

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2397 OF 2013

- 1] Rashid Lukman Pinjari
Age : 40 years, Occu.: Business,
R/o Khadki (Sheem),
Tal. Chalisgaon, Dist. Jalgaon
 - 2] Lukman S/o Sultan Pinjari
Age : 60 years, Occu.: Agri.,
 - 3] Saberabi w/o Lukman Pinjari,
Age :52 years, Occu.: Household,
Both R/o Mehunbare,
Tal. Chalisgaon, Dist. Jalgaon
 - 4] Rubina W/o Ashpak Pinjari,
Age : 26 years, Occu.: Household,
R/o. Shirsoli, Tal. & Dist. Jalgaon,
 - 5] Nashir S/o Luman Pinjari,
Age : Major, Occu. : Labourer,
R/o Mehunbare, Tal. Chalisgaon,
Dist. Jalgaon
 - 6] Roouf S/o Lukman Pinjari,
Age : 28 years, Occu.: Household,
R/o Khadki (Sheem),
Tal. Chalisgaon, Dist. Jalgaon
- .. Applicants

VERSUS

- 1] Naushad Rashid Pinjari,
Age : 29 years, Occu.: Household,
- 2] Naziya D/o. Rashid Pinjari,
Age : 10 years, Occu.: Education,
- 3] Shahid S/o Rashid Pinjari,
Age : 09 years, Occu.: Education
- 4] Jayid Rashid Pinjari,
Age : 6 years, Occu.: Education

Resp. No.1 to 4 are minor & Under
Guardian of the Respondent no.1 to 4

All R/o Azad Nagar, Madi Chouck,
Pimprala, Tq. & Dist. Jalgaon .. Respondents

Mr. Paresh B. Patil, Advocate for the applicant s
Mr. B.S. Deshmukh, Advocate for the respondents

CORAM : N.W. SAMBRE, J.
DATE : 07/06/2016

ORAL ORDER :

Heard both sides.

2. Learned counsel for the applicants submits that he would not press the present application for and on behalf of applicant no.1- Rashid Lukman Pinjari.

3. So far as applicant nos.2 and 3 are concerned, they are father and mother, respectively, of applicant no.1-Rashid, whereas, applicant no.4-Rubina, applicant no.5-Nashir and applicant no.6-Roouf are the brothers and sisters of applicant no.1 i.e. sons and daughters of applicant nos.2 and 3.

4. While questioning the legality and validity of the proceedings initiated before the learned Chief

Judicial Magistrate, Jalgaon, vide Criminal Misc. Application No. 130 of 2013 for the offences punishable under the provision of section 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act (for short "**the D.V. Act**"), learned counsel for the applicants would submit that perusal of the complaint preferred before the learned Chief Judicial Magistrate, Jalgaon, would show that no specific role is attributed as against applicant nos.2 to 6 in the present case.

5. To substantiate his contention, he has taken me through the allegations made in the complaint. Apart from above, he would invite my attention to the offence registered vide crime no. 278 of 2012 at Zilla Peth Police Station, Jalgaon on 3rd November, 2012 for the offences punishable under section 498-A, 323, 504, 506 r/w. 34 of the Indian Penal Code. He would submit that the said crime was registered with similar set of allegations against the present applicants. According to him, the said FIR came be quashed by a Division Bench of this Court while delivering its verdict in Criminal Writ Petition No.1191 of 2012 vide order dated 24th September, 2013.

6. According to him, as such, the present proceedings under the provisions of D.V. Act are also not sustainable.

7. Learned counsel for the respondent/complainant would submit that the present application is liable to be rejected on the ground that the parameters, as are required to be considered for establishing the case under the D.V. Act are altogether different than the one required under the provisions of the Indian Penal Code. He would submit that the judgment of the Division Bench of this Court in Criminal Writ Petition No. 1191 of 2012 can not be made the basis for quashing the proceedings under the D.V. Act, as the object with which the D.V. Act is enacted, is required to be taken into account. According to him, plain reading of the complaint preferred before the learned Chief Judicial Magistrate, Jalgaon for the offences punishable under the provisions of the D.V. Act would make it clear that each of the applicants herein has played a specific role in the case, as is alleged. According to him, the present application, as such does not deserve consideration and is required to be rejected.

8. Having bestowed my thoughtful consideration to the submissions advanced before me, it is required to be noted that pursuant to the FIR, crime no. 278 of 2012 for the offences punishable under section 498-A, 323, 504, 506 r/w. 34 of the Indian Penal Code came to be registered against the present applicants. The allegations as are made in the said FIR are similar to the one made in the complaint preferred under the D.V. Act before the learned Chief Judicial Magistrate, Jalgaon, which is questioned in the present proceedings. If the contents of the complaint under the D.V. Act are perused, it can be found that no specific role is attributed to applicant nos.2 to 6 herein. The allegations against these applicants are as vague as it could be.

9. In my opinion, learned counsel for the applicants was right in inviting my attention to the Division Bench judgment of this Court in Criminal Writ Petition No. 1191 of 2012 delivered on 24/09/2013.

. This Court while dealing with the prayer for quashing of the FIR, in paragraph no.(2) of the said

judgment has observed thus:-

"(2) We do not wish to comment on severity referred therein, as it would be matter of evidence, however for that purpose, it would be role attributable to husband Rashid. However, the F.I.R. as a whole, from any perspective, barring sweeping allegations, does not implicate with cruel treatment or man-handling or abusing to Respondent No.2. The proceedings qua Applicant Nos.2,3,4,5 and 6, vide F.I.R. No.278 of 2012 registered with Zilla Peth Police Station, Jalgaon, are quashed and set aside. Criminal Writ Petition partly allowed to the extent as above."

10. Apart from above, what is required to be noted is that applicant no.1-Rashid/husband has not pressed the present application for quashing of the proceedings. So far as the other applicants are concerned, applicant nos.2 and 3, who are father-in-law and mother-in-law of the original complainant, are senior citizens, whereas rest of the applicants are the brothers and sisters of applicant no.1-husband. In my opinion, they can hardly be held responsible in the background of the vague allegations, as are made in the complaint filed under

the provisions of the D.V. Act.

11. In view of above, in my opinion, the present application needs to be allowed to the extent of prayer made by applicant nos.2 to 6. As such, the Criminal Application stands allowed in terms of prayer clause (B) to the extent of applicant nos.2 to 6.

[N.W. SAMBRE]
JUDGE

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