

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 418/2018

(GAJANAN JAIRAMSA ANDHARE **VERSUS** HEMLATA SHRIRAM KAMBLE & ANOTHER)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.M. Ekre, counsel for the petitioner.
Mrs. Shamsi Haidar, A.P.P. for the R-2.

CORAM : MANISH PITALE, J.

DATE : JUNE 27, 2018.

By this writ petition, the petitioner has challenged the order dated 07.03.2018 passed by the Court of Judicial Magistrate First class and Civil Judge (Junior Division), Pulgaon, rejecting an application filed by the petitioner for dismissal of the complaint filed by the respondent no.1 under the provisions of the Protection of Women from Domestic Violence Act, 2005.

The respondent no.1 filed an application under Section 12 of the aforesaid Act against the petitioner seeking order against the petitioner under Section 18 of the said Act, as also a direction to pay an amount of Rs.10,000/- per month towards rent under Section 19 of the said Act and to pay an amount of Rs.40,000/- per month for maintenance under Section 20 of the said Act, in addition to a direction to pay Rs.20,00,000/- (Rupees Twenty Lakhs) to her for mental and physical harassment caused to her by the petitioner. In this application, the respondent no.1 claimed that she and the petitioner had lived together like husband and wife and that thereafter, the petitioner had given up his responsibilities towards her.

In the said application filed by the respondent no.1, the petitioner herein had filed an application for dismissal of the complaint/application of the respondent no.1, on the ground that there was no domestic relationship between the parties. It was claimed that there was only an official relationship as he was Commander of Home Guards, where for some periods, the respondent no.1 had worked as Home Guard. According to him, on his retirement on 10.08.2010, the official relationship had also come to an end and that therefore, the application/complaint filed by the respondent no.1 under the provisions of the said Act deserved to be rejected at the threshold.

The Court below has rejected the said application after considering the definition of 'domestic relationship' under Section 2(f) of the said Act. The Court has found that the application is premature and that the contention of the petitioner could not be accepted in the absence of an opportunity to the parties to lead evidence.

Mr. M.M. Ekre, learned counsel appearing on behalf of the petitioner, has submitted that a bare perusal of the application filed by the respondent no.1 under Section 12 of the aforesaid Act shows that the pleadings are vague and there are no specific dates or events stated therein, to show that there was any domestic relationship between the parties, as contemplated under Section 2(f) of the said Act. It was contended that the respondent no.1 had claimed about such relationship pertaining to the year 2011 and the application was filed by the respondent no.1 under the provisions of the said Act on 21.04.2017, thereby demonstrating that it was barred by limitation. The learned counsel placed reliance on

Sections 468 to 473 of the Code of Criminal Procedure (Cr.P.C.) to support the aforesaid submission, on the ground that under Section 31 of the aforesaid Act, a breach of protection order provides for punishment only for a term extended up to one year. The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of *D.Velusamy Versus D. Patchaimmal* [(2010) 10 SCC 469].

Although served, none appears on behalf of the respondent no.1 (the contesting respondent). Heard Mrs. Shamsi Haidar, learned Additional Public Prosecutor appearing for the State.

In the present case, there are two fold contentions raised on behalf of the petitioner seeking dismissal of the application filed by the respondent no.1 under the provisions of the said Act before the Court below. The first contention is that even a bare reading of the application filed by the respondent no.1 shows that there is no material to show that there was any domestic relationship between the petitioner and the respondent no.1 and therefore, the application was not maintainable and that it deserved to be dismissed at the threshold. It was claimed that the pleadings were absolutely vague and that the respondent no.1 could not have invoked provisions of the said Act on the basis of the allegations made in the application. A perusal of the application filed by the respondent no.1 under Section 12 of the said Act shows that she has stated about the manner in which she and the petitioner came in touch with each other and how the relationship between the two developed. In paragraph 15 of the application, the applicant has indeed stated about how the two of them started living together as

if they were married or they were in a relationship like that of husband and wife. There are other pleadings also in the application pertaining to the relationship between the parties, on the basis of which, the prayers have been made under the provisions of the said Act. In the face of such statements made in the application, it cannot be said that there is no material for the respondent no.1 to pursue the application filed by her, on the basis that there is nothing to show about domestic relationship between the parties as defined under Section 2(f) of the said Act. It is certainly not a situation where the application of the respondent no.1 can be dismissed at the threshold.

In the case of *D.Velusamy Versus D. Patchaimmal (Supra)*, while deciding on the question as to what can be the relationship in the nature of marriage, the Hon'ble Supreme Court has held as follows:-

“31. In our opinion a “relationship in the nature of marriage” is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In our opinion a “relationship in the nature of marriage” under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a “shared household” as defined in Section 2(s) of the Act. Merely spending weekends together of a one night stand would not make it a “domestic relationship”.

In order to determine whether the aforesaid features are present in a relationship or not, it would be necessary for the parties to lead evidence. In the present case, the pleadings in the application filed by the respondent no.1 before the Court below are such that it cannot be said that there is not even an iota of material to indicate that there was domestic relationship between the petitioner and the respondent no.1, as defined under Section 2(f) of the said Act. There is no doubt that the petitioner would be entitled to show by leading evidence that no such relationship existed. But, the contention of the petitioner that the application deserves to be dismissed at the threshold, cannot be accepted in the facts and circumstances of the present case. In fact, in the impugned order, the Court below has specifically held that the application for dismissal filed by the petitioner was premature and that the contention of the petitioner cannot be accepted without giving an opportunity to the parties to lead their evidence. Therefore, there is no error committed by the Court below while dismissing the application of the petitioner by the impugned order. The opportunity to lead evidence for the petitioner to deny the domestic relationship still exists and he can avail of the same before the Court below.

The second contention of the petitioner pertains to limitation, on the ground that when Section 31 of the aforesaid Act provides for punishment of only one year, under Section 468 of the Cr.P.C., the period of limitation in the present case was one year from 2011. According to the learned counsel, since the application under the provisions of the said Act was filed by the respondent no.1 on 21.04.2017, it was hopelessly barred by limitation. The said contention raised on behalf of the petitioner is without any substance because the averments made on behalf of the respondent no.1 in the entire application need to be considered for determining as to whether she had approached the Court within the period of limitation. The grievance raised by the respondent no.1 not only pertains to mental and physical harassment, but, also deprivation of economic and financial support, to which according to her, she was entitled. A perusal of the definition of domestic violence under Section 3 of the said Act shows that it not only includes physical abuse, sexual abuse, verbal and emotional abuse but also economic abuse. In fact, Section 3(iv) pertains to economic abuse and it includes deprivation of all or any economic or financial resources to which the respondent is entitled. The said provision read with the prayers made in the application by the respondent no.1 would show that the cause of action is necessarily of continuing nature. Therefore, the learned counsel for the petitioner is not justified in picking just one pleading in the application of the respondent no.1 referring to the year 2011 and then claiming that the entire application was barred by limitation. Therefore, there is no substance in the objection raised on behalf of the petitioner on the ground of limitation, in the facts and circumstances of the present case.

In the light of the above, there is no merit in the contentions raised on behalf of the petitioner and accordingly, this writ petition is dismissed.

JUDGE

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