

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

CRIMINAL WRIT PETITION NO. 893 OF 2017

Prakash s/o Krishanrao Ingle
Age : 60 Yrs., Occ. : Pensioner,
R/o : Samprat Nagar,
Shambhar Foot road,
above Shrikrishna Dairy,
Flat No. 6, Indumati Height
Apartment, Dhule.

**..... PETITIONER/
[ORI.NON APPLICANT]**

VERSUS

Vishranti alleged w/o Prakash Ingle
Age : 46 Yrs., Occ. Service,
as Anganwadi Sevika,
R/o : Gandhi Nagar, Latur
Tq. & Dist. Latur.

**..... RESPONDENT/
[ORI. APPLICANT]**

.....

Mr. H.V.Patil, Advocate for Petitioner.

Mr. B.M.Dhanure, Advocate for Respondent.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 12/09/2017

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent heard finally at the stage of admission.

2. By this Writ Petition, the petitioner/original non applicant has challenged the order dated 24/04/2017 passed by the Judicial Magistrate First Class [Court No. 3], Latur in Criminal Misc. Application No. 348/2016. By the impugned order, learned Magistrate has allowed the application seeking amendment/correction as to the date of marriage mentioned in the application filed under the provisions of the Protection of Woman from Domestic Violence Act, 2005 [for short 'Domestic Violence Act']. In view of the limited challenge raised in the petition as to legality of said order passed by the learned Magistrate, it is not necessary to discuss the facts in detail.

3. The respondent herein filed proceeding u/s 12 of the Domestic Violence Act as against the petitioner with specific assertion that she married with the respondent on 14/04/1985 as per the rituals and customs prevailing in their caste and community. After the marriage, they lived as husband and wife. Out of their wedlock, she gave birth

to three children. After the transfer and posting of the petitioner in the year 2001, the petitioner stopped visiting her and later-on contacted another marriage and refused to take her. The petitioner appeared in the matter and filed his Written Statement. He has specifically denied the case of the respondent. He has taken plea that he got married on 22/11/1985 with one Sau. Asha and they have two children born out of their wedlock. He has categorically denied the case of respondent that he married with her on 14/04/1990. The reply was filed on 27/02/2017.

4. Thereafter, on 03/02/2017 the respondent filed application seeking correction as to the date of marriage mentioned in the application. By the application filed, the respondent sought correction of date mentioned in the application as 14/04/1990 to be corrected as 14/04/1985. The petitioner objected to entertain the application. However, learned Magistrate has allowed the application and permitted respondent to carry out correction. Being aggrieved, the petitioner has approached this Court.

5. Mr. H.V.Patil, learned counsel for the petitioner

assailed the impugned order with contention that the proceeding filed u/s 12 of the Domestic Violence Act being governed by the provisions of Code of Criminal Procedure and as there is no provision under the said Act to entertain such application seeking amendment, the impugned order is not sustainable in law and liable to be set aside. He further submits that though it is mentioned in the application that the date was wrongly typed as 14/04/1990 due to typographical mistake, but the intention in filing such application was other than mere correction of date. He submits that the application has been filed with a view to take away the defence set up by the petitioner. By inviting attention to copies of various applications made by the respondent, before filing application u/s 12 of said Act, the learned counsel submits that different dates of marriage have been mentioned by the respondent in an application before the different authorities. In the application dated 15/03/2016 made to the Chairman-cum-Managing Director of New India Assurance Company, the respondent has mentioned the date of her marriage with the petitioner as 14/04/1990. In the proceeding filed u/s 125 of Code of Criminal Procedure before the Court of Judicial Magistrate First Class, Latur, the respondent has mentioned her date of

marriage with the petitioner as 14/04/1990. In an application made to special Cell for Women and Children, the respondent has mentioned her date of marriage with the petitioner as 14/04/1989. In this back-ground, learned counsel submits that the amendment sought to be made on the pretext of typographical mistake was totally incorrect. In order to overcome the case set up by the petitioner, the respondent has sought correction as to her date of marriage with the petitioner. It is further contended that by way of amendment, the respondent has taken away the admission given in the application which is not permissible under the law. In support of the submission, learned counsel submits that no such amendment can be allowed. The learned counsel referred and relied upon the decision of this Court in the case **of Damu Maruti Dadhe & Anr. Vs. Limba Maruti Dadhe & Ors. Reported in 2011 (5) Mh.L.J. 738.**

6. Per contra, the learned counsel representing the respondent has supported the order passed by the trial Court. He submits that the issue raised by the petitioner as to the maintainability of application seeking amendment in the proceeding filed under the provisions of the Domestic Violence Act is no more *res-integra*. In

support of submissions, the learned counsel referred and relied on the decision of Apex Court in the case of **Kunapareddy @ Nookala Shankha Balaji Vs. Kunapareddy Swarna kumari & Anr. reported in 2016 AIR (SCO 2519).** He has submitted that the correction as sought to be made not amounts to taking away any admission given on the part of the respondent. He submits that in the facts and circumstances of the case the trial Court has rightly allowed the respondent to correct the date of marriage mentioned in the application. He further submits that by allowing the application seeking amendment, no serious prejudice has resulted to the petitioner as ultimately the case will be decided on its own merits and on the basis of the evidence to be adduced in the matter.

7. In my view, there is no merit in the submission of the learned counsel for the petitioner that the application seeking amendment can not be entertained in a proceeding filed u/s 12 of the Domestic Violence Act. It is rightly pointed out by the learned counsel for the respondent that the issue as raised by the learned counsel for the petitioner remain no more *res-integra* in view of the decision of the Apex Court in the case of

Kunapareddy [supra]. After examining the scheme of the Domestic Violence Act, the Apex Court has held that if the amendment becomes necessary in proceeding filed under the provisions of the Domestic Violence Act, then the Court dealing with such proceeding can entertain such application. The Apex Court has further observed that even in the case governed by Code of Criminal Procedure, the Court is not powerless and may allow the amendment in appropriate case. In paragraph Nos. 17 and 18 the Court has observed as under :

“ 17. We understood in this backdrop, it cannot be said that the Court dealing with the application under DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events [escalation of prices in the instant case] or to avoid multiplicity of litigation, Court will have power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that respondent no. 1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application

rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal Courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances.

18. What we are emphasising is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated. "

8. Thus, in view of the ratio laid down in the case of Kunapareddy [supra], there is no merit in the submissions advanced that the Court below was not empowered to entertain the application seeking amendment filed u/s 12 of the Domestic Violence Act.

9. So far as the submissions advanced as to the merit of the application, I am of the view that the trial Court has acted well within its powers to entertain the application. By way of amendment, the respondent had sought correction as to the date of marriage. So far as

the submission of the learned counsel that the respondent has given different date before different authorities, the same is matter of evidence. Certainly the petitioner may cross examine the respondent and bring necessary evidence to discredit the testimony of respondent. If we consider the application moved by the respondent under the provisions of the Domestic Violence Act, then the respondent has claimed to be legally wedded wife of the petitioner. So also she claimed long standing relationship as husband and wife with petitioner. She claimed that she had three issues born out of her wedlock and relationship with the petitioner. The order passed by the trial Court not alter the cause of action. In this view, the order passed by the trial Court can not be termed as contrary to law.

10. In the result, I found no merit in the petition.

11. The petition is dismissed. Rule stands discharged.

[V.L.ACHLIYA, J.]

[J]