

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 110 OF 2015

1. Suresh s/o Bajarang Zarekar,
Age: 65 years, Occu: Advocate
R/o: Anmol Bangla No.-5,
Behind Chattrapati Bajaj Showroom,
Nagar-Pune Road, Ahmednagar.
 2. Sau. Pushpalata w/o Suresh Zarekar,
Age: 56 years, Occu: Housewife
R/o: Anmol Bangla No.-5,
Behind Chattrapati Bajaj Showroom,
Nagar-Pune Road, Ahmednagar.
 3. Milind s/o Suresh Zarekar,
Age: 35 years, Occu: Advocate
R/o: Anmol Bangla No.-5,
Behind Chattrapati Bajaj Showroom,
Nagar-Pune Road, Ahmednagar.
 4. Sau. Sarika w/o Milind Zarekar,
Age: 30 years, Occu: Advocate
R/o: Anmol Bangla No.-5,
Behind Chattrapati Bajaj Showroom,
Nagar-Pune Road, Ahmednagar.
 5. Smita w/o Balasaheb Dalve,
Age: 38 years, Occu: Housewife
R/o: Kunkulol plots, Ajalgaon road,
Barshi, Tq. Barshi, Dist. Solapur.
 6. Nita w/o Maruti Dandawate,
Age: 32 years, Occu: Housewife
R/o: Flat No. 403, Iris Everest Country side,
Kasarwadhavli, Ghodbandar road,
Thane (West).
- ... **Petitioners**

Vs.

1. The State of Maharashtra
Through Kotwali Police Station,
Ahmednagar.

2. Renu Ajit Zarekar
Age: 29 years, Occu: Advocate
R/o: Abhijeet Monto Estate,
Station, Ahmednagar.

3. Ayush Ajit Zarekar,
Age: Minor through natural guardian,
R/o: Abhijeet Monto Estate,
Station, Ahmednagar.

... **Respondents**
(Resp. No. 2 & 3 are
Orig. Complainant)

Mr. A.C. Darandale, Advocate for the Petitioners.
Mr. A.R. Kale, APP for Respondent-State.
Mr. U.S. Malte, Advocate for Respondent Nos. 2 & 3.

CORAM : MANGESH S. PATIL, J.
DATE : 19.07.2018

ORAL JUDGMENT :

In this Writ Petition preferred under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioners are seeking to quash a proceeding initiated by the respondent no.2 herein under Section 12 of the Protection of Women from Domestic violence Act, 2005 (hereinafter the D.V. Act) pending before the Judicial Magistrate First Class, Ahmednagar bearing Criminal M.A. No. 404 of 2014.

2. The respondent no.2 has filed the said proceeding *inter alia* alleging that she was married to the son of petitioner nos. 1 and 2 on 14.05.2011. The petitioner no. 2 is the brother of her husband, the petitioner no.4 is the wife of the petitioner no.3 and the petitioner nos. 5

and 6 are the married sisters of her husband. It was an inter-caste marriage. After the marriage she started cohabiting with her husband in a bungalow owned by the petitioner no.1 at Ahmednagar. However, since inception the petitioners were against the marriage. They used to quarrel with her and her husband. They were insisting her to divorce him. She also narrated several incidents which had occurred on 20.05.2011 and in August-2011 wherein she was allegedly slapped by the petitioner no. 2 and the petitioner nos. 5 and 6 has subjected her to physical and mental torture. She was also beaten by the petitioner nos. 1 and 2. She has then alleged that since 10.07.2011 she along with her husband migrated to Aurangabad and even at that time the petitioners were insisting her to bring various domestic articles for setting up the house. Whenever she used to go to the petitioners to their house at Ahmednagar on every week and during festivities they were creating obstructions in the smooth relations between the couple. They were insisting her to bring silver utensils and in spite of all such mental harassment she held patience.

3. She then alleged that her husband had acquired couple of plots and office premises at Aurangabad but the petitioners were pressurizing her husband to transfer those in their names and on that count there used to be a dispute between them and the petitioners. She then alleged that even after the child was born, the harassment continued.

4. On the day of Dussehra dated 13.10.2013 when she along with her husband had gone to the petitioners house at Ahmednagar, on the very next day they started quarreling with her, abused her and driven her out of their house along with her kid. She went to her parents however, her husband tendered apology and requested her to come back for cohabitation. Accordingly, when she went to the house of the petitioner on the next day she was not allowed to enter into the house and on the contrary they tried to snatch away her son. The petitioner no.1 also told her husband to divorce her if he wanted to maintain relations with the petitioners or else to leave the house. It is then alleged that even the petitioners did not allow her to go with her husband to Aurangabad on that day i.e. 14.10.2013 and she had to lodge a complaint with Kotwali Police Station, Ahmednagar. It is then averred that on the same day i.e. 14.10.2013 her husband committed suicide by hanging himself at Aurangabad. The petitioners even did not allow her and her relations to even have a last look and were not allowed to attend the funeral.

5. It is then alleged that the petitioner no. 3 filed a complaint with the Aurangabad Police on 15.10.2013 alleging that she had abetted suicide of her husband. While she was making attempts to secure bail, all the domestic articles including an automobike and gold ornaments belonging to her were taken away from her house in Aurangabad. It is also alleged that on 09.01.2014 the petitioner no. 3 also sent her

message including a photograph of her husband hanging, only with a view to disturb her psychologically and harass her mentally. Similar messages were subsequently transmitted to her by the petitioner no.3. It is then alleged that she also filed a complaint against the petitioners for the offence punishable under Section 498-A etc. of I.P.C.

6. The petitioners have ancestral agricultural land and she and her son have a right to have a share in it. However, the petitioners are bent upon to dispose of the properties depriving them of their legitimate rights. The petitioner nos. 1 and 3 are practising advocates earning handsome income. They also earn from agricultural lands but have not provided for their maintenance. Thus she claimed various reliefs under Sections 17, 18, 19, 20, and 22 of the D.V. Act and also claimed interim maintenance under Section 23 of that Act.

7. Being aggrieved by lodging of such a proceeding the petitioners are before this Court.

8. The learned advocate for the petitioners at the out set submits that the proceeding under Section 12 is not at all maintainable. The respondent no. 2 was never residing with them. She is not an 'aggrieved person' within the meaning of Section 2(a) of the D.V. Act. There is no 'domestic relationship' between the petitioners and her as is required by Section 2(f) of the Act. She was residing with her husband at Aurangabad whereas the petitioner nos. 1 to 4 are residing at

Ahmednagar and petitioner nos. 5 and 6 have long been married and staying with their husband at Barshi and Thane. Since she has never resided in the 'shared household' as defined under Section 2(s) of the D.V. Act, she is not entitled to maintain any petition under Section 12 of that Act. In support of his submissions he placed reliance in the decisions in the case of **S.R. Batra vs. Smt. Taruna Batra; AIR 2007 SC 1118 (1)**, **Hima Chugh v. Pritam Ashok Sadaphule and Ors.; 2013 CRI. L.J. 2182**, and **Smt. Meenakshi Jatav and others v. Dr. Seema Sehar and others; 2013 CRI. L.J. 3164**.

9. The learned advocate further submits that even otherwise there are no specific allegations against each of the petitioners. Only omnibus and vague averments have been made. The complaint has been lodged with an ulterior motive to rope in all the family members, since she was implicated for abetting suicide of her husband. As laid down in the case of **Preeti Gupta and Anr. v. State of Jharkhand and Anr; AIR 2010 Supreme Court 3363**, such a proceeding initiated to wreak vengeance is liable to be quashed.

10. The learned advocate also urges by referring to the full bench decision of this Court in case of **Nandkishor Pralhad Vyawahare v. Sau. Mangala W/o Pratap Bansar; (2018) 3 Mah LJ 913** that a proceeding initiated under Section 12 of the D.V. Act can be quashed by invoking the powers under Section 482 of the Code of Criminal

Procedure.

11. The learned advocate also submits that all the allegations pertain to years 2011 and 2012 whereas the complaint has been filed belatedly in the year 2014 and by virtue of Section 468 of the Code of Criminal Procedure, the complaint being beyond the limitation could not have been entertained and is liable to be dismissed on that count alone. In support of his such submission he placed reliance on the decision of Supreme Court in the case of **Inderjit Singh Grewal v. State of Punjab and Another; (2011) 12 SCC 588.**

12. The learned A.P.P requests to decide the application on its own merits.

13. The learned advocate for the respondent nos. 2 and 3 submits that since the petitioners are seeking to quash the proceeding, one has to bear in mind the principles laid down by the Supreme Court in the case of **State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604.** He would submit that at this juncture it is only to be seen as to if the allegations in the complaint *prima facie* demonstrate that the respondent no.2 was subjected to domestic violence. He would advert my attention to the definition of 'Domestic Violence' as contained in Section 3 and would point out that the definition is vast and all pervasive. It takes into account physical as well as mental abuse as also economical and emotional abuse. The allegations in the complaint clearly demonstrate

that the case of the respondent no.2 falls in these categories. Thus *prima facie* the complaint does make out necessary ingredients which enables her to seek various remedies by filing a proceeding under Section 12 of the D.V. Act.

14. The learned advocate would further submit that the petitioners and the deceased were members of the one family when her marriage had taken place. It has been specifically averred in the petition that initially they had stayed together in the same household. It is only later on that the couple had migrated to Aurangabad and still it has been averred that they were visiting the house of the petitioner no.1 at Ahmednagar every week and even on festivals. Therefore, at this juncture this much of material is sufficient to demonstrate that she was having domestic relationship with the petitioners and had faced domestic violence.

15. He would further point out that there has been no delay and no ulterior motive on the part of the respondent no.2 to initiate the proceeding. He would point out that even before her husband committed suicide at Aurangabad, on the same day in the morning she had lodged a written complaint with the police making allegations that the petitioners were not allowing her to go with her husband. She has also alleged the kind of harassment she was subjected to. Since, as alleged in the complaint, the harassment had been persistent right from

the date of marriage till the death of her husband and even thereafter, the question of limitation would not arise. The petitioner no.1 is the father-in-law, petitioner no. 2 is the mother-in-law, petitioner no. 3 is the brother-in-law and the latter has even texted her messages apparently to harass her mentally and the petitioner no. 4 being his wife staying in the same household, the complaint is maintainable against them all. He also places reliance on the decision of the Supreme Court in the case of **Krishna Bhattacharjee v. Sarathi Choudhury and Another; (2016) 2 SCC 705** and submits that being a continuing offence, it cannot be said that the complaint is barred by limitation under Section 468 of the Code of Criminal Procedure.

16. I have carefully gone through the papers and the decisions cited by the learned advocates. In the case of **Bhajanlal (supra)** the parameters have been laid down which should be taken into account for quashing of the F.I.R. / a criminal proceeding. In my considered view those would be the guiding factors which need to be borne in mind even in the matter in hand, since the petitioners are seeking to quash a proceeding under Section 12 of the Act which has almost all the drappings of a criminal case and is governed by the provisions of Code of Criminal Procedure for various purposes by virtue of Section 28 of that Act. That being so, it would be apposite to reiterate the principles laid down in the case of **Bhajanlal (supra)** which reads thus:

“108] *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

1] *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

2] *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.*

3] *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of*

the same do not disclose the commission of any offence and make out a case against the accused.

4] *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.*

5] *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6] *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7] *Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

17. Applying these principles to the facts in hand, by no stretch of imagination can it be said that the impugned complaint does not

contain necessary concomitants for seeking different reliefs under the D.V. Act. Though the learned advocate for the petitioners has laid emphasis on the fact that at all places the respondent no. 2 has referred to the petitioners by a collective noun, the sum and substance as can be gathered therefrom clearly indicates the manner in which the petitioners have indulged in domestic violence. Therefore it cannot be said that the allegations are not clear enough to discern ingredients which would constitute domestic violence as defined under Section 3 of the Act. The allegations clearly demonstrate that she was *prima facie* subjected to verbal abuse, physical abuse, mental abuse and economic abuse.

18. It is being alleged that she has filed the complaint to wreak vengeance merely because she was implicated for abetting suicide of her husband. However the complaint filed by her with Kotwali Police Station on 14.10.2013 (Exhibit- R-3), incidentally on which date unfortunately her husband committed suicide, she had specifically alleged that the petitioner nos. 1 to 3 were harassing her since the date of her marriage. They had beaten her and had sent her back to her parents. She had specifically alleged that her husband had promised her that she would not be harassed and they would stay together at Aurangabad but still the petitioners harassed her. More importantly, she had specifically alleged that on 13.10.2013 when she along with her husband had come to the house of the petitioners, the petitioner nos. 1 to 3 had abused her in filthy language. Even her husband had

threatened her and she was driven out of the house of the petitioners. She went back to her parents but did not lodge any complaint hoping for the better. She then alleged that in the afternoon her husband came to her and tendered an apology. On the next day i.e. 14.10.2013 when she along with her husband started for going to Aurangabad the petitioner nos. 1 and 3 did not allow her to accompany her husband and instead she was beaten and she was asked not to go to Aurangabad. In view of such stand of the petitioners even her husband did not take her along. It is apparent that unfortunately, it seems that after coming to Aurangabad her husband committed suicide. If such was the state of affairs, when the alleged domestic violence had continued even till the date when her husband committed suicide and there is sufficient material to *prima facie* corroborate the allegations, that in my considered view is sufficient to conclude that the impugned complaint has not been lodged with any vengeance and even cannot be said to be an afterthought. The allegations do not seem to be improbable.

19. There are also allegations that the respondent no. 2 and her relatives were not allowed to attend the funeral also and on the contrary, it is alleged that subsequently even the petitioner no. 3 had texted her some messages which would *prima facie* demonstrate that those were intended to emotionally and psychologically disturb her. In my considered view, the present case does not fall in any of the categories laid down in the case of **Bhajanlal (supra)**.

20. As regards the legal aspects are concerned, having considered the aforementioned facts and circumstances it can easily be discerned that the respondent no. 2 was subjected to domestic violence, the violence had started soon after the marriage in the year 2011 and had lasted not only till the date her husband committed suicide but even thereafter. It has been alleged that initially they were staying in the same household which belongs to the petitioner no. 1 at Ahmednagar and it is only in the year 2013 that the couple had migrated to Aurangabad and still had continued to visit the household weekly and even on the day of festivals. It can easily be said that *prima facie* the respondent no. 1 is an aggrieved person within the meaning of Section 2(a) of the Act who was having domestic relationship with the petitioners as contemplated under Section 2(f) of that Act and was sharing the same household as contemplated under Section 2(s) of the Act.

21. There cannot be two opinion about the principles laid down in the case of **S.R. Batra (supra)** and other cases cited by the learned advocate for the petitioners. However, the fact situation in the matter in hand, as demonstrated herein-above *prima facie* shows that the petitioners are not entitled to seek any benefit from these decisions. On the contrary, if one refers to the decision in the case of **Krishna Bhattacharjee (supra)**, the case of the respondent no. 2 is duly governed by the observations made therein.

22. Though as laid down in the case of **Inderjit Singh Grewal (supra)**, the provisions of Section 468 of the Code of Criminal Procedure are applicable even in respect of a proceeding instituted under Section 12 of the Act, since, going by the allegations, it is a case of continuing offence as defined under Section 472 of the Code of Criminal Procedure, when, as is observed herein-above, the domestic violence had continued even till the year 2014, the complaint which is filed in the year 2014 itself cannot be said to be barred by Section 468 of the Code of Criminal Procedure. In this respect the respondent no. 2 is entitled to seek benefit from the decision in the case of **Krishna Bhattacharjee (supra)**.

23. However, though the complaint as against the petitioner nos. 1 to 4 is maintainable and there are no sufficient and cogent reasons to quash it as against them, the case of the petitioner nos. 5 and 6 stands on a different footing. Even according to the respondent no. 2 they are married sisters of her husband who are staying with their husband at Barshi District Solapur and Thane respectively since long before her marriage. Merely because they have been named in the complaint one cannot comprehend any specific role or part played by them in subjecting her to domestic violence. Bearing in mind the usual tendency to rope as may family members as possible, as is noticed in the case of **Preeti Gupta and Anr. v. State of Jharkhand and Anr; AIR 2010 Supreme Court 3363**, in my considered view the petitioner nos. 5

and 6 would unnecessarily be put to harassment if they are made to face the complaint having not played any crucial and exclusive role in subjecting the respondent no. 2 to domestic violence. Therefore to their extent the complaint deserves to be quashed and set aside.

24. The Writ Petition is partly allowed. The complaint filed by the respondent no. 2 under Section 12 of the Domestic Violence Act bearing Criminal M.A. No. 404 of 2014 is quashed and set aside as against the petitioner nos. 5 and 6. The writ petition is dismissed to the extent of the petitioner nos. 1 to 4.

25. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)