

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

CRIMINAL WRIT PETITION NO. 1567 OF 2018

Shivrajsinh Alias Baburaju S/o Hirasinh Gaur
Age 75 years, Occ : Agri.,
R/o Dapka Raja, Tq. Mudkhed,
Dist.Nanded.

.. PETITIONER
[ORIGINAL RESPONDENT NO.1]

VERSUS

1]Mangalabai W/o Raje Shivrajsinh Gaur
Age 60 years, Occ. H.H.,
R/o Malakoli, Tq. Loha,
Dist.Nanded.

.. RESPONDENT
[ORIGINAL COMPLAINANT]

2]Hussainbi W/o Habibsab,
Age 61 years, Occ.Household,
R/o. Dapka Raja,Tq.Mudkhed,
Dist.Nanded.

.. RESPONDENT
[ORIGINAL RESPONDENT No.2]

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Mr. S.S.Halkude, Advocate for the petitioner
Mr. V.G.Salgare, Advocate for respondent No.1.
Respondent No.2 served.

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CORAM : MANGESH S. PATIL, J.
DATE : 03.10.2019

ORAL JUDGMENT :-

Heard both sides. Rule. Rule is made returnable forthwith. With the consent of both sides, the matter is heard finally at the stage of admission.

2] The petitioner is praying for quashment of the proceeding initiated by the respondent no.1 under Section 12 of the Protection of Women from Domestic Violence Act 2005 (hereinafter referred to as the Act).

3] The learned advocate for the petitioner submits that the marriage between him and the respondent no.1 was solemnized in the year 1976. She cohabited with him for few years. Thereafter, on her own she left his company and started residing at her parental home. Since thereafter she had never resumed marital relation. When he attempted to bring her back, she refused and thus the couple is separate since the year 1982. There was no domestic relation and there was no question of any domestic violence having been meted out to her. The proceeding was filed under Section 12 of the Act just to harass him after a long period of 34 years. This Court in the case of **Kishor Shrirampant Kale Versus Sou.Shalini Kishor Kale and others; 2010 All M.R.(Cri) 1386 and Jayesh Uttamrao Khairnar and others Versus State of Maharashtra and Others; 2010 All M.R. (Cri) 2259**, in similar situation where the proceeding was initiated by the wife after number of years since separation of the couple had quashed the proceeding. Thus there was no cause of action for filing the proceeding under Section 12 of the Act and it may be quashed and set aside.

4] Per contra, the learned advocate for the respondent no.1 submits that the domestic violence contemplated under the Act covers many aspects, physical, mental and economic abuse. She specifically alleged about having driven out of the house being unable to beget any issue. She alleged that subsequently he established illicit relation with the respondent no.2 and when she objected he drove her out in the year 1982. When attempts were made on

her behalf to resume matrimonial relation, he refused and promised to transfer a piece of agricultural land in her name. She further alleged that he has been living with the respondent no.2 and has even executed a sham sale deed in her name in respect of the agricultural land without receiving any consideration. The learned advocate further pointed out that in the application she has specifically mentioned that because of the advanced age and increase in the cost of living she needs maintenance. Thus she sought various reliefs under Sections 18,19,20 and 22 of the Act. Merely because the complaint has been filed belatedly, it cannot be dismissed at the threshold, without extending an opportunity to her to substantiate her allegations.

5] The learned advocate for the respondent no.1 would further submit that the complaint was filed way back in the year 2015. The petitioner has participated in the proceeding and after a long slumber has filed this Petition in the year 2018 seeking quashment. Therefore this Court should not invoke writ jurisdiction after lapse of so many years and the petitioner may be made to defend the case before the Magistrate.

6] The learned advocate for the respondent no.1 further submits by referring to the decision in the case of **Saraswathy Versus Babu; 2014 (2) Mh.L.J. (Cri) 684** and submits that the provisions of the Act have been held to have a retrospective effect and a proceeding can be initiated under the Act even in respect of domestic violence meted out prior to coming into force of the Act. The Act is a beneficial legislation intended to protect weaker section of the society i.e. married women who are subjected to domestic violence. Domestic violence would take many forms. It could be physical, mental and even economic abuse. When it is specifically alleged that the petitioner has established illicit relation with the respondent no.2 and even driven the

respondent no.1 out of his house, when she opposed his such conduct and continuously neglecting her can be said to be a physical and mental abuse. Further his conduct in executing sale deed in the name of respondent no.2 in respect of agricultural land alleged to be a sham one would be one more circumstance to infer that he has subjected her to mental and economical abuse. All these being the questions of facts, it would be appropriate to allow her to establish her allegations and the complaint may not be quashed at the threshold.

7] I have carefully gone through the papers. At the outset it is necessary to note that the complaint has been filed in the year 2015. The petitioner appeared in the matter and contested the proceeding by filing his say. The hearing resumed and as can be seen from the papers even the petitioner filed his affidavit in lieu of his examination in chief on 12/2/2018. It is thus apparent that without any objection he has participated in the proceeding and the present Writ Petition has been filed on 20/11/2018 seeking its quashment. This circumstance, in my considered view is sufficient enough to not to exercise writ jurisdiction.

8] True it is that the respondent no.1 has been residing at her parental house since the year 1982 and has filed the present proceeding in the year 2015. However, as has been rightly submitted by her learned advocate, the allegations in the complaint clearly indicate that the neglect and refusal of the petitioner is continuous. Her allegation about he having sold the land to the respondent no.2 who has been staying with him in live in relationship is also a continuous act and would *prima facie* constitute mental abuse and economic abuse as well.

9] The decisions in the case of Kishor and Jayesh (*supra*) being relied upon by the petitioner have been rendered in the peculiar facts and circumstances of the those cases. As can be seen in the case of Kishor the Petition was filed after 15 years since the date the couple had separated. There were no averments in the complaint which would indicate that the wife was put to some domestic violence. There was no complaint filed prior to the complaint under Section 12 of the Act complaining about any domestic violence in the recent past or within a reasonable period. In the matter in hand, as is mentioned hereinabove, there are specific allegations in the complaint which *prima facie* constitute domestic violence within the meaning of Section 3 of the Act and particularly mental and economic abuse. Besides, as can be seen from the papers even the petitioner was prosecuted on a complaint filed by her for the offence punishable under Sections 498-A, 506 read with Section 34 of the IPC, albeit he was subsequently acquitted in the year 1993. Therefore, on facts, the decision in the case of Kishor is easily distinguishable from the matter in hand.

10] Similarly, the decision in the case of Jayesh is also distinguishable on facts. In that case the application did not indicate as to under which sub-clause of Section 20 (1) her case would fall. On facts it was held that there was absence of domestic violence on the date of filing of the complaint and it was instituted *mala fide* and therefore, complaint was quashed. In the matter in hand, the fact situation is entirely different and one need not repeat it. Therefore, the petitioner is not entitled to derive any benefit from both these decisions i.e. Kishore and Jayesh (*supra*).

11] It is true that Explanation-II of Section 3 reads that in determining whether any act, omission, commission or conduct of the respondent

constitutes domestic violence would depend upon overall facts and circumstances of the case. In my considered view, *prima facie*, the allegations in the complaint clearly indicate that the respondent no.1 is making grievance about physical, mental as well as economic abuse. Whether and to what extent she would be able to prove it, is a different matter. But when the allegations and the complaint constitute *prima facie* a domestic violence, the doors of justice cannot be shut to her at the threshold more so when the Writ Petition has also been filed midway of the hearing in that complaint and at a belated stage. In my considered view this is not a fit case where this Court should intervene under the writ jurisdiction.

12] The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

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