

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.218 OF 2019

1. Mr. Mohsin Iqbal Sayyed,
Age about 31 years, Occ – Nil,
2. Mrs. Zakiya Iqbal Sayyed,
Age about 50 years, Occ- Household
3. Mr. Iqbal Anees Sayyed,
Age about 57 years, Occ- Driver,
Nos.1 to 3 All residing at
Mahalaxmi Vihar, First Floor,
Plot No.4, Baker's Spot, Hole Vasti,
Kad Nagar, Undri, Pune.
4. Mr. Mateen Haroon Ahmed Shaikh,
Age about 37 years, Occ- Household,
5. Mrs. Anika alias Dolly Mateen Shaikh,
Sr.No.4 & 5 Both R/at
Ganga Erika Society, First Floor,
Flat No.103, Kad Nagar, Hole Vasti,
Undri Pune.

... **PETITIONERS**

Versus

1. The State of Maharashtra,
(P.I., Beed Police Station, Beed)
2. Mrs. Salma Mohsin Sayyed,
Age- about 29 years, Occ- Household,
R/at Shehanshah Nagar,
Opp. Al-Huda School, Beed.

... **RESPONDENTS**

...
Advocate for Petitioners : Mr. Rajendrakumar N. Sanghavi
A.P.P for Respondent/State: Mr. A.P. Basarkar
Advocate for Respondent No.2: Mr. Sayyed Tauseef Yaseen
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CORAM : MANGESH S. PATIL, J.

DATE : 09.10.2019

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent-State and learned advocate Mr. Sayyed Tauseef Yaseen waives service for the respondent no.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are seeking quashment of a proceeding initiated by the respondent no.2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the D.V. Act), seeking several reliefs under Section 18, 19, 20, 21 and 22 of that Act. The petitioner no.1 is her husband, petitioner nos.2 and 3 are his parents, petitioner no.5 is his sister and petitioner no.4 is her husband.

3. After hearing the arguments when this Court expressed its disinclination to grant any relief to petitioner nos.1 to 3, their learned advocate, on instructions, seeks leave to withdraw the Writ Petition to their extent.

4. The learned advocate for the petitioners submits that the petitioner nos.4 and 5 have not been residing in the same household and have

been residing separately. There exists no domestic relation between them and the respondent no.2. Even in the title clause of her complaint filed under Section 12 of the D.V. Act she has mentioned their address which shows that they are not residing with the petitioner nos.1 to 3. The allegations against the petitioner nos.4 and 5 are vague and omnibus. There are no precise allegations which would demonstrate that they had subjected her to any domestic violence either directly or indirectly. The respondent no.2 had filed a proceeding under Section 498-A of the I.P.C. and this is yet another attempt to harass the petitioner nos. 4 and 5.

5. Per contra, the learned advocate for the respondent no.2 submits that going by the allegations in the complaint, the conduct of the petitioner nos.4 and 5 may constitute abetment under Section 18 of the D.V. Act. There are specific and precise allegations in the complaint attributing role to them. Merely because they are residing separately, that does not *ipso facto* lead to any conclusion. They have been residing in the nearby locality and being the close relatives have been visiting their parental home of and on and must have had sufficient opportunity to cause domestic violence. Since the respondent no.2 has come out with some allegations, it would be appropriate to allow her to substantiate those by leading evidence. The complaint cannot be shut at the threshold.

6. The learned advocate also places reliance on the decisions of this Court in the case of **Vinayak Ashok Martal & Ors. V/s. The State of Maharashtra Anr; 2015 SCC OnLine Bom 8120, “XXX” and Ors. V/s. “ABC” and Anr. in Criminal Writ Petition No. 647 of 2016** (decided on **02.03.2016**) and submits that in a similar fact situation this Court has refused to quash the proceeding.

7. I have carefully perused the complaint and the papers.

8. The petitioner nos.4 and 5 are invoking the powers of this Court under Section 482 of the Cr.P.C. and are praying for quashment of the proceeding initiated by the respondent no.2 under Section 12 of the D.V. Act. It is therefore imperative to ascertain the allegations in the complaint. The complaint *inter alia* reads that in the first paragraph she has narrated about having entered in to marriage on 01.09.2007. In the subsequent four paragraphs she alleged that for the first four months the petitioner nos.1 to 3 maintained her properly but thereafter started ill-treating her physically and mentally. In that process she alleges that petitioner nos.4 and 5 were instigating the other petitioners and were insulting her. In paragraph 7 she alleges that on 16.07.2017 petitioner nos.1 to 4 came to the house of her parents and asked as to why she had left the matrimonial home without

informing them and then obtained her signature on blank papers and abused and assaulted her father. In paragraph 8 she alleges that on 05.08.2017 all the petitioners took her to an advocate from Pune and obtained her signatures under the pretext that those were pertaining to some plot. She then alleges in paragraph no.9 that on 12.08.2017 the petitioner nos.1 to 4 took her to parental home with her daughter and left her there but took back the daughter. Her signatures were obtained on some Talaknama and thus all the petitioners subjected her to physical and mental harassment. She alleges that her signatures were obtained on Talaknama under the pretext that the writing was in respect of some transaction relating to plot. She thereafter alleges about having filed a police complaint for the offence punishable under Section 498-A and 420 of the I.P.C. In the last paragraphs she has summarised the allegations.

9. *Prima facie*, the allegation against petitioner nos.4 and 5 are vague and omnibus. Admittedly, petitioner no.5 is the elder sister of the petitioner no.1. Petitioner no.4 is her husband and they have been residing elsewhere and not in the shared household. There is no allegation in the complaint about they ever having co-habited with respondent no.2 so as to constitute the matrimonial home as a shared household within the meaning of Section 2(s) of the D.V. Act. For the same reason, it also cannot be said that

there was any domestic relation between them within the meaning of Section 2(f). As a logical and legal corollary even they cannot be said to be the respondents within the meaning of Section 2(q).

10. Apart from the above state of affairs even the allegations are vague and omnibus *qua* the petitioner nos.4 and 5. Being the married sister of the petitioner no.1 and her husband, the petitioner nos.4 and 5 must have been residing separately and if that be so *prima facie* a proceeding under Section 12 would not be maintainable against them.

11. Though the observations have been made in connection with a proceeding initiated under Section 498-A against the husband and his relatives, the observations and the conclusions drawn in the case of **Arnesh Kumar V/s. State of Bihar and Anr.; AIR 2014 Supreme Court 2756, Preeti Gupta and Anr. V/s. State of Jharkhand and Anr.; (2010) 7 Supreme Court Cases 667 and Geeta Mehrotra and Anr. V/s. State of U.P. & Anr.; 2013 (AIR) Supreme Court 181** would be squarely applicable even in the proceeding initiated by a women under Section 12 of the D.V. Act. There is usual tendency to rope in as many as relatives as possible including the married sisters in law. Therefore applying the principles laid down in the case of **State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604**, the instant case would fall under various categories

laid down therein.

12. The decisions in the case of **Vinayak Ashok Martal** (supra) and “XXX” (Supra) have been rendered in the facts and circumstances of those cases and cannot operate as precedents in respect of the matter in hand. As is demonstrated herein-above, the petitioner nos.4 and 5 cannot be said to be holding any domestic relation with the respondent no.2. The complaint does not mention about she ever having shared household with them and therefore they cannot be said to be the respondents in the proceeding under Section 12. In the facts and circumstances it would be sheer abuse of the process of law if they are made to face such a proceeding.

13. The submission of the learned advocate for the respondent no.2 that since affidavits in lieu of examination in chief have been tendered before the lower Court the present Writ Petition may not be considered is not tenable. Mere filing of such affidavits in lieu of examination in chief would not dis-entitle the petitioner nos.4 and 5 from invoking the powers conferred upon this Court under Section 482 of the Cr.PC.

14. The learned advocate for the respondent no.2 further submits that the petitioner no.4 is also facing prosecution for the offence punishable under Section 498-A and 420 of the I.P.C. along with the rest of the petitioners

and this Court has refused to interfere in a proceeding instituted by them for its quashment. The learned advocate for the petitioners submits that the Writ Petition has been disposed of by this Court today itself granting liberty to the petitioners to prefer a revision before the Sessions Court under Section 397 of the Cr.P.C. and the Writ Petition has not been decided on merits.

15. In my considered view, the aforementioned aspects are not relevant when, independently, as is demonstrated herein-above, the present proceeding initiated by the respondent no.2 under Section 12 of the D.V. Act is a sheer abuse of the process of law vis-a-vis petitioner nos.4 and 5 are concerned.

16. The Writ Petition is allowed to the extent of petitioner nos.4 and 5. The proceeding initiated by the respondent no.2 under Section 12 of the D.V. Act against them is quashed and set aside.

17. The Writ Petition to the extent of petitioner nos.1 to 3 is disposed of as withdrawn. The rule is accordingly made absolute to the extent of petitioner nos.4 and 5.

[MANGESH S. PATIL, J.]