

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2242/2017

- 1] Ronak Anilbhai Modi,
age 28 yrs., occu.service,
r/o Gautam Park, Society-2,
Behind Keshav Park Society,
Ancleshwar Tq.Ancleshwar Dist.Bharuch.
- 2] Anilbhai Thakurlal Modi,
age 60 yrs., occu.service,
r/o Gautam Park, Society-2,
Behind Keshav Park Society,
Ancleshwar Tq.Ancleshwar
Dist.Bharuch.
- 3] Sangeetaben Anilbhai Modi,
age 55 yrs., occu.household,
r/o Gautam Park, Society-2,
Behind Keshav Park Society,
Ancleshwar Tq.Ancleshwar
Dist.Bharuch.
- 4] Harshal Anilbhai Modi,
age 26 yrs., occu.service,
r/o c/o Prakasahkumar Karshanbhai
Patel, 02, Gayatri Krupa Bunglows,
Opp.Goldenpark Society,
Agola Road, Hanuman Tekari,
Abu Highway, Palanpur, Gujrat.
- 5] Bipinchand Chimanlal Mehta,
age 60 yrs., occu.
r/o Panchayat Bajar, Near Saibaba
Mandir, Ancleshwar Tq.Ancleshwar
Dist.Bharuch.
- 6] Rekhaben Bipinchand Mehta,
age 55 yrs., occu.household,
r/o Panchayat Bajar, Near Saibaba
Mandir, Ancleshwar Tq.Ancleshwar
Dist.Bharuch.

...Applicants..

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Versus

- 1] The State of Maharashtra,
through its Police Station,
Nandurbar. Dist.Nandurbar.
- 2] Dipali Ronak Modi,
age 25 yrs., occu.household,
r/o Near Dandpaneshwar Mandir,
Nandurbar Dist.Nandurbar.

...Respondents...

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Shri P.R. Harshal, Advocate for applicants.

Shri K.S. Patil, APP for respondent no.1.

Shri R.S. Wani, Advocate for respondent no.2.

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CORAM: PRAKASH D. NAIK, J.

DATE: 21.12.2017

ORDER :

1] Application was heard for final disposal.

2] The applicants have challenged the proceedings initiated by the respondent no.2 u/s 18, 20, 22 and 23 of the Protection of Women from Domestic Violence Act. The said proceedings were initiated vide Criminal Miscellaneous Application No.159/2017. The said application was filed on 22.3.2017. The trial Court took cognizance of the said proceedings by issuing notice to the respondent nos.1 to 6 therein.

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3] The applicants have, therefore, approached this Court. The applicant no.1 is the husband of respondent no.2. The applicant nos.2 and 3 are father-in-law and mother-in-law of the said respondent. The applicant nos.4 to 6 are brother-in-law, paternal uncle and aunt of the applicant no.1. In the application preferred by the respondent no.2, several grievances were made. It was contended that the marriage between the applicant no.1 and the respondent no.2 was solemnized on 11.5.2015. After the marriage, the respondent no.2 joined the matrimonial home. The respondent nos.1 to 4 in the said application were residing together. It was also alleged that the respondents were harassing her. They were asking her to bring money from her parents. She was mentally and physically ill-treated. She was not allowed to speak with her parents. The respondent nos.5 & 6 therein were also abusing her. The applicant no.1 — husband used to consume liquor and return home in the night. He used to assault her. She was physically abused by the opponents. They had demanded an amount of Rs.5,00,000/- to be brought by her from parents. The parents of the respondent no.2 requested the opponents to

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resolve the dispute by amicable settlement. However, the opponents did not agree for the same and it was stated that unless the amount, which was demanded by them is not brought, there will not be resolution of dispute. The respondent no.2, therefore, prayed for various reliefs u/s 20,21 and 22 of the Act. She claimed maintenance in the sum of Rs.15,000/-. She had also claimed compensation.

4] The learned counsel for the applicants submitted that the application u/s 12 of the Domestic Violence Act is based on false and frivolous grounds. It is submitted that the allegations of demand of money are concocted. The respondent no.2 had also forwarded complaint to Nandurbar City Police Station against the applicants, which was transferred to Mahila Dakshata Samiti for settlement between the applicants and the respondent no.2. The First Information Report was registered on 22.7.2016 vide Crime No.106/2016. It is submitted by the learned counsel for the applicants that the husband had cohabited with respondent no.2. He also took proper care of her. Although the respondent no.2 was ailing, medical treatment was provided to her. The applicant no.4 is an

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engineer and working at Palanpur, Gujarat. He is permanent resident of Palanpur, Gujarat. The distance between Ancleshwar and Palanpur is about 300 Kms. It is further submitted that there was no domestic violence and the proceedings initiated by the respondent no.2 are not tenable in law. The allegations made in the application are vague in nature and unsupported by any evidence. The applicant nos.5 & 6 are paternal uncle and aunt of the applicant no.1. They are residing separately. They have deliberately involved in the said proceedings. The allegations against them are vague in nature.

5] The learned counsel for the respondent no.2 submitted that the applicants have raised debatable issues, which cannot be looked into at this stage. *Prima facie* case was made out in the application preferred by the respondent no.2 and, therefore, the Court has taken cognizance of the application and issued notice to the applicants. The respondent no.2 be permitted to adduce requisite evidence before the Court to prove the grievance made in her application. It is submitted that specific overt-act has been attributed to all the applicants. The submissions advanced by the applicants are based on

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disputed questions of fact, which cannot be appreciated in an application u/s 482 of the Cr.P.C. It is, therefore, submitted that the application may be dismissed.

6] I have perused the application preferred by the respondent no.2 and the other documents, which are annexed to the application. The applicant no.1 is the husband of respondent no.2. The applicant nos.2 & 3 are the parents of applicant no.1 i.e. father-in-law and mother-in-law of respondent no.2. The marriage between the applicant no.1 and respondent no.2 was solemnized on 11.5.2015. The application under Domestic Violence Act was filed on 22.3.2017. There are specific allegations against applicant nos.1 to 3. The applicant no.4 is employed at Palanpur, Gujarat. The applicant nos.5 & 6 are the relatives of the applicant no.1. The applicant no.4 is the brother-in-law of the respondent no.2. Although some allegations are made against applicant nos.4 to 6, they are vague in nature and are not sufficient to constitute domestic violence as contemplated under the provisions of the said Act. The applicant nos.4 to 6 are residing separately. However, on

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perusal of the application, on the other hand, that there are specific allegations against applicant nos.1 to 3. The submissions advanced on behalf of applicant nos.1 to 3 cannot be accepted for quashing the proceedings. The respondent no.2 must be given an opportunity to adduce evidence in her support and prove the contents of the application preferred by her. The proceedings cannot be quashed at this stage in exercise of powers under Section 482 of the Cr.P.C. as against applicant nos.1 to 3. However, taking into consideration the nature of allegations made against applicant nos.4 to 6, I am inclined to quash the proceedings against them in exercise of powers u/ 482 of the Cr.P.C. Hence, I pass the following order.

O R D E R

- a] The Criminal Application No.2242/2017 is partly allowed.
- b] The application to the extent of applicant nos.1 to 3 stands rejected.
- c] The application at the instance of applicant nos.4 to 6 is allowed and the impugned order dated 22.3.2017 passed by learned Judicial

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Magistrate, First Class, Nandurbar, in Criminal Miscellaneous Application No.159/2017 and the said proceedings are quashed and set aside as against the applicant nos.4 to 6.

d] The application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)