

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

CRIMINAL WRIT PETITION NO.803 OF 2016

1. Prashant s/o Kamlakarrao Jagtap,
Age 40 years, Occu. Service
2. Kamlakarrao Ganpatrao Jagtap,
Age 60 years, Occu. Pensioner
3. Sarla Kamlakarrao Jagtap
Age 55 years, Occu. Household
4. Pravin Kamlakarrao Jagtap,
Age 38 years, Occu. Service
5. Prasad s/o Kamlakarrao Jagtap,
Age 36 years, Occu. Service

All R/o Hindustan Awas Society,
in front of Hanuman Temple,
Paithan road, Aurangabad

..Petitioners

Versus

1. Maya w/o Prashant Jagtap,
Age 35 years, Occu. Household
R/o Sant Gyaneshwar Nagar,
Latur
2. Rohit s/o Prashant Jagtap,
Age 8 years, Under guardian
of Respondent No.1

..Respondents

Mr S.S. Shinde, Advocate for petitioners
Mr S.B. Ghute, Advocate for respondent

**CORAM : N.W. SAMBRE, J.
DATE : 19th August 2016**

PER COURT

Heard learned Counsel for the parties.

2. The respondent No.1 was married to the petitioner No.1 on 7th February 2006 and out of the said wedlock, it is claimed that the respondent No.1 gave birth to respondent No.2 on 15th December 2016. It is claimed in the complaint preferred under the provisions of

Protection of Women from Domestic Violence Act (hereinafter referred to as 'Domestic Violence Act' for brevity) that all the petitioners have committed an offence thereunder and a relief pursuant to the provisions of Sections 18, 19, 20 and 21 is claimed.

3. From the perusal of the complaint and other proceedings, it is not in dispute that the proceedings initiated under Section 498-A of Indian Penal Code were already dismissed for want of prosecution. Apart from above, an application under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights initiated by present petitioner No.1-husband is still pending.

4. Apart from above, it is required to be noted that in spite of the fact, as could be gathered from the contents of the pleadings that cause of action in the matter has arose in the year 2006 and the proceedings under the Domestic Violence Act are initiated in 2016.

5. It is then to be noted that in the proceedings initiated under the provisions of Domestic Violence Act, but for passing reference of the mother-in-law, there are hardly any allegations against the petitioners No.2 to 5.

6. It is required to be noted that the respondent No.1 - wife has impleaded all the family members of the petitioner No.1-husband without any substantial pleadings or attributions against each of them. As observed herein above, for the cause of 2006, it is inferred from the record that proceedings under Domestic Violence Act are initiated in 2016, without explaining the delay.

7. Apart from above, it is required to be noted that the proceedings under Domestic Violence Act are sought to be used by the present respondent No.1 against the family members of petitioner No.1-husband so as to twist the arms, as is apparent from the pleadings made in paragraph 6 of the Domestic Violence Act proceedings.

8. Appropriate support *qua* sustainability of the proceedings against petitioners No.2 to 5 could be drawn from the judgment of Apex Court in the matter of **Ashish Dixit & Ors. Vs. State of U.P. & anr.**, reported in **2013 AIR (SC) 1077**.

9. In view of above, in my opinion, the proceedings initiated under the Domestic Violence Act vide Complaint Case No.Cri .M.A. 119/2016, pending on the file of Chief Judicial Magistrate, Latur are required to be quashed to the extent of petitioners No.2 to 5.

10. As such, present Criminal Writ Petition is allowed in above terms.

(N.W. SAMBRE, J.)

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