

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1903 OF 2016

Vivek Vikramsingh Chavan and Ors

.....Petitioners

V/s.

Charusheela Vivek Chavan and Ors

....Respondents

Ms. Sharmila U. Deshmukh Advocate for Petitioner.

Ms. Vaishali S. Nimbalkar for Respondent no. 1

Mr. A. R. Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JULY 26, 2016.

PC :

- 1) Heard respective counsel.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) The complainant i.e. Respondent no. 1 herein happens to be the wife of Petitioner no. 1, daughter-in-law of Petitioner nos. 2 & 3 and sister-in-law of Petitioner no. 4 who happens to be a spinster and is residing with Petitioner nos. 1 to 3. It appears that since 2009, there have been disputes between Petitioner no. 1 and Respondent no. 1. In January 2014, Respondent no. 1 filed an application before the Judicial Magistrate First Class at Sangola under

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the Provisions of Protection of Women from Domestic Violence Act, 2005. (Hereinafter referred as 'the said act') The said petition is registered as M.A. No. 3 of 2014. The learned Magistrate had issued notices to the present Petitioners and they have caused their appearance before the learned Magistrate.

4) The learned counsel for the Petitioner, upon instructions, submits that the Petitioners have also filed their reply before the learned Magistrate which has not brought on record. The Petitioners have approached this Court under Article 227 of the Constitution of India seeking relief of quashing of the complaint on the basis of which M.A. No. 3 of 2014 is registered and is pending adjudication. It is submitted that the parties were referred for mediation, however, mediation has failed.

5) At this stage, it would not be proper to quash the complaint as the learned Magistrate, seized with the matter, has not passed any orders against the Petitioners which are under challenge.

6) The learned counsel for the Petitioners submits that in the facts of the case, the complaint deserves to be quashed. It is stated that there has been suppression of material facts in the complaint.

7) It is pertinent to note that the Respondent had filed Misc. Application No. 348 of 2010 under Section 125 (1) of the Code of Criminal Procedure, 1973. By an order dated 04/07/2011, application was partly allowed and the Petitioner no. 1 was directed to pay amount of Rs. 1,000/- (Rs. One Thousand) to Respondent no. 1 and Rs. 1,000/- (Rs. One Thousand) to their son. It appears that Petitioner no. 1 had filed several complaints against Respondent no. 1 at Kasarwadavali Police Station which were registered as non-cognizable cases. It is also submitted that Petitioner no. 1 has filed Marriage Petition No. 67 of 2011 under Section 13 & 13 (1) (a) of the Hindu Marriage Act which is pending before Family Court at Thane.

8) The learned counsel for the Petitioner vehemently submits that the said fact does not appear in the complaint and hence, there is suppression of material facts. It is also not mentioned that Respondent no. 1 is receiving Rs. 4,000/- (Rs. Four Thousand) in matrimonial proceeding no. 3 of 2014. The learned counsel for the Petitioners also submits that there is no prayer under Section 17 of the said Act, however, there is a prayer under Section 19 of the said Act which would not maintainable. However, all these contentions can be considered by the learned Magistrate before passing orders in accordance

with the Law.

9) The learned counsel for the Petitioner submits that she would file a separate written say on behalf of Petitioner no. 4.

10) The learned Magistrate, before passing any coercive orders as prayed for, shall take into consideration all these aspects as well as the contentions raised by the Petitioners in their written say.

11) With these directions, writ petition stands disposed of. All contentions are kept open. The learned Magistrate shall not be influenced by the disposal of this petition which is disposed of only on the ground that in the absence of any impugned order, the powers under Article 227 of the Constitution of India could not have been exercised.

12) Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)