

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

CRIMINAL WRIT PETITION NO.1279 OF 2017

1. Baban Trimbak Foke,
Age 62 years, Occu. Agril.,
2. Kalyan Trimbak Foke,
Age 41 years, Occu. Agril.,
3. Sau. Nirmala Baban Foke,
Age 55 years, Occu. Household,
4. Sau. Vandana Kalyan Foke,
Age 38 years, Occu. Household,

All R/o Warud Kazi,
Tq. & Dist. Aurangabad.
5. Jankabai Babasaheb Chintamani,
Age 50 years, Occu. Household,
R/o Chintamani Adgaon, Near Adul,
Tq. & Dist. Aurangabad.
6. Sindhubai Nanasaheb Patil,
Age 48 years, Occu. Household,
R/o Chhatrapatinagar, Plot No.1,
Shivnandan Apartment, Flat No.6,
Near Gurukrupa Emporium, Behind
Reliance Mall, Garkheda, Aurangabad.
7. Heerabai Kashinath Zalte,
Age 45 years, Occu. Household,
R/o Jaitapur, A/p. Gajanan Colony,
Kannad, Tq. Kannad, Dist. Aurangabad.
8. Shobhabai Karbhari Shirsath,
Age 42 years, Occu. Household,
R/o Jalgaon (Ghat), Tq. Kannad,
Dist. Aurangabad.

9. Sarabai Kadu-Patil Nawalwade,
Age 39 years, Occu. Household,
R/o Bazar Sawangi, Tq. Khultabad,
Dist. Aurangabad. ... **Petitioners**

Versus

1. The State of Maharashtra,
Through Public Prosecutor,
High Court Bench at Aurangabad.
2. Sau. Chhya Raosaheb Foke,
Age 45 years, Occu. Household,
R/o A/p. Gangapur, Tq. Gangapur,
Dist. Aurangabad.
3. Kakasaheb Trimbak Foke,
Age 40 years, Occu. Agril.,
4. Sau. Sunita Kakasaheb Foke,
Age 38 years, Occu. Household,

Both R/o Warud Kazi,
Tq. & Dist. Aurangabad. ... **Respondents**

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Mr. M.V.Ghatge, Advocate for Petitioner Nos.1, 2 and 5 to 9.

Ms. V.S.Chaudhari, APP for Respondent-State.

Mr. D.G.Nagode, Advocate for Respondent No.2.

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CORAM : MANGESH S. PATIL, J.

RESERVED ON : 14.06.2018

PRONOUNCED ON : 12.07.2018

JUDGMENT :-

Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. The husband, brother-in-laws and sister-in-laws of Respondent No.2 have approached this Court under Article 226 and 227 of the Constitution of India seeking to quash and set aside Criminal Miscellaneous Application No.631 of 2013 pending before the learned Judicial Magistrate First Class, Aurangabad moved by her under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the D.V.Act).

3. Respondent No.2 has filed the application alleging that her husband was the brother of the petitioner Nos.1, 2 and 5 to 9 and respondent No.3. She was residing with her husband in their house at Warud Kazi, Taluka and District Aurangabad, after the marriage was solemnized on 22.05.1987. Unfortunately her husband died on 05.09.1993. Since thereafter the petitioners started physically and mentally torturing her and opposed her staying in their house. She therefore went back to her parental home. They never provided for her maintenance nor were they allowing her to cohabit with

them in the shared house. When she demanded her share in the joint family properties even that was refused. She had to file Regular Civil Suit No.386 of 2008 for partition. In spite of her having been allotted 10/45th share in the joint family properties, she was not given her share. They started insisting her to relinquish it for a consideration of Rs.20,00,000/- and were compelling her to sign on a blank stamp paper. When she refused, Petitioner Nos.1 to 4 abused her and her father in filthy language whereas Petitioner Nos.5 to 9 pressurized her to sign on the blank paper and also beaten her. They all threatened them of dire consequences if she returned to claim her share. They also threatened to dispose of it. She also alleged that there are two house properties consisting of 8 rooms of the family and she should be given accommodation in the shared household. Thus, she claimed a right to occupy a shared household under Section 17, sought protection under Section 18, monetary relief under Section 20 and compensation under Section 22 of the D.V.Act.

4. Simultaneously, Respondent No.2 also filed application seeking interim maintenance and the learned Magistrate by the order dated 01.12.2015 directed Respondent Nos.1 to 3 therein that is the Petitioner Nos.1 and 2 and their one more brother Kakasaheb who is Respondent No.3 in the Petition to pay her Rs.1500/- per month till the decision of the application. Hence, this Writ Petition.

5. The learned advocate for the petitioners would submit that Respondent No.2 does not have any ground to proceed against them under the provisions of the D.V.Act. In fact she is armed with a decree for partition which has been challenged by them in the District Court. She started demanding an amount of Rs.1,00,00,000/- (Rupees One Crore only) to relinquish her share and when they refused the offer she has resorted to this proceeding under Section 12 of the D.V.Act.

6. The learned advocate further submitted by relying upon the decision of the single Judge of this Court in

the case of **Arun Ramkrishna Pawade and others Vs. Smt. Nilima Prakash Pawade and others ; 2015 ALL MR (Cri.) 1735** that the Petitioner Nos.3 and 4 who are the wives of Petitioner Nos.1 and 2 and Petitioner Nos.5 to 9 who are the sisters of the husband of Respondent No.2, by virtue of the definition of 'Respondent' contained in Section 2(q) of the D.V.Act, a proceeding under Section 12 of the Act is not maintainable and the proceeding initiated by Respondent No.2 is liable to be quashed and set aside at least against these female respondents.

7. The learned advocate for Respondent No.2 vehemently submitted that the proceeding has been instituted by Respondent No.2 under Section 12 of the D.V.Act in the facts and circumstances averred by her in the application filed before the Magistrate. Since the application is still pending, Respondent No.2 deserves to be extended sufficient opportunity to lead evidence to substantiate her allegations and the remedy cannot be stalled at the threshold by quashing and setting aside

the proceeding out-rightly.

8. The learned advocate would further submit that no exception can be carved out to the female respondents. There are specific allegations even against them and being a pure question of fact, they cannot be discharged by quashing and setting aside the proceeding.

9. It is necessary to emphasize that the petitioners have straight away approached this Court under the writ jurisdiction seeking quashment of the proceeding initiated by Respondent No.2 under Section 12 of the D.V.Act. However it would suffice to observe that a bare perusal of the application submitted by her would clearly show that she has specifically quoted the instances which constitute the physical abuse, verbal and emotional abuse as also economic abuse within the meaning of the respective phrases as defined under Section 3 of the D.V.Act. Since all these questions are pure questions of fact, no inference can be deduced at this juncture when the proceeding before the Magistrate is still at a nascent stage. An opportunity ought to be

extended to her to substantiate these allegations. For this reason alone, no adverse comment can be made in respect of the conclusion drawn by the learned Magistrate in taking cognizance of the complaint and passing the interim order for maintenance, atleast on facts.

10. Now coming to the questions of law, the whole emphasis of the learned advocate for the petitioner has been on the definition of word ' respondent' contained in Section 2(q) of the D.V.Act and the interpretation sought to be placed upon it by him to the effect that a respondent in any proceeding initiated under the D.V.Act could be only an adult male and no proceeding would lie against a female member of the family.

11. In order to decide the point in controversy it is necessary to refer to the various definitions contained in the D.V.Act coupled with the relevant provisions which make it abundantly clear that the legislature never intended that a proceeding under the Act could be initiated only against the male persons and not females.

Section 2(a) defines 'aggrieved person' as :

2(a) :- “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent ;

Section 2(f) defines 'domestic relationship' to men
as :

2(f) :- “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family ;

Word 'respondent' has been defined under Section
2(q) and reads thus :

2(q) :- “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

The word 'shared household' has been defined under Section 2(s) and reads as under :

2(a) :- “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

Section 3 then lays down definition of domestic violence to include physical abuse, sexual abuse, verbal and emotional abuse and economic abuse which terms have also been defined in Explanation I of that Section as under :

Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii)

(iii) “verbal and emotional abuse” includes—

- (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
- (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes—

- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and

- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. ”

12. A bare reading of these definitions would clearly indicate that it cannot be said that the legislature was intending to exclude a female of a family being a respondent in a proceeding initiated under the D.V.Act. Perusal of Section 2(q) wherein the word 'respondent' has been defined does not specifically exclude a female member being a respondent. On the contrary the wording of the proviso makes it abundantly clear that an aggrieved wife may also file a complaint against a relative of the husband. Since the noun 'relative' has not been qualified by making it applicable to a specific gender, it cannot be said that the legislature was intending to save the females of the family from a proceeding under the D.V.Act.

13. In this regard it is pertinent to note that an aggrieved person who is entitled to make a complaint regarding domestic violence by initiating a proceeding

under Section 12 is entitled to make a grievance pertaining to physical abuse, sexual abuse, verbal and emotional abuse as well as economic abuse. One need not repeat the definitions which have been reproduced earlier. Hypothetically, if a mother-in-law or an unmarried sister, or for that matter even a married sister of the husband who have been staying together or otherwise in the same shared household, if they indulge in any of these abuses, one cannot comprehend as to why they should be excluded from being respondents in a proceeding launched by the wife under Section 12 of the Act. There could be a physical abuse at the hands of the mother-in-law as well as the sister-in-laws. Similarly there could be verbal as well as emotional abuse as also economic abuse. Depriving a widowed woman from sharing a family household or from having her share in the joint family property or pressurizing her to relinquish her share could be some such instances where one can easily comprehend the role which could be easily attributable to even the female members of the family.

14. This is what the case in matter in hand is about. It has been specifically alleged in the complaint filed by Respondent No.2 that even these female folks have been pressurizing her to relinquish her right in the joint family property and have also physically assaulted her. Whether the allegations would ultimately be proved during the course of trial is a matter which is beyond the purview of the present inquiry. The fact remains that respondent No.2 has levelled allegations which are sufficient to constitute physical abuse, verbal and emotional abuse as also economic abuse within the meaning of the phrases as defined under Section 3 of the D.V.Act.

15. Considering the afore mentioned aspects, the submission of the learned advocate that no female member of a family could be a respondent in a proceeding under D.V.Act is far too general statement which does not stand the scrutiny of law. With respect, I find vindicated by the observations of the Supreme Court in the case of **Sandhya Majoj Wankhade Vs.**

Manoj Bhimrao Wankhade & ors. ; 2011 ALL MR (Cri) 975 (S.C.) and particularly the observations in paragraph Nos.11 to 14 which read thus :

“11. Having carefully considered the submissions made on behalf of the respective parties, we are unable to sustain the decisions, both of the learned Sessions Judge as also the High Court, in relation to the interpretation of the expression "respondent" in [Section 2\(q\)](#) of the Domestic Violence Act, 2005. For the sake of reference, [Section 2\(q\)](#) of the above-said Act is extracted herein below :-

"2(q). "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."

12. From the above definition it would be apparent that although [Section 2\(q\)](#) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

13. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only.

14. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005."

16. In view of such an interpretation, the submission of the learned advocate that the petitioner Nos.3 to 9 who are female members of the family could not have been arrayed as respondents by Respondent No.2 is not legally tenable. The decision in the case of *Arun Ramkrishna Pawade* (supra) cited by the learned advocate for the petitioners stands on a different footing. The brother Judge has distinguished the ratio in the case of *Sandhya Manoj Wankhade* on facts and more

importantly it does not lay down any ratio that no proceeding under the D.V.Act could be initiated against a female member of a family at all. Therefore the petitioner is not entitled to seek any benefit from this decision.

17. In the circumstances, the Writ Petition does not hold merit and is liable to be dismissed.

18. The Writ Petition is dismissed.

19. The rule is discharged.

(MANGESH S. PATIL, J.)

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