

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

CRIMINAL WRIT PETITION NO.1160 OF 2016

1. Jagruti Sadashiv Gaisamudre,
R/o.Kanchanwadi, Paithan Road, Aurangabad.

2. Amrapali Kiran Kamble,
R/o.Bhavsingpur, Aurangabad.

3. Savita Sanjay Sonvane,
R/o.Sonvane Nivas, Raigad Colony, Beed.

4. Pradnya Rajendra Hazare,
R/o.Bhakti Constructions, Beed.

5. Eknath Dharmajirao Tupare,
R/o.Vidhya Nagar, West Beed, at Beed.

6. Gaulanbai Eknath Tupare,
R/o.Vidhya Nagar, West Beed, at Beed.

7. Uday Eknath Tupare,
R/o.Vidhya Nagar, West Beed, at Beed.

Petitioners

versus

Sanghamitra Uday Tupare,
Age 28 years, Occ. Household,
R/o.Chinchagavhan, Tal.Majalgaon,
District Beed.

Respondent

Mr.M.U.Shelke for petitioners.
Mr.S.J.Salunke for respondent.

CORAM : PRAKASH D. NAIK, J.

Date of reserving the judgment : 15th November 2017
Date of pronouncing the judgment : 20th December 2017

JUDGMENT :

1. The petitioners have taken exception to the proceedings pending before the Court of Judicial Magistrate, First Class, Majalgaon initiated by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('D.V.Act').

2. The marriage between the respondent and petitioner no.7 was solemnized on 20th November 2011. The petitioner nos.1 to 4 are the sisters of the petitioner no.7. Petitioner nos.5 and 6 are parents of other petitioners.

3. The respondent initiated proceedings under D.V.Act by filing Miscellaneous Criminal Application No.535 of 2014 before the Court of learned Judicial Magistrate, First Class, Majalgaon on 29th November 2014. In the said application it was stated that the marriage was solemnized between the respondent and petitioner no.7 in accordance with Buddhist religion. The marriage is still in subsisting. The respondent jointed the matrimonial home after marriage. She was subjected to harassment right from the beginning. The opponent nos.2 and 3 used to dislike her. The opponent no.1 and opponent no.6 suspected her of chastity and alleged that she had conceived prior to the marriage with opponent no.1. Thereafter to clear the doubt, she was required to undergo sonography. The opponent no.6 resides at Aurangabad and frequently visits the matrimonial home of the respondent-wife. The opponent nos.1, 4, 6 and 7 were asking her to bring Rs.2,00,000/- from her parents for purchasing the car. On 28th October 2014 the respondent was drawn out of matrimonial home and asked her to

return with Rs.2,00,000/- for purchasing the car which can be used by opponent no.6.

4. The petitioners contend that the application filed by respondent is false and frivolous. Petitioner nos.1 to 4 who were original opponent nos.4 to 7 are sisters of petitioner no.7 and since their marriage they are residing in their matrimonial house. Petitioner nos.5 and 6 are old parents of other petitioners. Petitioner no.1 is working as Lecturer in Dental College and Hospital, at Aurangabad and residing at Kanchanwadi, Aurangabad. Petitioner no.2 is working as Clerk-cum-Typist in Mantralaya, Mumbai. Petitioner no.3 is working as Assistant Teacher in Saraswati Vidya Mandir, Beed and petitioner no.4 is working as Assistant Teacher in Zilla Parishad school. They are residing with their husbands since the date of their marriage and rendering their services at the respective places. Petitioner nos.1 to 4 are impleaded merely because they are relatives of petitioner no.7. The allegations against them are vague. They had never stayed with petitioner no.7 after their marriage. They are falsely implicated in the impugned proceedings. The petitioner nos.5 and 6 are old persons. The respondent had not lodged any complaint against petitioners with regards to the alleged harassment. Since 15th April 2013, the respondent has left the matrimonial home without any reason and stayed with her parents. On several occasions the petitioners and the relatives made endeavour to put an end to the dispute. On the date of filing of complaint, the respondent is not in domestic relationship and, therefore, the complaint is not maintainable. The application under Section 12 of the D.V.Act was filed after a period of one year and seven months after she left the matrimonial home. In the

absence of domestic relationship, the complaint deserves to be quashed and set aside. The petitioners had filed an application for dropping the proceedings which was rejected by the Court without appreciating the material on record. There was no conjugal relationship between the respondent and petitioner no.7. The respondent had lodged false complaint on 18th April 2013 against petitioner alleging that they have abused and extended threats to her. It is submitted that on 28th August 2010, the respondent had lodged a complaint with the police about assault and pouring of kerosene. The police visited the house of petitioners and conducted an inquiry and it was found that the complaint was false. The statements of neighbours were recorded, which do not corroborate the complaint made by the respondent. The said documents which were obtained by petitioners through Right to Information Act, have been annexed to the petition. Since 15th April 2013, the respondent is residing with her parents and in the absence of domestic relationship, the complaint should not have been entertained by the Trial Court. It is, therefore, submitted that the proceedings initiated by the respondent may be quashed.

5. Learned counsel for petitioners relied upon following decisions:

- (i) Jayesh Uttamrao Khairnar and others Vs. State of Maharashtra and others – 2010(3)-Mh.L.J.-305;
- (ii) Sejal Dharmesh Ved Vs. The State of Maharashtra and others Criminal Application No.160 of 2011, decided on 7.3.2013;
- (iii) Smt.Vijaya Vasant Sawant Vs. Ms.Shubhangi S. Parab & others 2013-ALL MR (Cri.) - 2360;

- (iv) Arun Ramkrishna Pawade and ors. Vs. Nilima Prakash Pawade and others – 2015(4)-Bom.C.R. (Cri.) - 287;
- (v) Dimple Jatin Khanna @ Dimple Rajesh Khanna @ Mrs.Dimple Khanna and another Vs. Anita Advani and another (2016{1}-Mh.L.J. (Cri.)-210).

6. Learned advocate for the respondent, however, submitted that the petition is devoid of merits. The application filed by the respondent clearly makes out a case for the relief sought by her under D.V.Act. The contentions of the petitioners are required to be decided in evidence and the same cannot be accepted as truth at this stage. The application filed by the respondent attributes overt act to all the petitioners who have caused domestic violence and, therefore, the Trial Court has rightly taken cognizance of the application filed by the respondent. The application categorically mentions that the petitioner nos.1 to 4 used to visit the matrimonial home of the respondent and harassed her and they used to demand money even at their instance. It is submitted that the petitioners had challenged the order dated 25th January 2016 passed by learned Judicial Magistrate, First Class rejecting the application for dropping the proceedings filed by the petitioners and, therefore, the petitioners ought to have resorted to alternate remedy of filing an appeal under Section 29 of D.V.Act. It is, therefore, submitted that the proceedings should be allowed to be continued. Learned counsel relied upon the decision of Supreme Court in the case of Union of India Vs. T.R.Varma reported in AIR-1957-SC-882.

7. The respondent has preferred the application under D.V.Act. The Trial Court has taken cognizance of the same. Petitioner no.7 had preferred application before the Trial Court on 6th July 2015 and

prayed that the proceedings against all the opponents be quashed. Learned Magistrate vide order dated 25th January 2016 rejected the said application. While passing the said order it was observed that over all allegations in the application put forth by the applicant-respondent herein, very well prima facie establish that there is triable case and is required to be decided fully and finally. Insofar as defence of respondent no.1 is concerned, the same can be assessed only after leading evidence by giving an opportunity to the parties. It was also observed that the prayer cannot be accepted as the Court has no jurisdiction in absence of any provisions under D.V.Act.

8. On going through the material on record which is the part of the petition it is apparent that petitioner nos.1 to 4 are married sisters of petitioner no.7. Petitioner no.1 is working as lecturer in Dental College and Hospital, at Aurangabad and residing at Kanchanwadi, Aurangabad. Petitioner no.2 is working as Clerk-cum-Typist in Mantralaya, Mumbai. Petitioner no.3 is working as Assistant Teacher in Saraswati Vidya Mandir, Beed and petitioner no.4 is working as Assistant Teacher in Zilla Parishad, Beed. They are all married. Petitioner nos.5 and 6 are parents of other petitioners.

9. The respondent had filed an affidavit-in-reply. The submissions advanced by the petitioners are denied. It is submitted that the Trial Court has commenced the proceedings and the examination of victim and her father is already over. The copies of notes of evidence are annexed to the reply. The application filed by the petitioners was rejected on 25th January 2016. The Trial Court has thereafter proceeded with the matter. It also appears that petitioner no.1 i.e.

husband of respondent no.1 has also been examined. I have perused the roznama which has been annexed to the application. Affidavit-in-evidence of respondent no.1 was tendered on 4th June 2016. She was cross examined on 7th May 2016. The respondent has been exhaustively cross examined by advocate for petitioners. The affidavit of father of respondent was tendered and taken on record as evidence on 22nd June 2016. The affidavit was also tendered on behalf of the petitioner no.7. The same was taken on record on 4th July 2016. He has been cross-examined by respondent's advocate which was completed on 6th August 2016. Both the parties have put forth their case and the opponents have also lead their defence. From the aforesaid facts it is apparent that the proceedings have already commenced and the evidence of the witnesses is being recorded. In the circumstances it would not be appropriate to quash the proceedings against the petitioners at this stage.

10. The decisions relied upon by both the parties need not be analyzed since the proceedings have already commenced and I do not wish to exercise powers under Article 227 of the Cosntitution of India to quash the proceedings.

11. Hence, I pass following order :

ORDER

- (i) Criminal Writ Petition No.1160 of 2016 is dismissed;
- (ii) The Trial Court shall decide the proceedings in accordance with law.

(PRAKASH D. NAIK, J.)