

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

CRIMINAL APPLICATION NO. 3307 OF 2018

- 1] Pravesh S/o Rameshchandra Sharma
Age 28 years, Occ : Labour
 - 2] Rameshchandra S/o Nemichand Sharma
Age 56 years, Occ-Nil
 - 3] Sow.Hirabai w/o Rameshchandra Sharma
Age 50 years, Occ : Household
 - 4] Swapnesh S/o Rameshchandra Sharma
Age 31 years, Occ : Labour
Applicant No.1 to 4 R/o. Mahavir Nagar
Fattepur, Tq. Jamner, Dist. Jalgaon
 - 5] Poonam W/o Rajesh Sharma
Age 26 years, Occ : Housewife
R/o C/o. Rajesh Gopalchandji Sharma,
Near Sant Mira School, Thavariya Bazar,
At and Post Ratlam, Dist. Ratlam
 - 6] Shilpa W/o Vijay Sharma
Age 23 years, Occ : Household,
R/o C/o. Vijaykumar Rameshchandji Sharma
At and Post Rupetha, Tq. Nagda
Dist. Ujjain.
- .. APPLICANTS

VERSUS

- 1] The State of Maharashtra
Through the Investigation Officer,
Kotwali Police Station,
Dist. Ahmednagar
- 2] Sow. Meenal W/o Pravesh Sharma

Age 24 years, Occ : Household,

- 3] Devansh S/o Pravesh Sharma,
Age 8 months, Occ : Nil,
Since minor, through his Guardian,
Mother Applicant no.2
(Both R/o At present C/o Rajendra
Sitaram Sharma, Ajinkya Colony,
Bhushan Nagar, Kedgaon,
Dist.Ahmednagar.

RESPONDENTS

[Res.No.2 Orig.complainant)

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Mr. R.S.Shinde, Advocate for the applicants
Mr.P.K.Lakhotia, APP for respondent no.1 State
Mr. P.B.Waghmare, Advocate for respondent No.2.

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CORAM : MANGESH S. PATIL, J.

DATE : 26.09.2019

ORAL JUDGMENT :-

Heard both sides. Rule. Rule is made returnable forthwith. The learned advocate Mr.Waghmare waives service for respondent no.2. With the consent of both sides, the matter is heard finally at the stage of admission.

2] The applicants are the husband, parents in law and married sisters in law of the respondent no.2 seeking exercise of the powers of this Court under Section 482 of the Cr.P.C. for quashing a proceeding initiated by her under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the D.V.Act).

3] The learned advocate for the applicants submits that the entire allegations in the complaint are false and concocted. There is no material to show that the respondent no.2 was subjected to any domestic violence. A false

complaint is lodged after the applicant no.1 filed a proceeding for restitution of conjugal rights, only as a counter blast.

4] The marriage was solemnized on 27/2/2016. Contradictory allegations are being levelled in the complaint. At one place she says that she was maintained properly for 1½ month of marriage and at one place she states that the ill treatment started barely within 15 days of the marriage. She also filed a complaint against the applicants under Section 498-A of the IPC and this Court has quashed the case to the extent of the applicant nos. 4 to 6 herein. Every attempt is made by her to harass all the members of the family. Particularly even the brother in law and married sisters in law have been roped in. There are no specific and precise allegations attributing any exclusive role to the applicants particularly applicant nos.4 to 6. It would be sheer abuse of the process of law if based on such vague and omnibus allegations the applicants are made to face the proceeding.

5] The learned advocate further submits that though the decisions in the case of **Preeti Gupta and Another V/s State of Jharkhand and another; (2010) 7 Supreme Court Cases 667** and **Geeta Mehrotra and another V/s State of U.P. and another; AIR 2013 Supreme Court 181**, are in respect of a proceeding for quashment of prosecution initiated under Section 498-A of the IPC against in-laws, the principles would be equally applicable with equal vehemence even in respect of such a proceeding under Section 12 of the D.V.Act. Therefore, the complaint may be quashed.

6] The learned advocate for the respondent no.2 submits that it would be premature to arrive at any conclusion refuting the allegation being levelled by the respondent no.2 in her complaint. No married woman having a child

would indulge in such an act of filing a complaint without rhyme or reason. An opportunity deserves to be extended to her to substantiate the allegations and the doors of the justice may not be shut at the threshold. The learned advocate for the respondent no.2 further raised an objection that such a proceeding would not be maintainable before this Court for quashment of a complaint initiated under Section 12 of the D.V.Act, in view of the provision of appeal contained under Section 29 of that Act.

7] Before turning to the facts of the case it would be appropriate to deal with the preliminary objection being raised by the learned advocate for the respondent no.2 regarding maintainability of the present application. In fact, the issue is no longer *res integra*. The Full Bench of this Court in the case of **Nandkishor Pralhad Vyawahare V/s Mangala w/o Pratap Bansar; 2018(3) Mh.L.J. 913** has in unequivocal terms laid down that the High Court under the inherent powers conferred upon it under Section 482 of the Cr.P.C. has the powers to deal with the application of this nature and cannot refuse to exercise it by referring to Section 29 of the D.V.Act which provides for a remedy of appeal against any order passed by a Court under the provisions of that Act.

8] Now turning to the facts of the present case, a careful perusal of the complaint which is meticulously drafted and runs into four pages would reveal that several allegations have been levelled against the applicants to demonstrate as to how the respondent no.2 was subjected to domestic violence. In paragraph no.3 of the complaint at the beginning she has alleged by addressing all the applicants in common that they started demanding money from her. Thereafter, she has alleged as to how the applicant no.1 who is her husband was addicted to vices and used to harass her. Again she

vaguely asserted that the rest of the applicants were instigating him in that respect. Then she has stated about having informed her parents about such ill treatment meted out to her and her parents having tried to convince all the applicants. It is then alleged that the applicant nos. 1 to 3 thereafter abused her parents. She has then alleged that all the applicants thereafter made her to starve and used to abuse her. She then alleged that thereafter there was some discussion wherein her father promised to secure a job for the applicant no.1 at Ahmednagar and accordingly secured one in a company. She alleged that applicant no.1 then started residing at Ahmednagar from May 2016 onwards with her. However, he continued to be addicted to vices and used to physically and mentally torture her. He started demanding divorce. Somehow she continued to cohabit with him at Ahmednagar. She then alleged that the applicant nos.2 and 3 i.e. his parents then used to frequent to their house at Ahmednagar and used to demand money and used to insult her.

9] In paragraph no.4 of the complaint, respondent no.2 alleged that in November 2017, applicant nos. 2 and 3 came down to her house at Ahmednagar and again asked her to bring money from her father or else to divorce their son. Even he assaulted and abused her. Again in a vague statement in that paragraph, addressing all the applicants in common, she stated that in 2018 also all the applicants demanded money from her and threatened her to give divorce to the applicant no.1.

10] In paragraph no.5 she alleged that applicant nos. 1 to 3 asked her to bring money and repeated the episode on 24/1/2018. She then lodged a complaint with Women's Grievance Cell on 31/1/2018 and thereafter she lodged the complaint under Section 498-A of the IPC.

11] In paragraph no.6 she alleged that many a times she made an attempt to resume cohabitation and even a notice was issued through her advocate but the applicants did not allow her to resume.

12] Considering the nature of allegations, it is quite apparent that the respondent no.2 apparently seems to be aggrieved by the conduct and attitude of the applicant nos. 1 to 3 who are her husband and his parents. So far as applicant nos. 4 to 6 are concerned, no specific and separate allegations have been levelled against them. They have been addressed collectively with the applicant nos. 1 to 3. However, there are indeed some allegations precisely against the applicant nos. 1 to 3. The allegations against applicant nos. 4 to 6 are vague and omnibus.

13] It is pertinent to note that even according to her complaint, the marriage was solemnized on 27/2/2016 and from May 2016 onwards the couple started residing at Ahmednagar whereas her matrimonial home is at Fattepur, Tq. Jamner, Dist.Jalgaon. If that is so, it is also very doubtful as to how the applicant nos. 4 to 6 particularly the applicant nos.5 and 6 who are the married sisters in law residing in the State of Madhya Pradesh can be said to be sharing household with her.

14] As is pointed out by the learned advocate for the applicants, the applicant no.1 filed a proceeding under Section 9 of the Hindu Marriage Act for restitution of conjugal rights in the month of March 2018 and the present complaint has been lodged on 7/6/2018. I do not intend to draw any inference purely on the basis of this circumstance, but this circumstance does demonstrate that primarily the dispute is between the couple and as usual, as has been noticed by the Supreme Court in very many judgments (supra), there

is usual tendency of a married woman to rope in as many as relations of the husband as possible so as to wreak vengeance. Though the observations are in the context of prosecution under Section 498-A of the IPC, in my considered view the principle needs to be borne in mind even in such proceedings which are initiated under Section 12 of the D.V.Act.

15] As is pointed out by the learned advocate for the applicants, the proceeding initiated by the respondent no.2 for the offence punishable under Section 498-A etc. of the IPC against all the present applicants has been quashed to the extent of the applicant nos. 4 to 6.

16] Considering all the aforementioned aspects, though there are some specific and precise allegations against applicant nos. 1 to 3 and the complaint cannot be quashed at this stage under Section 482 of the Cr.P.C., the case of the applicant nos. 4 to 6 stands on a different footing. The allegations against them being vague and omnibus, the Application deserves to be allowed to their extent.

17] The Writ Petition is partly allowed. The proceeding initiated by respondent no.2 under Section 12 of the D.V.Act to the extent of the applicant nos. 4 to 6 is quashed and set aside.

18] The Writ Petition to the extent of applicant nos. 1 to 3 is dismissed. Rule is accordingly made absolute.

[MANGESH S. PATIL, J.]