

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1054 of 2015

Avinash Madhav Deshpande
and others

.. Applicants

Versus

Madhuri Satish Deshpande
and others

.. Respondents

...

Mr. Prosper D'Souza i/b Rajendra Anbhule for the applicants.
Mrs.M.H. Mhatre, APP for the State.

CORAM: SMT. BHARATI H.DANGRE, J.

DATED : 10th SEPTEMBER, 2018

P.C:-

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

The applicants have approached this Court praying for a relief of quashing and setting aside the issuance of the process by the Judicial Magistrate First Class, Vashi in Miscellaneous Application No.176 of 2015 instituted by the respondent no.2. The two applicants are senior citizens and are

the in-laws of the respondent no.1. They have invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for quashing of the proceedings initiated against them on a complaint filed under Section 12 of the Domestic Violence Act, 2005 by the respondent no.2. The specific ground set out in the application is that the respondent no.2 was married to the son of the applicants i.e. Satish on 19th April 2008. The applicants admit that there was some marital discord between their son and the respondent no.1 and on occasions, attempt was made to settle their discord. However, they were unsuccessful in doing so. On the basis of the said discord, the proceedings under the Domestic Violence Act came to be instituted by respondent no.1 against her husband by filing Miscellaneous Criminal Application No.176 of 2015. However, in the said application, apart from her husband and the son of the applicant, the applicants were also impleaded as parties and by the impugned order, the Judicial Magistrate First Class has issued notice to the present applicants. The crux of the application is that they did not share a household with the respondent no.2 and even perusal of the entire complaint

would reveal that there is no allegation of any domestic violence as sought to be covered under the Domestic Violence Act, 2005, as set out in the said application, and on this ground, it is prayed to this Court that the said proceedings initiated against the present applicants be quashed and set aside as against them.

The respondent no.1 was duly served, none appears for the respondent. Perusal of the order-sheet reveals that the respondent no.1 was duly served and Advocate Vilas Vichare had filed power for respondent in 2016 itself. On 27th June 2016, the respondent no.1 again remained absent and even when the matter was listed before this Court on 30th August 2018, the respondent was absent.

2 With the assistance of the learned counsel for the applicants, I have carefully perused the application which is annexed as Exhibit-A to the application. The application which is titled as “Application under Section 12 of the Protection of Women from Domestic Violence Act, 2005”, seeks relief under Sections 17, 18, 19, 20, 21, 22 and 23 of the said Act. Perusal

of the application would reveal that it states that the applicant was married to Shri Satish Deshpande on 19th April 2008 and after the marriage, she came to stay at Ghansoli, Navi Mumbai along with her husband and delivered a male child on 20th January 2009. The application gives the instances of the marital discord between the applicant and her husband and barring a statement which is made in paragraph no.15 in the said application. There is no reference of the applicants or their role in the matrimonial life of the applicant. The statement reads thus :

“The applicant now got confirmed that the respondent no.1 is having relationship with some third women and all they are staying at Goa, with the blessing of respondent no.2 and 3 also. All the respondents made conspiracy against the applicant and her child and they all are having motive intention to drive away them from the matrimonial house by forcing the applicant to take mutual consent divorce by torturing, harassing mentally, physically as well as financially. And this is also the cause of action to file this application to the Hon'ble Court to seek justice to one poor innocent women and her child.

The statement in respect of the cause of action as made in paragraph no.20, the application does not make any specific allegations against the present applicants. Though the

said application proceeds to make a narration of the harassment and the ill-habits of the husband, as far as the present applicants are concerned, except the allegation that they were conspiring with the husband, in the said ill-treatment, no specific allegation has been made out.

3 By now, in view of the latest judgment of the Hon'ble Apex Court in *K. Subba Rao Vs. The State of Telangana*¹ it is settled position of law that the relatives of the husband cannot be roped in the proceedings initiated under Section 498A or the proceedings under the Domestic Violence Act, merely on the basis of vague or omnibus allegation. The allegations, if are required and called upon to be inquired into, must be specific and instances must be given to as to substantiate the said allegation. Making of mere bald allegation and roping in the in-laws has been deprecated by the Hon'ble Apex Court in the aforesaid judgment and the observation reads as follows:

“A perusal of the charge sheet and the supplementary charge sheet discloses the fact that the Appellants are

¹ Cr.Appeal 1045/18 dt.21/8/2018

not the immediate family members of the third Respondent/husband. They are the maternal uncles of the third Respondent. Except the bald statement that they supported the third Respondent who was harassing the second Respondent for dowry and that they conspired with the third Respondent for taking away his child to the U.S.A., nothing else indicating their involvement in the crime was mentioned. The Appellants approached the High Court when the investigation was pending. The charge sheet and the supplementary charge sheet were filed after disposal of the case by the High Court.

Criminal proceedings are not normally interdicted by us at the interlocutory stage unless there is an abuse of process of a Court. This Court, at the same time, does not hesitate to interfere to secure the ends of justice. See *State of Haryana Vs. Bhajan Lal* 1992 Supp.(1) SCC

335. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. See *Kans Raj vs. State of Punjab & Ors* (2000) 5 SCC 207 and *Kailash Chandra Agrawal and Anr Vs. State of Uttar Pradesh & ors* (2014) 16 SCC.

4 In light of the settled position of law and the fact that the application preferred by the applicants do not contain any allegation as against the present applicants under the provisions of Domestic Violence Ac, the issuance of the notice to the present applicants is totally unsustainable and it is liable to be quashed and set aside in exercise of powers under Section 482 of the Code of Criminal Procedure. This Court is competent enough to invoke and apply its power under Section 482 of the Code of Criminal Procedure to prevent an abuse of process of law and in my considered opinion, issuance of process against the present applicants in proceedings instituted by the respondent no.2 under the provisions of Domestic Violence Act, 2005 is nothing but an abuse of process of the Court, and therefore, interference of this Court is warranted in order to prevent such a misuse and abuse of law and its process. In such circumstances, the application deserved to be allowed and is so allowed in terms of prayer clause (b).

Manali
Prasanna
Tilak

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(SMT. BHARATI H. DANGRE, J.)

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