

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

CRIMINAL WRIT PETITION NO.4451 OF 2016

Smt.Vatshla Krishna Davne & Anr. .. Petitioners

Vs.

Mrs.Samiksha Sunil Davane & Ors. .. Respondents

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Mr.Balwant V.Salunkhe, Advocate for the Petitioners.

Tahera Qureshi, Advocate for Respondents.

Mr.A.R. Patil, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 10, 2018.

P.C. :

The petitioners are aggrieved by proceedings initiated by respondent no.1 by preferring application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "The DV Act", for short).

2 Respondent No.1 is the daughter-in-law of the petitioners. The marriage between respondent no.1 and petitioner's son was solemnized on 9th May, 2004.

3 The brief allegations made in the complaint filed under DV Act are as follows:

The marriage between respondent no.1 and the son of petitioners was solemnized on 9th May, 2004 at Kolhapur. The father of the complainant had given ornaments in the marriage to respondent no.1. The husband of respondent no.1 was continuously suspecting her character and has caused harassment to her. The petitioners had also caused harassment to her. Respondent No.1 also filed application for interim relief under Section 23 of the DV Act. Interim maintenance was granted to respondent no.1. The acts committed by opponents amounts to domestic violence.

4 The case of the petitioners is that they have been falsely implicated in this proceedings. They have never resided in the share household with respondent no.1. The proceedings under the DV Act were initiated belatedly after a period of about eleven years. It is submitted that the son of the petitioner was working at Mumbai. Petitioners were residing at Kolhapur. After the marriage, Petitioner's son joined his duty at Mumbai and since then respondents were residing at Mumbai. It is further submitted that since the petitioner had never stayed with petitioner no.1 at any point of time, the question of harassment to respondent no.1 does not arise. There are no averments in the

complaint that respondent no.1 had resided at Mumbai with petitioner as well as her husband. There was no domestic relationship between the respondent no.1 and the petitioners. The fact that the complaint was filed belatedly itself indicate that the version of the complainant is concocted and the allegations are made with the view to drag the petitioners in the said proceedings. There was no other complaint of harassment against the petitioners at any point of time. It is further submitted that continuation of the proceedings against the petitioner is abuse of process of law, and, therefore, the proceedings be quashed.

5 Learned counsel for the respondents, however, submitted that in the application under Section 12 of the DV Act, requisite averments are made which constitute domestic violence. Trial Court has issued notice on the basis of the averments in the complaint and respondent no1 should be given an opportunity to adduce evidence before the trial Court to prove the factum of domestic violence. It is submitted that after the marriage was solemnised, respondent no.1 had stayed with the petitioners and hence the submissions advanced by the petitioners that they have not stayed with respondent no.1 is devoid of merits. It is submitted that the allegations in the

complaint constitute domestic violence and by invoking the powers under Section 482 of Cr.P.C. the proceedings shall not be quashed. It is further submitted that respondent no.1 had also lodged NC complaint against her husband in the year 2011. The cumulative effect of the averments made in the application preferred by respondent no.1 under the DV Act clearly establishes the domestic violence under DV Act. *Prima facie* case is made out against the petitioners. It is, thus, submitted that the petition be dismissed.

6 I have gone through the documents on record. It is pertinent to note that the complaint under the DV Act preferred in 2016. The marriage between respondent no.1 and the son of petitioner no.1 is solemnized on 9th May, 2004. No complaint is lodged against the petitioners. The petitioners are residing at Kolhapur. The marriage was solemnized at Kolhapur and, thereafter, apparently, respondent no.1 joined her husband and she was allegedly residing with him at Mumbai. The allegations made against the petitioners are vague in nature. It is also pertinent to note that the NC complaint was lodged in 2011 against the husband of respondent no.1. Application mainly proceeds on the basis that the husband of respondent no.1 was

constantly harassing her and was suspecting her character. Taking into consideration the nature of allegations made against petitioners. I find that there is no reason to continue the proceedings against the petitioner. In the circumstances, in exercise of powers under Section 482 of Cr.P.C., the proceedings initiated by respondent no.1 against the petitioners are required to be set aside.

:: ORDER ::

- (i) Criminal Writ Petition No.4451 of 2016, is allowed;
- (ii) The impugned proceedings initiated by respondent no.1 before the Court of Chief Judicial Magistrate, Thane bearing Case No.40/DV/2016, is quashed and set aside.
- (iii) Writ Petition No.4451 of 2016, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)