

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

CRIMINAL WRIT PETITION NO.794 OF 2019

Rani D/o Bhimraj Marathe,
Age- 23 years, Occu- Education,
R/o 582/ Chobhe Row-Housing Society,
Renuka nagar, Bolhegaon, Nagapur,
Tal & Dist-Ahmednagar.
Presently R/o House No. 15961,
Shikshak Nagar, Ranjangaon (Shenpunji)
Tal-Gangapur, Dist- Aurangabad.

... **PETITIONER**

Versus

Swati s/o Vivek Marathe,
Age 23 years, Occ. Household,
R/o Through Dilip Atmaram Akolkar
R/o Karanji, Tal – Pathardi,
Dist- Ahmednagar.

... **RESPONDENT**

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Advocate for Petitioner : Mr. Kasar Rajendra S.

Advocate for Respondent : Mr. D.B. Pokale h/f. Ms. Mohale Choudhari R.M.

...

CORAM : MANGESH S. PATIL, J.

DATE : 24.09.2019

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. D.B. Pokale h/f. Mohale Choudhari R.M. waives service for the respondent. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is sister in law of the respondent, seeking quashment of the proceeding initiated by the latter under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter the 'D.V' Act).

3. The learned advocate for the petitioner submits that the petitioner is an unmarried sister in law of the respondent. The couple had got separated barely within three months of marriage. The petitioner was studying in an Engineering College at a different place and was staying in the hostel and there could not have been any occasion for her, during the course of the academic year to co-habit with the respondent in the shared household much less to get an opportunity to indulge in domestic violence. The learned advocate would submit that the respondent had filed a police complaint for the offence punishable under Section 498-A of the I.P.C. soon after there was a severance in the matrimonial relation, by lodging the F.I.R. on 13.04.2018, wherein even the petitioner was made a co-accused. This Court in Criminal Application No. 420 of 2019 by the judgment and order dated 27.03.2019 quashed and set aside the prosecution as against the present petitioner. While that proceeding was pending the present application has been filed belatedly in the month of January-2019 with some additional allegations which donot

find place in the earlier F.I.R. The respondent had an opportunity to attribute allegations against the petitioner while lodging the F.I.R. For the first time now she has come out with some improvised version in paragraph 2 of the present application. Even those allegations are vague and omnibus and in all probabilities have been levelled to wreak vengeance. When this Court has quashed the proceeding under Section 498-A of the Cr.PC. as against the petitioner, even the present proceeding deserves to be quashed for the same reasons.

4. The learned advocate for the respondent submits that since the petitioner is the unmarried sister in law one can easily infer that she must have been sharing the household with the respondent and was in a domestic relation with her. It has been specifically alleged in the application that all the respondents therein i.e. including the present petitioner had threatened her of consequences. They used to abuse and keep her starving. The husband used to assault her at the instigation of the present petitioner and her mother. The petitioner and her mother also used to mentally torture her. These allegation clearly indicate that the petitioner along with other family members had subjected the respondent to domestic violence. There is a *prima facie* material and it would not be proper to quash the proceeding at the threshold.

5. I have carefully gone through the papers. The marriage of respondent was solemnised on 19.02.2018 and even according to her version she was driven out of the matrimonial house on 15.04.2018. It is thus quite clear that she had put in marital life for barely three months.

6. The important aspect that needs a specific reference is the fact that the respondent soon after she was allegedly driven out from the matrimonial home had filed F.I.R. *inter alia* for the offences punishable under Section 498-A of the Cr.PC. against the petitioner and other family members. Perusal of that F.I.R. would clearly show that except one isolated instance about the petitioner having taken part in subjecting the respondent to cruelty there were no other allegations. The Division Bench to which I was a party in Criminal Application No. 420 of 2019 has quashed and set aside the prosecution qua the petitioner holding that the allegations were bald, vague and omnibus and were made with an intention to wreak vengeance.

7. True it is that *per se* the decision of the Division Bench in that proceeding cannot be relied upon to allow this application.

8. However even on an independent scrutiny one cannot lose sight of the fact that if at all whatever is being alleged now in the present proceeding is clearly an improvisation. The respondent could have levelled

the very same allegations against the petitioner even in the F.I.R. That being not the case, it is indeed a material circumstance to be borne in mind while deciding the present application.

9. The allegations in the application qua the petitioner would reveal that those are quite omnibus and vague. It has been alleged that her husband used to assault her at the instigation of the petitioner and her mother and that they also used to mentally torture and tease her. As is noted earlier, the respondent had stayed in the matrimonial home barely for three months. If that fact is noted, being an unmarried sister in law though the petitioner must have been occupying the same shared household one cannot jump to the conclusion that she was also indulging in subjecting the respondent to domestic violence albeit the latter may have been ill-treated by the husband and may be by the parents in law.

10. Considering all the aforementioned aspects and taking note of the observations of the Supreme Court 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, the proceeding deserves to be quashed qua the petitioner. True it

is that these cases (supra) pertain to the F.I.R. registered under Section 498-A of the I.P.C. and not in respect of the proceeding under the D.V. Act However, in my considered view these decisions by implication would be applicable even in the matters of the present nature.

11. The Writ Petition is allowed. The Criminal Misc. Application No.09 of 2019 filed by the respondent under Section 12 of the Domestic Violence Act is quashed and set aside to the extent of the petitioner. The rule is accordingly made absolute.

[MANGESH S. PATIL, J.]