liable to be rejected.

8. With the assistance of the respective learned Counsel, I have perused the contents of the complaint preferred under the provisions of the D.V. Act seeking reliefs under sections 17 to 24 thereof. In paragraph 2 of the application, it is stated in clear terms that applicant no.2 is brother-in-law, whereas applicants no.3 and 4 herein are the married sisters-in-law of the complainant. Though applicants no.3 and 4 herein are shown to be the married sisters-in-law, respondent no.1 – complainant has intentionally not mentioned their place of residence after their marriage. One more aspect of which this Court must take note of is that, both the sisters-in-law, i.e. applicants no.3 and 4 herein are elder to the husband of the complainant, i.e. Suryakant and are married much prior to the date of marriage of the complainant and were residing with their respective husbands. In the said background, if the other pleadings as against applicants no.2 to 4 are tested, but for vague allegations in paragraphs no.4 and 7, there is hardly

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any material on record to infer any domestic violence on their part, on the complainant.

9. The intention of the complainant as could be gathered from initiation of the proceedings is to twist the arms of applicants no.2 to 4, as the complainant has impleaded all the family members of husband as parties to the domestic violence proceedings.

10. Apart from above, it is required to be taken note of the fact that applicant no.2 brother-in-law is impleaded as party, in view of the fact that he is residing with the husband of the complainant, though there are no allegations whatsoever against him in the complaint. The vague allegations, particularly in paragraph 8 if are accepted as it is and if are tested logically, the said contents *prima facie* appear to be incorrect at its face value, as it is claimed by the complainant that it is because of assault by her husband she became unconscious and applicant no.2 has not helped in regaining consciousness and left the spot and it is only after the neighbours treated her, she could regain consciousness.

11. The primary contention of respondent no.1 – complainant is that the provisions of section 482 of the Code of Criminal Procedure are not available to the applicants. If the said contention is analyzed in the light of the judgment rendered by the Division Bench of this Court in the matter of **Devanand Baliram Wankhede & ors. vs. The State of Mah. & ors.**, reported in **2015 ALL MR (Cri.) 3618**, the Court in exercise of powers

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under section 482 of the Code of Criminal Procedure has quashed the complaint initiated under the provisions of the D.V. Act. Paragraph 4 of the said judgment is worth referring to, which reads thus :-

“We have ourselves perused the entire complaint. From perusal of para 1 itself, we find that the present applicants are not as such related in such a manner that the provisions of the Protection of Women from the Domestic Violence Act, 2005, could be invoked against them, prima facie in the first place. Even otherwise, we find that in para 1, only relationship of the applicants is mentioned and thereafter at page 37, a general statement against all the Non -applicant Nos. 1 to 10 is made about alleged mental or physical harassment and nothing more. In our opinion, in so far as the provisions of the Protection of Women from the Domestic Violence Act, 2005, are concerned, the respondent No. 2 - Jyoti might have a grievance against her husband and in -laws. But to pull the other relatives, i.e., applicants, from some other places, namely Akot and Daryapur, in the litigation by filing a private complaint under the Protection of Women from the Domestic Violence Act, 2005, is, in our opinion, an abuse of process of Court. At any rate, as stated by us earlier, there are no specific allegations at all against the applicants so as to attract the ingredients of the provisions of Protection of Women from the Domestic Violence Act, 2005, though there may be such averments in the complaint in so far as other non -applicants in the complaint are concerned. Thus, looked from the point of view even of the complaint itself and at its face value, we are convinced that the complaint against the applicants is required to be quashed

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and set aside by exercising power under Section 482, Criminal Procedure Code.”

12. Apart from above, this Court, in the matter of **Dimple Jatin Khanna and ors. vs. Anita Advani & ors.**, reported in **2015 4 BCR (Cri) 237**, has already taken a view as regards the existence of domestic relationship between the parties and availability of the proceedings under section 482 of the Code of Criminal Procedure. In view thereof, in my opinion, the issue as is sought to be raised in the present case, also on facts and law, is squarely covered by the said judgment.

13. In the light of what has been stated above, in my opinion, Criminal Application needs to be allowed and is accordingly allowed. The proceedings initiated under the D.V. Act against applicants no.2 to 4 herein, are hereby quashed and set aside.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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