

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 57 OF 2017

1. Mr. Jason Lobo, 31 years of age,
married, Indian National,
2. Mrs. Nivet Lobo, 33 years of age,
married, Indian National,
Both r/o H. No. 415, First Floor, St.
Anthony Waddo, Pilerne Marra,
Bardez, Goa.
Both represented in this act through
their Power of Attorney, Mr. Anthony
Lobo, 63 years of age, married, Indian
National, r/o H. No. 415, Ground Floor,
St. Anthony Waddo, Pilerne Marra,
Bardez Goa. Petitioners

Versus

1. State of Goa, Through Public
Prosecutor, High Court Building,
Panaji-Goa.
2. Mrs. Epifania Granciana Fernandes e
Lobo alias Effie Lobo, 64 years of age,
married, Indian National, r/o H. No.
415, Ground Floor, St. Anthony
Waddo, Pilerne Marra, Bardez, Goa. Respondents

Shri Joaquim Godinho, Advocate for the Petitioners.

Shri S.R. Rivankar, Public Prosecutor for the Respondent No. 1.

Shri Joseph Vaz, Advocate for the Respondent No. 2.

CORAM:- C.V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.

DATE:- 6th JULY, 2017.

ORAL JUDGMENT: (Per C.V. Bhadang, J.)

Rule made returnable forthwith. The learned Public Prosecutor for the respondent no. 1 and Shri Vaz, the learned Counsel for the respondent no. 2, waive service. Heard finally by consent of parties.

2. The challenge in this petition under Article 226 of the Constitution of India, read with Section 482 of the Criminal Procedure Code, is to the proceedings before the learned Judicial Magistrate First Class at Mapusa in DVA Case No. 12/DVA/2016/E. The said case is initiated by the respondent no. 2, under the provisions of the Protection of Women from Domestic Violence Act, 2005 (Act, for short).

3. The brief facts are that the respondent no. 2 is the mother of the petitioner no. 1 and the mother-in-law of the petitioner no. 2. Anthony Lobo is the husband of the respondent no. 2. Petitioner no. 1 is the elder son and Joel Lobo is the younger son of the respondent no. 2.

4. The respondent no. 2 filed a complaint under Section 12 of the Act against her husband-Anthony Lobo and the present petitioners, stating that she has been subjected to acts of

domestic violence, which includes verbal and emotional abuse, economical abuse and dowry related abuse. It appears that Anthony Lobo, husband of respondent no. 2 was residing at Dubai and had come back sometime prior to the filing of the complaint. A perusal of the complaint shows that the only allegations made against the present petitioners in paragraphs 14 and 15 are as under:

"14. Recently on April 5th 2016 my daughter-in-law Nivet has leveled false accusations against me before the Porvorim Police Station, to set up a false defence. That I have been demanding dowry from her, when I am not at all in contact with her or my elder son Jason, since they live and work abroad and when in Goa, then leave on the first floor, where I live on the ground floor of H.No. 415/2.

15. On April 10th 2016 I had gone to the first floor where my elder son and daughter-in-law stay to get some of the masalas kept in the fridge upstairs. When I went up my daughter-in-law started saying I have taken advantage of her husband and used him. Then my elder son said that he is going to lock the door of the rooms upstairs and told his wife to tell me to get out of the house (first floor)."

Except this, there are no allegations insofar as the present petitioners are concerned.

5. It is admitted position that the petitioners are living and working abroad and when in Goa, they are staying on the first floor of the House No. 415/2, whereas the respondent no. 2 resides on the ground floor of the said house. Thus, it can be seen that the petitioners are not staying in the shared household with the respondent no. 2. The respondent no. 2 has sought certain reliefs in the complaint, which are essentially against her husband-Anthony Lobo.

6. In such circumstances, the petitioners have filed this petition for quashing the complaint against them.

7. We have heard Shri Godinho, the learned Counsel for the petitioners and Shri Vaz, the learned Counsel for the respondent no. 2. We have also heard Shri Rivankar, the learned Public Prosecutor for the respondent no. 1.

8. The learned Counsel for the petitioners has submitted that the petitioners are not residing in the shared household. He pointed out that the petitioners are residing abroad, where they are working and occasionally, when they come down to Goa, they are residing on the first floor of the house and not with the

respondent no. 2. It is submitted that the allegations in paragraphs 14 and 15 as set out above, ex-facie, are not sufficient to make out any case of domestic violence and the continuation of the complaint, insofar as the complaint is concerned, is an abuse of the process of the Court.

9. It is submitted by Shri Vaz, the learned Counsel for the respondent no. 2 that the petitioners cannot seek quashing of the complaint before the Magistrate, when it is at a preliminary stage. It is submitted that the allegations made by the respondent no. 2 are required to be tested, which can only be done when the complainant is heard on merits and when the parties lead evidence. It is submitted that there are allegations made in the complaint, which need to be inquired into and no case for quashing the complaint, is made out.

10. We have given our anxious consideration to the rival circumstances and the submissions made. We are conscious of the fact that this Court would be extremely slow in interfering with the proceedings before the learned Magistrate at the preliminary stage, unless there are strong and compelling reasons to do so. In our considered view, this is a case, which would require the complaint, insofar as the petitioners are

concerned, to be quashed, in order to prevent the abuse of the process of the Court.

11. It appears from the submissions made, during the course of the arguments at Bar, that the material dispute is between Anthony Lobo and the respondent no. 2. It appears that the younger son is supporting respondent no. 2, while according to the respondent no. 2, the petitioner no. 1, who is the elder son is siding his father, Anthony Lobo. The contention on behalf of the petitioners is that this is the reason why the petitioners have been roped in by the respondent no. 2 in the complaint. In our considered view, the contention is well founded and deserves to be accepted. Thus, looking to the allegations made in the complaint against the petitioners, essentially contained in paragraphs 14 and 15, which we have reproduced above, we are inclined to say that all that the respondent no. 2 claims is that on 05.04.2016, the petitioner no.2 leveled false accusations against her before the Porvorim P.S., about the respondent no. 2 demanding dowry from her, when according to the respondent no. 2, she is not at all in contact with petitioner no. 2, since they live and work abroad and when in Goa, they stay on the first floor, while respondent no. 2 stays on the ground floor. The fact that even according to the respondent no. 2, there is no contact

between her and the petitioners would ex-facie negate any acts by the petitioners, which may amount to domestic violence vis-a-vis, the respondent no. 2 is concerned. The second incident is of 10.04.2016 when according to the respondent no. 2 she had gone on the first floor to get some 'masalas', kept in the fridge upstairs, when the petitioner no. 2 alleged that respondent no. 2 is taking disadvantage of petitioner no. 1. The petitioner no. 1 is alleged to have said to his wife (petitioner no. 2) to ask the respondent no. 2 to get out of the house. Except this, there are no other allegations made nor any material reliefs claimed against the petitioners. We find that on her own saying, the petitioners are not residing in the shared household with the respondent no. 2. Thus, in our considered view, the continuation of the proceedings, insofar as the petitioners are concerned, would be an abuse of the process of the Court. The contention on behalf of the respondent no. 2 that the matter needs to be inquired into, in our view, cannot be accepted because even accepting the allegations on their face value, no case of domestic violence as such is said to be made out against the petitioners.

12. In the result, Rule is made absolute in terms of prayer clause (a).

Needless to mention that we have not expressed any opinion as regards the allegations as against Anthony Lobo, the husband of respondent no. 2.

PRITHVIRAJ K. CHAVAN, J.

C.V. BHADANG, J.

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