

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

CRIMINAL WRIT PETITION NO. 133 OF 2019

- 1) Narendra s/o Hari Ingle,
Age 28 years, Occ. Unemployed.
- 2) Surekha Hari Ingle, Age 50 years,
Occupation Service.
- 3) Hari s/o Kisan Ingle, Age 66 years,
Occupation Agriculture.

All r/o. Kurha, Tq. Muktainagar,
District Jalgaon.

- 4) Sanjay s/o Hari Ingle, Age 35
years, Occupation Service,
Junior Resident, Sukhsagar
Medical College & Hospital,
Jabalpur, Madhya Pradesh.
- 5) Archana Vinod Bhoi @ Archana
Hari Ingle, Age 30 years, Occ.
Service, Agriculture, Assistant
Yawal, Tq. Yawal, Dist. Jalgaon.
- 6) Kamlakar s/o Dashrath Naikwade,
Age 48 years, occ. Service,
Junior Clerk, R/o. Shirpur, Dist.
Dhule.
- 7) Bhagyashree Kamlakar Naikwade,
Age 44 years, Occ. Household,
R/o. Shripur, Dist. Dhule.
- 8) Rajendra s/o Dashrath Naikwade,
Age 40 years, Occup. Service,
Peon, R/o. Raul Daulatsinghji
Bahuuddeshiya Secondary and
Higher Secondary School, Dondaicha
District Dhule.

- 9) Ratnabai w/o Rajendra Naikwade,
Age 36 years, Occ. Household,
R/o. Dondaicha, Dist. Dhule. ... **Petitioners.**

VERSUS

- 1) Harsha Narendra Ingle, Age 28
years, occupation Household.
- 2) Chi. Vihan s/o Narendra Ingle,
Age 1 years 3 months, Occ. Nil.
Applicant No. 1 is the natural
guardian mother of applicant
No. 2.
Both r/o. C/o. Ishwar Tarachand
More, At Post Waghadi, Tq. Shirpur,
District Dhule. ... **Respondents.**

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Mr. L. V. Sangit, Advocate for the Petitioners.
Mr. Amit Salve, APP for the respondents.

CORAM : MANGESH S. PATIL, J.

DATE : 11/10/2019

JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. Learned advocate Mr. Salve waives service for the respondents. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are seeking quashment of proceeding instituted by respondent No. 1 under section 12 of the Protection of

Women from Domestic Violence Act, 2005 (hereafter referred as 'D.V. Act. '), by invoking the powers of this Court under section 482 of the Code of Criminal Procedure.

3. The respondent No. 1 filed a proceeding under section 12 of the D.V. Act inter alia alleging that the marriage between petitioner No. 1 and her was solemnized on 07.06.2015 and after the marriage she started cohabiting with him and the couple was begotten the respondent No. 2 out of that wedlock. The petitioners No. 2 and 3 are his parents. The petitioner No. 4 is his brother, petitioner No. 5 is his married sister, petitioners No. 6 and 8 are his maternal uncles and petitioners No. 7 and 9 are the wives of petitioners No. 6 and 8 respectively. The respondent No. 1 alleged that at the time of marriage she was deceived by the petitioners by saying that petitioner No. 1 was having a permanent government employment when he had none. After the marriage when she started cohabiting with the petitioners No. 1 to 3 and started questioning them as to why she was bluffed about such employment they started harassing her physically and mentally. She alleged that all the petitioners subjected her to physical and mental torture. They started suspecting her character. In spite of birth of respondent No. 2 there was no change in the attitude of the petitioners towards her. They started insisting her to bring money

from her parents. She was assaulted, abused, her gold ornaments were snatched and she was driven out of the matrimonial home on 23.04.2016. Thereafter her father made an attempt to bring about some settlement, but the petitioners did not budge. She had to approach the Women's Grievance Cell but the petitioners did not turn up. She alleged that since after she was driven out of the house the petitioners have not provided any thing for the maintenance of the respondents. She claimed various reliefs, under section 18, 19, 20 and 22 of the D.V. Act.

4. The learned advocate for the petitioners submits that though there is no dispute about the matrimonial relation, the complaint has been filed by the respondents under section 12 of the D.V. Act by making false and concocted accusations. She on her own had left the company of the petitioner No. 1 and has been residing at her parental home. The complaint has also been lodged belatedly only because it was lodged as a counter blast to a proceeding initiated by the petitioner No. 1 who has filed Hindu Marriage Petition seeking divorce filed on 18.11.2016. It is thereafter that the respondent No. 1 has filed number of proceedings. She filed a proceeding for restitution of conjugal rights and also filed a complaint under section 498A of the Indian Penal Code. In fact, that complaint has been quashed and set

aside by the Division Bench of this Court on 26.07.2018 to the extent of petitioners No. 4 to 9 herein. Therefore, it is nothing but misuse of the process of Court and the complaint is liable to be quashed.

5. The learned advocate for the petitioners also submits that the petitioner No. 4 who is the elder brother of petitioner No. 1 was taking medical education elsewhere and subsequently has been working as a Junior Resident in a Medical College at Jabalpur (Madhya Pradesh), since before the marriage was solemnized between petitioner No. 1 and the respondent No. 1. Similarly, the petitioner No. 5 is married sister and has been residing at her matrimonial home since before the marriage of petitioner No. 1. The petitioners No. 6 and 8 are maternal uncles of the petitioner no. 1 and have been residing at Shirpur Dist. Dhule and Dhondaicha District Dhule respectively whereas the matrimonial home of respondent No. 1 is at Kurha District Jalgaon. There are no allegations about the petitioners No. 4 to 9 having ever cohabited with the respondent No. 1 in a shared household so as to constitute any domestic relations between them. In the absence of which, even if the allegations in the complaint are taken to be true that would not constitute domestic violence to the extent of petitioners No. 4 to 9. Besides, the allegations against them are omnibus and vague. The case is duly covered by the decision in the case of **Preeti Gupta and**

Anr. V. State of Jharkhand and Anr; AIR 2010 Supreme Court 3363 and applying the principles in case of **State of Haryana Vs. Bhajanlal; AIR 1992 S.C. 604** the complaint filed by the respondent No. 2 under Section 12 of the D.V. Act is liable to be quashed and set aside.

6. Per contra, the learned advocate for the respondents submits that there are precise and specific allegations in the complaint against each of the petitioners. The allegations clearly make out the circumstances which would constitute domestic violence. The complaint cannot be dismissed at the threshold and an opportunity needs to be extended to the respondents to substantiate their allegations. The learned advocate would submit that though this Court has quashed the complaint filed by the respondent No. 1 under section 498A etc. of the Indian Penal Code, the present proceeding which is under section 12 of the D.V. Act stands on a different footing and cannot be quashed.

7. I have carefully gone through the papers. There is no dispute about the couple having got married on 07.06.2015 and obviously the respondent No. 1 must have started cohabiting with petitioner No. 1 in his house. Since the petitioners No. 2 and 3 are his parents, it is but natural for them to have been cohabiting in the same abode. The respondents in their complaint have specifically alleged as to how the

petitioners No. 1 to 3 have deceived the respondent No. 1 by bluffing that the petitioner No. 1 was in the government employment when he was not. They have further alleged as to how he started saying to her that he had an affair with a girl and wanted to marry that girl and insisted her to divorce him. Admittedly, even he has applied for a divorce by filing a proceeding. The respondents have also alleged that there was a demand for money to secure a job for the petitioner No. 1 and respondent No. 1 was subjected to physical and mental torture on that count. There are allegations about petitioner No. 1 having driven her out on 23.04.2016. Considering all such allegations when the petitioners No. 1 to 3 have been sharing the household with the respondents at least till the time she was cohabiting with them, it is quite apparent that they stand in a domestic relation as defined under section 2(f) of the D.V. Act. Therefore, the complaint cannot be quashed at the threshold by invoking inherent powers of this Court under section 482 of the Code of Criminal Procedure to the extent of petitioners No. 1 to 3.

8. However as far as the petitioners No. 4 to 9 are concerned, the entire complaint reveals that no specific and precise role is attributed to them in subjecting the respondent No. 1 to any domestic violence. The tenor of the complaint clearly shows that primarily the

allegations are made against the petitioner No. 1 and to some extent even against the petitioners No. 2 and 3 but throughout the complaint right from paragraph Nos. 3 to 11, all the petitioners have been collectively referred to in an omnibus and vague manner. Therefore the complaint is clearly devoid of specific and clear allegations attributing precise role to petitioners No. 4 to 9.

9. Besides, though the petitioner No. 4 is the brother of the petitioner No. 1, apart from the fact that there are no specific allegations against even him, he is serving in some Medical College at Jabalpur (Madhya Pradesh). The petitioner No. 5 is the married sister of the petitioner No. 1. The petitioners No. 6 to 9 are admittedly residing elsewhere and are only distant relatives. There are no allegations about the petitioners No. 4 to 9 having shared the household with the respondents. The allegations in the complaint do not show that there was any domestic relation between them and the respondents within the meaning of Section 2(f) of the D.V. Act. Consequently, though the respondent no. 1 can be said to be an aggrieved person within the meaning of Section 2(a) of the D.V. Act vis-a-vis petitioners No. 1 to 3 are concerned, she cannot be said to be an aggrieved person qua the petitioners No. 4 to 9. If such is the state

of affairs, no proceeding under section 12 of the D.V. Act at the instance of respondents can be allowed to be continued.

10. The decisions in the case of **Preeti Gupta (supra)** and catena of several other decisions of the Supreme Court pertain to the proceedings under section 498A of the Indian Penal Code. But the analogy can easily be brought into effect and applied even in the matters under the D.V. Act, since the scenario remains the same. There is usual tendency of a married woman to implicate as many relations of the husband as possible if and when the couple cannot get along well. The Courts have to be on guard in preventing such misuse of process of law.

11. Several instances have been laid down in the case of **Bhajanlal (supra)** when a complaint can be quashed which can fruitfully be invoked even in the matter of this kind. Even in the matter in hand, a Division Bench of this Court has quashed and set aside the criminal case instituted by the respondent No. 1 for the offence punishable under section 498A etc. of the Indian Penal Code to the extent of petitioners No. 4 to 9 herein. In my considered view, for the self same reasons, even the instant complaint deserves to be quashed to the extent of petitioners No. 4 to 9 by invoking the principles laid down in the case of **Bhajanlal (supra)**.

12. The Writ Petition is partly allowed. The proceeding filed by the respondents under section 12 of the D.V. Act against the petitioners No. 4 to 9 is quashed and set aside.

13. However the Writ Petition seeking such quashment even in respect of petitioners No. 1 to 3 is dismissed. The rule is accordingly made absolute to the extent of petitioners No. 4 to 9.

(MANGESH S. PATIL, J.)

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