

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application No. 681 of 2014
[Ku Sheela Yadnyawalkya Borkar & another Vs. Sau. Meerabai Balakdas Dhanvijay]

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

Court's or Judge's orders

Mr. U. K. Bisen, Adv., for the Applicants.
 Ms. Wanjari, Adv., holding for Mr. M. Anilkumar, Adv., for respondent.

- - - -
CORAM : NITIN W. SAMBRE, J.

DATE : 14th August, 2018

01. This application is by the original non-applicant no.4 – Ku. Sheela and non-applicant no.5 – Ku. Zhama who are the sisters of Sau. Shailaja, non-applicant no.1 in Misc. Criminal Application No. 68 of 2013 filed under the provisions of Section 12 of the Protection of Women from Domestic Violence Act, 2005 [for short “the D.V. Act”].

02. The learned counsel for the applicant Shri Bisen would invite attention of this Court to the pleadings in Misc. Criminal Application No. 68 of 2013 wherein the applicant – Meerabai has sought certain relief under the

provisions of D.V. Act. Shri Bisen, learned counsel for the Applicant, read out a few passing references in the pleadings in the D.V. Complaint and urged that neither there are any specific attributions against the present applicants [original non-applicant nos. 4 and 5] nor any relief is claimed against the Applicants in the application filed under the D.V. Act, being Misc. Criminal Application No. 68 of 2013 pending on the file of learned Chief Judicial Magistrate. He then relied upon provisions of Section 2 [f] of the D.V. Act so as to substantiate his contentions that Applicants are not in domestic relation with the respondents [original applicant]. According to him, in absence of pleadings against these applicants, even if what has been stated in the application under the D.V. Act is taken to be true at its face value, still the applicants cannot be proceeded against as no relief can be granted against Applicants. He submits that the proceedings need to be quashed and set aside to the extent of the present applicants.

03. Per contra, Ms. Wanjari, learned Counsel holding for Shri M. Anilkumar, Adv., for respondent, would strenuously urge that the specific allegations are made in paras 16 and 18 against the present applicants, as the present applicants have caused interference in the lawful use of water. She would urge that there are specific allegations of abetment and the proceedings under the D. V. Act are very much maintainable. According to her, the present application is liable to be

dismissed.

04. Considered rival submissions.

05. The relation of the present applicants with that of original complainant is through non-applicant no.1 - Shailaja. Shailaja happened to be the daughter-in-law of the original complainant - Meerabai and there are specific allegations against Shailaja of violating the provisions of D.V. Act. The relation of the present applicants with Shailaja is found to be a basis for initiating the proceedings against the present applicants under the provisions of D.V. Act. If the allegations against the present applicants are appreciated from the contents of the complaint, what is noticed is, the present applicants are alleged to have caused interference in the drawing of the water from the common source by the original complainant. It is further claimed that these applicants have instigated the non-applicant no.1 - Shailaja and as such Shailaja has practised domestic violence on the complainant - Meerabai. It is to be noted that if the provisions of Section 2 [f] of the D.V. Act are appreciated, there is hardly any material on record to infer that the original complainant - Meerabai is in domestic relation with the present applicants. Apart from above, there are hardly any pleadings which contemplate attracting the provisions of the D.V. Act against the present applicant.

06. In the wake of above, even if what has been stated in the complaint under the D.V. Act is taken to be true at its face value, the applicants cannot be prosecuted for want of appropriate pleadings and prayer made in the complaint.

07. As such, the application needs to be allowed. The D.V. Act proceedings initiated against the applicants are hereby quashed. As a consequence, the impugned order dated 5th June, 2014 is also quashed. The application stands allowed in above terms.

Judge

|hedau|