

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3643 OF 2018

1. Zumbar s/o Ram Mali
Age 45 years, Occu. Service
R/o Janakpuri, Londhe Nagar
Nilanga, District Latur
2. Shyamal w/o Zumbar Mali
Age: 43 years, occu: Household
R/o Janakpuri, Londhe Nagar
Nilanga, District Latur
3. Arvind s/o Ram Mali,
Age: 40 years, Occu. Service
R/o Satej Building, Room No.7
Mogalwadi, Khopoli
Taluka Khanapur, District Raigad
4. Chandrakala w/o Arvind Mali
Age: 38 years, Occu: Household,
R/o Satej Building, Room No.7
Mogalwadi, Khopoli
Taluka Khanapur, District Raigad
5. Balaji s/o Ram Mali,
Age: 38 years, Occu. private Service,
R/o Flat No.12, Plot No.96/6-G(E)
Sairaj Housing Society,
Block M.I.D.C.,
Near Sadashiv Bahirwade,
Shahu Nagar, Chinchwade, Pune
6. Usha w/o Balaji Mali
Age: 35 years, Occu. Household,
R/o Flat No.12, Plot No.96/6-G(E)
Sairaj Housing Society,
Block M.I.D.C.,
Near Sadashiv Bahirwade,
Shahu Nagar, Chinchwade, Pune
7. Laxmi w/o Rajendra Mali,
Age: 50 years, Occu. Household
R/o Karla, Taluka AUSA, Dist. Latur

8. Rajendra Shankarrao Kshirsagar,
Age: 76 years, Occu. Agri.,
R/o Karla, Taluka AUSA, Dist. Latur

9. Sanjay s/o Vishwanath Hagra,
Age: 55 years, Occu. Agri.,
R/o Hagra Niwas, Main Road,
Swargaon-Kati, Taluka Tuljapur
District Osmanabad

10 Ayodhya w/o Sanjay Hagra
Age: 43 years, occu: Household,
R/o Hagra Niwas, Main Road,
Swargaon-Kati, Taluka Tuljapur
District Osmanabad

Applicants

(No.1 to 10 original non-applicants)

versus

1. The State of Maharashtra

2. Sau Swarna w/o Gowardhan Mali
Age: 40 years, Occu. Household
R/o Karla, Taluka AUSA, Dist. Latur
At present: C/o Rajabhau Harischandra
Bhalerao, Motinagar, Latur
Taluka and District Latur

RESPONDENTS

(No.2: original complainant)

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Mr. B.L. Sagar Killariker advocate for the applicants
Mr. K.D. Mundhe, APP for respondent No.1
Mr. R.P. Adgaonkar advocate for respondent No.2.

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CORAM : **V.L. ACHLIYA, J.**

Date: June 20th , 2019

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JUDGMENT

1 Rule. Rule returnable forth with. By consent, heard finally
at the stage of admission.

2 The applicants - original non-applicant Nos.4 to 13 in

Criminal Miscellaneous Application No.345/2017 have filed this application under section 482 of Code of Criminal Procedure for quashing the proceedings filed against them under section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein after referred to as 'the domestic violence Act').

3 Learned counsel for the applicants strenuously contended that no specific act amounting to act of domestic violence has been attributed to applicants (original non applicant Nos.4 to 13). It is submitted that the marriage of respondent No.1 with non - applicant No.1 had taken place about 18 years prior to filing of the complaint. Respondent No.2 has two children aged 17 and 14 years born out of wedlock with non-applicant No.1. After a period of more than 17 years of marriage, dispute cropped-up between respondent No.2 and her husband on account of talking on phone for a long time. During the meeting organized on account of her dispute with husband, the husband of respondent No.2 brought to the notice of her father about her behavior. On the day of meeting itself respondent No.2 attempted to commit suicide by consuming poison. She was taken to hospital. After treatment, she came to the house of accused. Thereafter, she left the house of husband and started residing with her parents. In the notice dated 21.3.2017 issued to her husband, she has not uttered a single word against the applicants. In the notice issued to her husband, she has only

alleged about suspicion her husband carrying against her. The notice of respondent No.2 was responded by her husband. Thereafter, she filed proceedings under the provisions of Protection of Women from Domestic Violence Act against thirteen persons and implicated entire family and relatives of her husband. It is submitted that the allegations made in the complaint are vague and general in nature. No specific act amounting to domestic violence has been attributed against the applicants. The applicants are relatives of husband of respondent No.2. They are residing separately at their respective places. The applicant No.1 is the brother of husband of respondent No.2. He is serving with MSRTC at Nilanga, District: Latur. The applicant No.2 is the wife of applicant No.1 and residing at Nilanga. The applicant No.3 is the brother in law of respondent No.2 and residing at Tq. Khopoli, Tq. Khanapur, Dist. Raigad. Applicant No.5 is the brother in law of respondent No.2 complainant. Applicant No.6 is the wife of applicant No.5. Both of them are residing at Chinchwad, Pune. Applicant No.7 and 8 are not even the members of family of husband of respondent No.2. They are residing at Karla, Tq. Ausa, Dist. Latur. Applicant No.9 is the husband of applicant No.10 who is sister of husband of respondent No.2. They are residing at Kati Savargaon, Tq. Tuljapur, Dist. Osmanabad.

against the applicant Nos.1 to 10, to initiate proceedings against them under the provisions of Domestic Violence Act. No relief has been claimed against applicant Nos.7 to 10. In the application itself, respondent No.2 has claimed that her husband is running the flour-mill and earning Rs.15,000 to Rs.20,000. The reliefs claimed in the application can be claimed only against her husband. In the application itself, respondent No.2 has stated that the applicant Nos.1, 3 and 5 (original non-applicant Nos.4, 6 and 7) are Government servants and they are sending money to their father to meet the expenses. Applicant Nos.2, 4 and 6 are wives of non-applicant Nos.4, 6 and 8 respectively and are residing with their respective husbands. As against applicant Nos.7 and 8, no relief has been claimed. Applicant Nos.10 and 11 are not related with husband of respondent No.2. In the background of over all facts of the case, it is contended that filing of such proceedings and continuation thereof is nothing but gross abuse of process of law and in order to save the applicants from facing harassment and rigour of prosecution of such proceeding, it is necessary to invoke inherent jurisdiction of this Court under section 482 of the Criminal Procedure Code to quash the proceedings against the applicants. In support of his submission, the learned counsel, has referred and relied upon the decision of this Court in case of **Vikrant Sudhakar Ambhore & Ors. Versus Varsha Vikrant Ambhore (2014 ALL. MR(Cri)2836)** and the decision of Honourable Apex Court

in case of ***Ashish Dixit & others versus State of Uttar Pradesh & another (2013, 4 Supreme Court cases 176)***.

5 On the other hand, learned counsel for respondent No.2 urged that the allegations as made in the application against the applicants are more than sufficient to prosecute them under the provisions of Domestic Violence Act. It is submitted that specific acts of ill-treatment and harassment are attributed against the applicants. By referring to the allegations, it is contended that veracity of the allegations made in the application can be tested and decided only during the course of hearing of the case on merit. It is submitted that no case is made out to invoke jurisdiction under section 482 Cr.P.C. to quash the proceedings against the applicants.

6 I have carefully considered the submissions advanced, in the light of over-all facts of the case and allegations made against the applicants in the application filed under the provisions of domestic violence Act by respondent No.2 and the copies of the documents produced in support of the application to quash the proceedings against the applicants.

7 Perusal of the application reveals that respondent No.2 has filed complaint against Gowardhan s/o Ram Mali, her husband (non-applicant No.1), Ram Arjun Mali (original non applicant No.2) the father-in-law of respondent no.2 and Hirakanbai Mali,

the mother-in-law of respondent no.2, these applicants being related with non applicant no.1. The respondent no.2 has claimed Rs.20,000/- as maintenance and order of protection against non-applicant nos.1 to 9. No specific relief has been claimed as against applicant Nos.10 to 13. So also no specific act of 'domestic violence' has been attributed against non-applicant Nos.10 to 13 i.e. applicant Nos.7 to 10. The applicant Nos.7 and 8 i.e. original non-applicant Nos.10 and 11 are not directly related with the husband of respondent No.2. Except the vague allegations that in a meeting called at village Karla, the applicants were warned by the members present in meeting and asked not to harass the respondent No.2, no other allegations has been made against the applicants.

8 If we consider the over-all allegations made in the application by respondent no.2 then she has made specific allegations only against her husband. It is alleged that her husband, who is addicted to liquor, suspect her character and ill-treated and harassed her. Due to ill-treatment and harassment caused by her husband, once she attempted to commit suicide. Only allegations made against the applicants that they had instigated her husband to harass and ill-treat her. It is pertinent to note that the marriage of respondent No.2 was solemnized more than 18 years prior to filing of the proceedings against the applicants. For the period of more than 17 years of marriage, no

complaint made against the applicants. In the notice issued on 21.3.2017, respondent No.2 has not stated a single word about ill-treatment and harassment caused to her by applicants.

9 The allegations made in the application are vague and general in nature. No specific allegations are made against the applicants. The relief claimed in the application i.e. maintenance amount to be payable by husband. From the face of application, the Respondent No.2 is not entitled for any relief against the applicants. The proceeding under the Domestic Violence Act appears to be filed against applicants with *ulterior motive* to humiliate and harass them, as they are related with husband of respondent No.2. The allegations made in the application itself spell out that the applicant Nos.1, 3 and 5 are residing with their family members and carrying their own profession/job. The applicant Nos.2, 4 and 6 are the wives of applicant Nos.1, 3 and 5 and residing with their respective husbands. The applicant Nos.7 and 8 are even not related with husband of respondent No.2. Applicant No.9 is husband of applicant No.10, who is related with husband of respondent No.2. Applicant No.10 is the sister of husband of respondent No.2. Applicant No.9 is the husband of applicant No.10. They are residing separately at Osmanabad. The documents produced on record fortify their stand that they are residing separately and carrying their profession/job at the places mentioned in the cause title of the

application. It is difficult to believe that present applicants instigated the husband of respondent no.2 to ill-treat and harass her for the period of more than 17 years.

10 In order to file proceedings under section 12 of the domestic violence Act, it is incumbent upon the complainant to make out a *prima facie* case of commission of act of domestic violence on the part of the non-applicants. Summoning the person to face proceedings under the provisions of domestic violence Act results into serious consequences. Perusal of the order passed by the learned Judge spells out that the order has been passed in the most casual manner. Learned Judge has even not read the application to find out, whether any case constituting an act of domestic violence specified under section 3(b) made out against the applicants. Except the vague and bald allegations that the present applicants instigated her husband to ill-treat and harass her, no specific act amounting to act of domestic violence has been attributed against the applicants. No relief has been claimed against applicant Nos.7 to 10. The applicants are the persons residing separately from their respective places and carrying their own job/profession. There is no material placed on record to accept the case of respondent no.2 that the applicants had instigated her husband to ill-treat and harass the respondent No.2. In absence of any *prima facie* case of domestic violence made out against the applicants, the

continuation of such proceedings would amount to gross abuse of process of law against the applicants. In that view, it is a fit case to invoke powers under section 482 of Criminal Procedure Code to quash the proceedings against the applicants. Accordingly, the application is allowed in terms of prayer clause 'B' to the extent of applicants.

11 Rule made absolute in above terms.

(V.L.ACHLIYA, J)

vbd