

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2355 OF 2017

Mr. Karan Ramniklal Waya & Ors. ... Petitioners

V/s.

The State of Maharashtra & Anr. ... Respondents

.....

Mr. M.K. Dubey I/b Veenu Dubey for the Petitioner.

Mr. F.R. Shaikh APP, for the Respondent/State.

Mr. Shyam Marwadi a/w Prerna Gnadhi I/b M/s. Manilal Kher Ambalal & co. for Respondent No.2.

CORAM : BHARATI H. DANGRE, J.

DATE : 30th AUGUST, 2018

P.C.:

. The petition is filed by the Petitioner who is husband of Respondent No.2 and the Petitioner Nos. 2 and 3 are the in-laws of Respondent No.2. By way of present Writ Petition, the Petitioners have prayed for quashing and setting aside the order passed by the 17th Court of Metropolitan Magistrate at Borivali on 14.06.2016 in Domestic Violence Case instituted by Respondent No.2. Perusal of the application filed before the 17th Court of Metropolitan Magistrate at Borivali on which the impugned order has been passed would reveal that this is an application filed under Section 12 of the Protection of Womens under Domestic Violence Act, 2005 and in the said application, the Petitioner No.1 is impleaded

as Respondent No.1. Whereas, the remaining Petitioners are impleaded as Respondent Nos. 2 and 3. Considering the submissions leveled and in light of the specific pleading in the said application, the Metropolitan Magistrate had passed following order:

“ Heard. Perused application. Ruling cited by Applicant i.e. Bharati Naik V/s. Ravi Halarnkar Cr. W.P. No. 18264 of 2009 Dt. 17.02.2010 and Cr. W.P. No. 542/10 Maruti V. Gangubai. Issue Notice to all Respondents. R/O:- 06.08.16”

2 The Petitioners take an objection to the said order. The crux of the arguments of learned Counsel for the Petitioners is that the marriage between the Petitioner and Respondent No.2 was solemnized on 14.05.2007 and thereafter, they started residing at Bahrain. It is specific submission of the learned Counsel for the Petitioners that till the year 2011, the Respondent No.2 frequently visited in India, but when she returned to India on 06.01.2011, she did not go back to the Bahrain to co-habit with the Petitioners. All Petitioners continue to stay in Bahrain. It is then pointed out that from 06.01.2011 for the first time, a notice was sent through the Counsel making certain allegations, but the learned Counsel submits that it did not contain any allegations of the harassment and the said notice was responded by the Petitioner No.1. It is then submitted that the divorce proceedings were instituted in the month of August 2014 and it was only on 04.05.2015, the first information report came to be lodged by the Respondent No.2 under Section 498A of Indian Penal Code against the Petitioner. The

learned Counsel would submit that they were required to seek anticipatory bail which was granted by this Court and in a petition filed for quashing of the FIR has directed to Police Authority not to file charge sheet. The learned Counsel would submit that the allegations leveled are vague and after though, after gap of almost 5 years after the Respondent No.2 returned to India and in the backdrop and in such circumstance, he would submit that the filing of Domestic Violence proceeding would amount to abuse of process of this court and therefore he assailed the order, by notice is issued.

3 The learned Counsel for the Petitioner would submit that after the notice was issued, the matter has progressed further and now fixed for evidence and the last date of hearing was 01.08.2018 and since the Court was vacant, the matter could not be heard. He would further submit that the matter is ready for being proceeded and the evidence on affidavit can be filed by the parties shortly.

In such circumstances, the plea that is raised in the present petition can always be put forth before the learned Metropolitan Magistrate which is ceased of the matter and it is open for the Petitioners to oppose the application under Section 12 of the Protection of Womens under Domestic Violence Act, 2005 by whatever legal and possible defence being taken and which is sought to be canvased in this Writ Petition.

4 The learned Counsel for the Petitioner in his backdrop would submit that he would respond to the said notice and raise the defence in the matter before

Metropolitan Magistrate, but only apprehension expressed is to seek presence of the Petitioner Nos. 2 and 3 in the said proceeding before the Metropolitan Magistrate.

5 At this stage, the learned Counsel for the Respondent No.2 graciously submits that they will not insist on presence of the Petitioner Nos. 2 and 3 and he would submit that there was never insistence on their part to seek their personal presence. In view of this statement being made and seen the discord which is tried by way of domestic violence petition is between the Petitioner No.1 and Respondent No.2, when the presence of Petitioner Nos.2 and 3 would not be warranted, the parties are ready to proceed with the matter. The learned Counsel for the Respondent submits that he would file affidavit of evidence at the earliest and parties would cooperate for its expeditious disposal.

6 In view of aforesaid observation, nothing survives in the present Writ Petition and Writ Petition is disposed off.

7 Needless to state that this Court has not expressed any opinion on the rival claim of the parties and it is open for the parties to stake their claim before the Metropolitan Magistrate.

(BHARATI H. DANGRE, J.)