

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

WRIT PETITION NO.1793 OF 2014

1. Mr. Prabhakar Mohite
Age : 67 years, Occu.: Retired
 2. Mrs. Vijaya Prabhakar Mohite
Age : 59 years, Occu.: Home maker
Residing at : Flat No.202, Maruti Niewas
A-wing, Plot No.37-B, Section 6,
New Panvel (East), 410206
- ...Petitioners**

V/s.

1. The State of Maharashtra
 2. Mr. Archana Nilesh Shinde
Age : 31 years, Occu.: Service
Residing at : C/o. Mr. Yuvraj O. Birari
Flat No.102, A-wing, Shivrushti
Apartment, Sector 8/B, CBD, Belapur
Navi Mumbai – 400 614
- ...Respondents**

Mr.A.y. Sakhare, Senior Counsel a/w Mr.Yashwant Dhangare,
Mr.Harshwardhan Borse i/b Joel John Carlos for the Petitioners.

Ms.S.D. Shinde, APP for the Respondent-State.

Ms.Anita Wakchaure i/b Mr.V.R. Shinde for Respondent No.2.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 05th SEPTEMBER 2018

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard by consent of the parties.

The present Writ Petition is filed by the petitioner No.1 who is a retired person and senior citizen whereas the petitioner No.2, who is the wife of petitioner No.1. The petitioners are aggrieved by the issuance of process against them in the proceedings under the Protection of Woman from Domestic Violence Act, 2005 initiated by the respondent No.2, who is wife of petitioner No.2's nephew. The petitioner No.2 is the aunt of the husband of the respondent No.2. The said proceedings came to be initiated by respondent No.2 against her husband as well as her father in law and mother in law and also the present petitioners.

2. The marriage between the parties namely the respondent No.2 and the nephew of the petitioner No.2 was solemnized on 07.07.2007. The respondent No.2 approached the Judicial Magistrate, First Class, Panvel, by preferring an application bearing No. DV/MA/122/2013 on 15.03.2013 highlighting the marital discord between the parties namely herself and her husband as well as her in laws. The complaint proceeded to the allege harassment on account of the demand of dowry and also referred to certain instances demonstrative of irretrievable breaking down of the relationship on account of the misunderstanding between the parties.

The specific case of the respondent No.2 as stated in the

application is that after solemnization of the marriage she came to reside at Room No.502, B-Wing, Sector-9, Khanda Colony, Taluka-Panvel, District-Raigad. It further proceeds to state that the present petitioner's who are the aunt and uncle of her husband were also residing in Khanda Colony and used to often visit her matrimonial home. This is how in the application she ropes petitioner Nos. 1 and 2 and it proceeds to state that the two petitioners used to instigate the husband of the respondent No.2 and it was thereafter in collusion, she was harassed by all the respondents namely the husband, her in laws as well as the present petitioners. The applicant has categorically made a statement, in the application that on every Saturday and Sunday the present petitioners used to visit her matrimonial house and at that time the husband of the complainant used to be at home and at the instigation of the present petitioners along with her own in laws, she was subjected to harassment. She therefore sought protection orders from the Court by filing the application and invoking provisions of the Domestic Violence Act, 2005, on 15-03-2013. It is on the basis of this application, the summons have been issued to the present petitioners and being aggrieved by the said action, they have filed the present Writ Petition.

3. The learned senior counsel Shri.Sakhare, appearing for the petitioners would submit that the marriage between the parties namely the respondent No.2 and the nephew of the petitioner No.2 was solemnized on 07.07.2007. The learned senior counsel do not dispute that the present writ petitioners are resident of New Panvel. However he would submit that they are residing at Maruti Niwas, Plot No.37B, Section 6, New Panvel, which is an address distinct and away from the residence of the respondent No.2 and her family and that the petitioners never shared a joint household with the respondent No.2. Shri.Sakhare would further submit that on account of the matrimonial discord of the respondent No.2 with her husband she left her matrimonial house on 13.07.2011. On 14.07.2011 she lodged a complaint under Section 498A against her husband and her in laws. Mr.Sakhare would submit that the said complaint conspicuously did not name the present petitioners and there is no allegation that she was subjected to harassment at the instance of these petitioners. However the said complaint is only against her husband and in laws. He also submits that in the month of August 2011 the husband of the respondent No.2 instituted proceedings for divorce. The said proceedings are pending for considerable long period of time and during this intervening period that is on 15.03.2013, the present application has been instituted

by the respondent No.2 seeking protection orders by instituting the proceedings before the Judicial Magistrate, First Class, Panvel.

Narrating the chronology of events the learned senior counsel would submit that by no stretch of imagination the present petitioners are connected with the martial discord. He would also submit that the filing of the present application alleging Domestic Violence on 15.03.2013 is an after thought and when at the first instance she left the matrimonial home on account of the incident that took place on 13.07.2011, pursuant to which immediately on the next date she lodged the complaint against her husband and her in laws i.e. her father-in-law and mother-in-law, where she did not level any aspersions against the present petitioners. The learned Senior Counsel would thus submit that without making allegations of any specific nature and merely by making bald allegation that the petitioners were harassing the respondent No.2 and they used to often visit her matrimonial house and instigate the husband and her in laws to harass her is the only allegation and therefore, the learned Magistrate has committed a gross error in construing it as a domestic violence at the instance of the present petitioners and has fallen into a grave error in issuing the process to the petitioners. He would invite attention of this Court to the submission which were advanced before the Judicial Magistrate First Class for recalling of

the order of issuances of process against them and also to the order passed by the Magistrate on 24.03.2014.

Per contra the learned Counsel for the Respondent vehemently opposed the present Writ Petition and she would submit that it is not permissible for the petitioner to invoke the powers under Section 482 of the Code of Criminal Procedure since these powers are not available qua the provisions of the Domestic Violence Act, 2005. She would rely upon the Division Bench of this Court in Case of *Sukumar Pawanlal Gandhi vs. Bhakti Sushil Gandhi*, wherein it has been held that there is no power conferred or vested in this Court to exercise its jurisdiction under Section 482 of the Criminal Procedure Code as against the proceeding instituted and falling within the purview of Domestic Violence Act, 2005. On merit also her specific submission is that the petitioner had subjected the respondent No.2 to abuse and therefore she had filed application before the Judicial Magistrate, First Class, Panvel, seeking protection orders.

4. Perusal of the order dated 24.03.2014 would reveal that the Magistrate has considered the application filed by the present petitioners seeking recall of the process issued against them. Interestingly the learned Magistrate himself distinguish the proceedings under the Domestic Violence Act from that instituted

under Section 498A of the Indian Penal Code and concludes that parameters of harassment under Section 498A of the Code are distinct from the one prescribed under the Domestic Violence Act. Based on this principle he concludes that just because there are no allegations leveled against the applicants in a complaint under Section 498A, would not absolve them of the allegations under the Domestic Violence Act and the Magistrate was not convinced with the grounds raised in the application for dropping the proceedings against them. Resultantly, he dismissed the said application, and being aggrieved by the said dismissal the present Writ petition is filed.

5. Perusal of the said impugned order would reveal that, the Magistrate has drawn distinction between proceedings instituted under Section 498A of IPC and the proceedings under the Domestic Violence Act. He observes that the harassment that is intended to be covered under Section 498A is distinct from the one contemplated under the provisions of the Domestic Violence Act 2005. Section 498A contemplates harassment of a woman by subjecting her to cruelty by the husband or his relatives and such a conduct is made punishable under the said provision. The term cruelty is explained in the said Section to be any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause

grave injury or danger to life, limb or health (whether mental or physical) or harassment of the women where such harassment is with view to coerce her to bring any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The parameters attracting the said provisions are succinctly distinct from the one contemplated under the provisions of the Domestic Violence Act which aims to provide for effective protection of right of women guaranteed under the constitution and, who are victims of violence of any kind occurring within the family. The said enactment assigns a definite meaning to the term “Domestic Violence” and Section 3 of the said enactment set out the instances which would constitute Domestic Violence. Perusal of the said enactment would reveal that it is wider in scope and ambit and it intends to bring within under sphere an “aggrieved person”, who is a women who is, or has been living in Domestic relationship with the respondent and who alleges to have been subjected to any act of Domestic Violence by the respondent. The enactment also contains definition of the term Domestic Relationship under section 2(f) which reads thus :-

“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.”

The Domestic Violence Act of 2005 therefore deals with violence within a Domestic Relationship. The said enactment also assigns a definite meaning to the term “shared household” in Section 2(s) and it intends to convey a meaning that it is household where the aggrieved person at any stage has lived in a domestic relationship with the respondent and this would cover joint household which is 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 or interest and it also includes a household belonging to the joint family of which the respondent is a member.

6. Perusal of the definition clauses implied in the 'Domestic Violence, Act, 2005' and in particular Section 3 of the Act of 2005, would make it amply clear that the enactment is intended to protect the women from violence or any sort of harassment to which she is subjected to by any person with whom she shares a “Domestic relationship” in a “Shared household”. Perusal of the complaint which is filed by the applicant under the provisions of the Domestic

Violence Act would reveal that the present petitioners were not residing with the respondent No.2 or nor it is her case that they at any point of time they resided or shared the same matrimonial house where she was staying with her husband and her in laws.

7. Perusal of the complaint makes a very interesting reading and the allegation is that every Saturday and Sunday the petitioners used to visit the matrimonial house of the respondent No.2 and would then start instigating the husband and in laws of the respondent No.2 and it was after their visit and instigation, she was subjected to harassment or cruelty and it is alleged that for the purposes of preventing this she had approached the Court seeking orders of protection. The complaint reflects an exaggerated version and the application is conspicuously absent as regards the manner in which the petitioners subjected the respondent No.2. to harassment or cruelty or any abuse which would fall within the preview of the provisions of the Domestic Violence Act, 2005.

The Hon'ble Apex Court in the Judgment of ***Kailash Chandra Agrawal and Another V/s. State of Uttar Pradesh***¹ has made an observation that the tendency which has been developed for roping in all the relationship of the in-laws by the wife in the matter of dowry death or such type of similar offences, in an over enthusiasm

¹ (2014-16-SCC-551)

and anxiety to seek conviction needs to be depreciated. In the latest judgment delivered by the Hon'ble Apex Court in case of ***K.Subb Rao and Others V/s. State of Telangana***² their lordships specifically observed that the relatives of the husband should not be roped in on the basis of vague allegation unless specific instances of their involvement are set out.

8. Applying the aforesaid principle as laid down by the Hon'ble Apex Court to the present application filed before the Magistrate, the allegations can be only described as vague and general in nature without specific role being attributable to the petitioners. Moreover, since the undisputed fact is that the present petitioners had not at any point of time lived in a shared household, the domestic relationship between the petitioner and respondent No.2 is not established and therefore the allegation about the domestic violence against the petitioners is not sustainable.

Once it is noted that the application which is filed is not maintainable against the present petition under the relevant provisions of the Domestic Violence Act, 2005, then the relief sought by the petitioners to quash and set aside the proceedings by invoking the jurisdiction of this Court under Section 482 of the Code of Criminal procedure has to be looked into. The parameters of

² Criminal Appeal No.1045 of 2018 decided on 21.08.2018

exercise of the powers confer on this Court under Section 482 being settled, that in order to prevent to abuse of process of any Court and to secure the ends of justice, this power can be exercised, then there is no doubt this is one case where this power needs be exercised. In terms of the decision of the Hon'ble Apex Court in case of *State of Haryana vs. Bhajanlal*³, the power under Section 482 can be exercised by this Court, where the allegations made in the FIR or 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.

9. The learned counsel for the respondent has placed reliance on the judgment of this Court in Writ Petition No.2473 of 2016 in case of *Sukumar Pawanlal Gandhi V/s. Bhakti Sushil Gandhi*⁴ wherein the Division Bench of this Court by a judgment dated 27th October 2017 has held that there is no power conferred or vested in this Court to exercise jurisdiction 482 of the Criminal Procedure Code in the proceedings that are instituted and falling within the purview of the Domestic Violence Act, 2005. The said argument of the learned counsel for the respondent is completely misplaced in light of the latest full Bench Judgment of this Court delivered on 03.05.2018 in the case of *Nandkishor Pralhad Vyawahare V/s Sau.Mangala*

3 AIR 1992 SC 604.

4 WP No.2473 of 2016 Decided on 27.10.2016

*w/o Pratap Bansar*⁵. Perusal of the said judgment of the Full Bench would reveal that the judgment of Sukumar Gandhi was also referred to and in view of the divergence of the opinion in case of *Mangesh Sawant V/s. Minal Bhosale*⁶ and *Naryan Thool and Ors. V/s. Mala Chandan Wani*⁷ and the judgment in case of Sukumar Gandhi, the reference was necessitated and the full Bench formulated specific question as to whether or not the High Court can exercise its power under Section 482 of the Code of Criminal Procedure, in respect of the proceedings under the Protection of Women From Domestic Violence Act, 2005.

The full bench of this Court on examining the scheme of the Domestic Violence Act, 2005, and by referring upon the judgment of the Hon'ble Apex Court in the case of Kunapareddy has arrived at a conclusion that the inherent power of this Court can be invoked for quashing the proceedings under the Domestic Violence Act and the Hon'ble full Bench observed thus :-

“53. This would mean that generally the provisions of Cr.P.C. would be applicable, to all proceedings taken under Sections 12 to 23 and also in respect of the offence under Section 31 of the D. V. Act, subject to the exceptions provided for in the Act including

5 Criminal WP No.578 of 2011

6 (2012) ALL MR (Cri.) 1113

7 Criminal WP No.773 of 2014

the one under sub-section (2) of Section 28. It would then follow that it is not the nature of the proceeding that would be determinative of the general applicability of Cr.P.C. to the proceedings referred to in Section 28(1) of the D. V. Act, but the intention of the Parliament as expressed by plain and clear language of the Section, which would have it's last word. We have already held that Section 28 of the D. V. Act announces clearly and without any ambiguity the intention of the Parliament to apply the criminal procedure generally subject to the exceptions given under the Act. So, the inherent power of the High Court under Section 482 of Cr. P.C., subject to the self-imposed restrictions including the factor of availability of equally efficacious alternate remedy under Section 29 of the D. V. Act, would be available for redressal of the grievances of the party arising from the orders passed in proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and also in respect of the offence under Section 31 of the D. V. Act.”

58. *A plain reading of Section 482 of Cr.P.C. which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent*

power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only respondent-man but also the aggrieved person-woman may feel like approaching the High Court to give effect to any order or to prevent abuse of the process of Court or secure ends of justice. This would show that this power is capable of being used by either of the parties and not just by the respondent seeking quashing of the proceedings under Section 12 of the D.V. Act. If this power is removed from Section 28 of the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.”

10. In light of the authoritative pronouncements of the full Bench, the judgment in case of Sukumar Gandhi (supra) no longer holds the field and therefore objection raised by the learned counsel for the respondent No.2 about the maintainability of the present petition on the ground that the power under Section 482 cannot be exercised in respect of the proceedings under the Domestic Violence Act can not be sustained.

In view of the aforesaid reasoning and the findings recorded above and on examination of the entire matter, the present Criminal

Writ Petition deserves to be allowed. It is accordingly, allowed in terms of prayer clause (b) and (c) and the order dated 24.03.2014 passed by the Judicial Magistrate, First Class, Panvel, in Application No.DV/MA/122/13, against the petitioners is quashed and set aside. No order as to costs.

(SMT. BHARATI H. DANGRE, J.)