

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1355 OF 2017

1. Prashant Pandurang Hingane, Age 36 years,
R/o.Laxminagar Township, Gullewadi,
Tal.Sangamner, Dist. Ahmednagar.

2. Pandurang Sakharam Hingane,

3. Alka Pandurang Hingane,
Both R/o.Sai Vihar Colony, Behind Hotel Prasad,
Sangamner, Tal.Sangamner.

4. Harsha Balasaheb Arote,

5. Balasaheb Raghunath Arote,
Both R/o.Dwarka Colony, Maldad Road,
Post Ghulewadi, Tal.Sangamner,
Dist.Ahmednagar.

Applicants

versus

1. Manisha Prashant Hingane,

2. Aditya Prashant Hingane,
Both R/o.C/o.Deoram Maruti More,
Golden City, Near Takeshwar Mandir,
Om Sai Colony, At Gunjal Wadi,
Tal.Sangamner, Dist.Ahmednagar.

3. The State of Maharashtra.

Respondents

Mr.Vinod Y. Bhide for Applicants

Mr.K.S.Patil, APP, for Respondent no.3.

Mr.K.N.Shermale for Respondent nos.1 and 2.

CORAM : PRAKASH D. NAIK, J.

Date of reserving the judgment : 27th November 2017
Date of pronouncing the judgment : 20th December 2017

JUDGMENT :

1. The applicants have challenged the proceedings initiated by respondent no.1 under the provisions of Protection of Women from Domestic Violence Act, 2005 ('D.V.Act'). The proceedings are pending on the file of learned Judicial Magistrate, First Class, Sangamner.

2. Respondent nos.1 and 2 are the wife and son of applicant no.1. The applicant nos.2 and 3 are the parents of applicant no.1. Applicant no.4 is the younger married sister of the applicant no.1 and applicant no.5 is the husband of applicant no.4. The marriage between applicant no.1 and respondent no.1 was solemnized on 20th May 2003.

3. The respondent no.1 filed an application before the Court of Judicial Magistrate, First Class, Sangamner, which was numbered as Criminal Miscellaneous Application No.808 of 2016 under the provisions of D.V.Act against the applicants. In the said application it was stated that the opponents had caused harassment to the applicant therein. The respondent no.1 was employed as a school teacher and for the convenience she sought transfer to the nearest school. Since 7th May 2007 the respondent no.1 was residing with the opponent nos.1 to 3 at Sangamner. The husband was addicted to liquor. It was also revealed that the husband was having illicit

relationship with another school teacher. The respondent no.1 ascertained the said fact. Considering the view of respondent no.2, the respondent no.1 continued to bear the mental agony. The opponents also demanded Rs.1,00,000/- to be brought by her. It was also stated that respondent no.1 was abused, assaulted and was even thrown out of house. An application was, therefore, filed under Section 12 of D.V.Act and reliefs were sought under Sections 18 and 19 of the said Act. The application was filed on 10th November 2016. The Court took cognizance of the same and issued notices to the opponents therein.

4. The applicants have challenged the said proceedings on several grounds. It is submitted on behalf of the applicants that the allegations made in the said proceedings do not make out the case for taking cognizance of the application under D.V.Act. There are no specific allegations against applicant nos.2 to 5. The applicant no.1 and respondent no.1 were residing in rental house and other applicants were residing at different locations. The fact of separate residences is admitted by respondent in other proceedings. The applicant no.4 is married with applicant no.5 on 13th May 2003 i.e. prior to the marriage of complainant with applicant no.1. The applicant nos.4 and 5 were resident of Jawhar, District Thane for some years and then transferred to Vandarwadi, Taluka Akole. Due to transfer of applicant no.5, the applicant nos.4 and 5 shifted to Ghulewadi. Thus, the allegations made by respondent no.1 that they are residing with applicants from 2008 are false. The applicant nos.2 and 3 were also residing separately. It is submitted that at no point of time the applicant nos.4 and 5 were residing with the complainant. The applicants have relied upon the documents in

relation to marriage of respondent nos.4 and 5. One of the main contention of the applicants is that the cause of action as stated in the application filed by respondent no.1 had occurred on 15th August 2008, however, the application was filed on 10th November 2016 which is beyond the law of limitation. It is further submitted that the complaint is filed after eight years and the same is barred by Law of Limitation in accordance with Section 468 of Code of Criminal Procedure, 1973 and Sections 28, 32 and Rule 15(6) of D.V.Act. The complaint ought to have been filed within one year from the date of cause of action. The respondents had availed of other possible remedies including the complaint for an offence punishable under Section 498A of the Indian Penal Code as well as application under Section 125 of Cr.PC claiming maintenance. It is further submitted that the Court has granted maintenance under Section 125 of Cr.PC to the respondent no.2 and the prayer for maintenance to respondent no.1 has been refused. It is submitted that the prosecution under Section 498A and other offences is pending. The evidence is being recorded and on realising that the complainant would not succeed in the said prosecution, the present proceedings were initiated. It is, therefore, submitted that in exercise of power under Section 482, the proceedings may be quashed. The applicant no.1 has also initiated the proceedings for divorce which were numbered as Hindu Marriage Petition No.96 of 2010, which were contested by respondent no.1 by examining herself on oath. The evidence of respondent no.1 in all the proceedings shows that she is exaggerating the facts.

5. Learned advocate for the respondent nos.1 and 2 opposed the relief prayed by the applicants. It is submitted that the proceedings are pending before the Trial Court. The respondent nos.1 and 2 may

be allowed to adduce the evidence and prove their case. This is not the stage to accept the contentions of the applicants and quash the proceedings. It is further submitted that the nature of harassment caused to the respondents, which has resulted in domestic violence, is a continuous offence and, therefore, the application is not filed beyond the limitation prescribed under Section 468 of Code of Criminal Procedure, 1972. It is submitted that merely because the proceedings under Section 498A of Indian Penal Code were initiated and/or the maintenance proceedings under Section 125 of Cr.PC were filed by respondent no.1, the present proceedings cannot be set aside.

6. Learned advocate for the applicant placed reliance on following decisions :

- (i) Ashish Dixit and others Vs. State of Uttar Pradesh and another AIR-2013-SC-1077;
- (ii) Smt.Meenakshi Jatav and others Vs. Dr.Seema Sehar & Others 2013-Cri.L.J.-3164;
- (iii) Durgesh Yuvraj Rahangdale Vs. Rajni Krushnadatta Ukey and another (2013{3}-Mh.L.J. {Cri.}-456);
- (iv) Mrs.Dimple Jatin Khanna @ Dimple Rajesh Khanna @ Mrs. Dimple Khanna and another Vs. Anita Advani and another 2016-All.MR (Cri).-3748;
- (v) Inderjit Singh Grewal Vs. State of Punjab and another 2011-AIR-SCW-6259.

7. The learned counsel for respondent nos.1 and 2 relied upon following decisions :

- (i) Krishna Bhattacharjee Vs. Sarathi Choudhury and another (2016)2-SCC-705;
- (ii) Bhaskar Lal Sharma and another Vs. Monica and others (2014)3-SCC-383;
- (iii) Prashant Pandit Salve and others Vs. Suvarna Prashant Salve and others – (2016{5}-Mh.L.J. (Cri)-737):
- (iv) Maroti Dewaji Lande Vs. Sau Gangubai Maroti Lande & anr. Criminal Writ Petition No.542 of 2010, decided on 9-8-2011;

8. On perusal of the material on record and after hearing both the sides, it is apparent that the marriage between applicant no.1 and respondent no.1 was solemnized on 20th May 2013. The complaint refers to the harassment caused to respondent no.1 by the opponents therein. The respondents have referred to incidents of harassment. The applicant nos.4 and 5 are residing separately. The applicant no.4 is the sister of applicant no.1. The marriage of applicant no.4 is solemnized with applicant no.5 on 13th March 2003 which is prior to the marriage of applicant no.1 and respondent no.1. It was pointed out that the applicant nos.4 and 5 were residents of Jawhar, District Thane for some years and then transferred to Wanderwadi, Taluka Akole. On 31st May 2013 due to transfer of applicant no.5, they shifted to Ghulewadi. The respondents, however, have alleged in paragraph no.6 of the applicant that the applicant nos.4 and 5 were residing with other applicants from the year 2008. Apparently the allegation appears to be devoid of substance. The marriage card is also placed on record which shows that the applicant nos.4 and 5 were married prior to the marriage of applicant no.1 and respondent no.1. The allegations against the applicant nos.4 and 5 also appear to be vague in nature. The primary grievance is against applicant nos. 1 to 3 who were residing

together with respondent no.1. It is true that respondent no.1 has initiated proceedings under Section 498A as well Section 125 of Cr.P.C. The prosecution under Section 498A appears to be pending and maintenance was not granted to respondent no.1 in the proceedings under Section 125 of Cr.P.C. The harassment which meted out to the respondent no.1 and which appears to be part of the application filed by respondent no.1 under Section 12 of D.V.Act, will be decided in evidence before the Court. However, as far as applicant nos.4 and 5 are concerned, they need not be subjected to the exercise of facing the said proceedings. Prima facie there is material against applicant nos.1 to 3. The mental agony, reflected on account of domestic violence, is a continuous process and it cannot be said that the cause of action had arisen only on 15th August 2008 as contended by the applicants, cannot be accepted. The complainant has stated in the application that there was a demand of Rs.1,00,000/- by the opponents. The proceedings cannot be considered only by looking into the incident dated 15th August 2008. The broad allegations in the complaint will have to be seen. In the application under Section 12 of D.V.Act, it is also stated that even after 15th August 2008 the respondent no.1 and her relations tried to resolve the dispute and at that point of time applicant no.1 has stated that he is residing with Smt.Shital Gaikwad and their relationship is in the nature of husband and wife. He has solemnized the marriage with respondent no.1 against his wishes and that he would not cohabit with respondent no.1. It was further stated that the husband did not make any arrangement for the maintenance and shelter for the respondent nos.1 and 2. It was also stated that on 14th August 2016 the applicant no.1 gave a dash to respondent no.1 while driving the motorcycle and also abused and assaulted her. He was

accompanied by Smt.Sheetal Gaikwad and a written complaint in that regard was lodged with the police station. It is also noted that the respondent no.1 has been invoking various proceedings and it is not that she was silent for several years and filed proceedings under D.V.Act belatedly. The application under Section 125 of Cr.PC was filed on 4th September 2010 vide Criminal Miscellaneous Application No.371 of 2010. Her evidence was recorded on 8th April 2011. She was cross examined on 1st December 2012. The hindu marriage petition proceedings were initiated by the applicant no.1. The evidence of respondent no.1 was recorded on 18th October 2012. She was cross-examined on 9th November 2012. From the averments in the petition it appears that the said petition is dismissed. The FIR for offence under Section 498A and other offences was registered on 25th October 2012. The evidence of respondent no.1 was recorded and she has been cross-examined on 20th August 2016. The submission of the advocate for the applicants is that the averments in various proceedings are exaggerated or that the application under D.V.Act was filed after realizing that respondent no.1 would not succeed in her complaint cannot be accepted.

9. In the case of Ashish Dixit (Supra), the Hon'ble Supreme Court has quashed the proceedings on the ground that in the petition filed by the wife, she has arraigned several persons as respondents. It is, therefore, observed that in the circumstances the High Court could have directed that the petition filed by the respondent-complainant be confined to her husband and also her parents-in-law and should not have allowed the impleadment of other respondents. The proceedings were, therefore, quashed against other respondents. The other decisions relied upon by the petitioners reiterates the same

principle. In the case of **Inderjit Singh Grewal (supra)**, the Hon'ble Supreme Court has observed that the parties have obtained decree of divorce by mutual consent and unless the same is set aside, the complaint under Section 12 of D.V.Act is not maintainable. It was also observed that the law of limitation under Section 468 of Cr.P.C is applicable for such proceedings. The other decisions relied upon by the applicants also deals with quashing proceedings under the D.V. Act under Section 482 of Cr.P.C.

10. In the case of **Bhaskar Lal Sharma and another (supra)**, the Hon'ble Supreme Court has observed that the test that has to be applied before summoning the accused, is that the facts stated against the accused have to be accepted as they appear on the very face of it. In the case of **Prashant Pandit Salve and others (supra)**, this Court has observed that D.V.Act has been introduced to protect the women against domestic violence which is undoubtedly a human right and is serious deterrent to the development. The object of D.V.Act is keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India. In the case of **Maroti Dewaji Lande (supra)**, this Court has considered the objections raised by the opponents on the ground of inordinate delay in initiating the proceedings. While dealing with the said objection the Court has observed that D.V.Act has come into force on 26th October 2006. It was brought to provide more effective protection to the rights of women. It was argued by the opponents in the said case that there is inordinate delay in initiating the proceedings. The wife contended that there is no question of limitation, as there is continuous cause of action for a wife to claim maintenance and other reliefs. It was observed by the Court that there shall be continuous

causes of action. Therefore, there is no question of putting a stop to the relief sought for on ground of continuous breach of legal right, since continuous deprivation of economic or financial resources and continued prohibition or denial of access for the shared household, maintenance etc to the aggrieved person can come within the definition of Domestic Violence explained under the Act. The Hon'ble Supreme Court in the case of **Krishna Bhattacharjee (supra)** has considered the issue relating to limitation for the proceedings under the D.V.Act, more particularly when the wife is claiming stridhan. In paragraphs 29, 30, 31, 32 and 33 the Supreme Court has made the following observations :

“29. Having appreciated the concept of stridhan, we shall now proceed to deal with the meaning of “continuing cause of action”. In *Raja Bahadur Singh V. Provident Fund Inspector*, the Court while dealing with the continuous offence opined that the expression “Continuing offence” is not defined in the Code but that is because the expressions which do not have a fixed connotation or a static import are difficult to define. The Court referred to the earlier decision in *State of Bihar Vs. Deokaran Nenshi* and reproduced a passage from the same which is to the following effect : (Bhagirath Case, SCC. P.227, para 10) :

“10. ... `5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or

omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all. (Deokaran Nenshi Case, SCC. p.892, para5)”

30. The Court further observed : (Bhagirath case, SCC p.227, para 11) :

“11. This passage shows that apart from saying that a continuing offence is one which continues and non-continuing offence is one which is committed once and for all, the Court found it difficult to explain as to when an offence can be described as a continuing offence. Seeing that difficulty, the Court observed that a few illustrative cases would help to bring out the distinction between a continuing offence and a non-continuing offence. The illustrative cases referred to by the Court are three from England, two from Bombay and one from Bihar.”

31. Thereafter, the Court referred to the authorities and adverted to Deokram Nenshi and eventually held : (Bhagirath case, SCC p.229, para 19) :

“19. The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence.”

32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by

the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. “Economic abuse” as it has been defined in Section 3(Iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of “continuing offence” gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22-5-2010 and the said authority had forwarded the same on 1-6-2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of “Continuing offence” and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as

the High Court had fallen into a grave error by dismissing the application being barred by limitation.”

In the present case, apart from other reliefs, the respondent no.1 is also claiming return of her ornaments. Apart from this, in present case, it is also noted that there were continuous incidents, one of them has occurred in the year 2016.

11. The Supreme Court, in the case of **Vanka Radhamanohari Vs. Vanka Venkata Reddy (1993)3-SCC-41**, while considering bar of limitation for taking cognizance of offences as also prayer for condonation of delay, considered matrimonial offences as exceptional cases wherein the Court would not throw out the complaint solely on the ground of delay. In view of Section 473 of the Code of Criminal Procedure, the Court can take cognizance of an offence not only when it is satisfied on the facts and circumstances of the case that the delay has been properly explained or but also when that it is necessary so to do in the interest of justice. In respect of matrimonial offences when allegations are of cruelty, torture and assault by husband or members of family to the complainant, the Court will consider that victim who is subjected to a such act of cruelty repeatedly is more or less suffering from continuing offence.

12. Taking into consideration the factual aspects, the proceedings cannot be quashed on the ground that complaint is barred by law of limitation. However, considering the factual aspects and the role attributed to applicant nos.4 and 5, more particularly in the light of the fact that applicant no.4 is the sister of applicant no.1 who is married to applicant no.5 and is residing separately, the proceedings against them will have to be quashed and set aside.

13. Hence, I pass following order :

ORDER

- (i) Criminal Application No.1355 of 2017 is partly allowed;
- (ii) The application of applicant nos.1 to 3 is dismissed;
- (iii) The proceedings against applicant nos.4 and 5 initiated by respondent nos.1 and 2 in Criminal Miscellaneous Application No.808 of 2016 under Section 12 of Protection of Women from Domestic Violence Act, 2005, which are pending on the file of learned Judicial Magistrate, First Class, Sangamner, are quashed and set aside;
- (iv) The Trial Court shall not be influenced by observations made in this order while adjudicating the proceedings against applicant nos.1 to 3;
- (v) Criminal Application No.1355 of 2017 is disposed off.

(PRAKASH D. NAIK, J.)

MST