

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Application NO. 1340 OF 2018

Amjad Abdul Aziz Pagarkar
And others

...Applicants

Versus

Taiseer W/o Amjad Abdul Pagarkar
@ Taiseer D/o Mubarak Mulla
And another

...Respondents

....

Ms. Ranjan Rajgor, Advocate for the Applicants.

....

CORAM : R. G. KETKAR, J.

DATE : 10th JANUARY, 2019

P.C.

1. Heard Ms.Ranjan Rajgor, learned counsel for the applicant, at length.
2. Leave to amend so as to challenge the order dated 9.8.2018 passed by the learned Judicial Magistrate, First Class at Chiplun below Exhibit-17 in D.V. Criminal Case No.20/2017 is granted. Amendment shall be carried out forthwith.
3. The applicants have initially instituted present application under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') *inter alia* praying for following reliefs :

- “A) Application/Petition be admitted and the relief as prayed be granted.
- B) Order for disposing D.V. Case No.20/17 filed at Chiaplun JMFC be granted.
- C) Pending the Family Court petition on the ground of non consummation of marriage, stay on D.V. Case no.20/17 at Chiaplun JMFC be granted and order of maintenance dated 9/8/18 be also stayed.
- D) Order for dissolving the Contract of Marriage dated 16/01/18 be passed declaring marriage of applicant and respondent as null and void in case Family Court do not consider the said plea in want of provisions for it.
- E) Respondent be directed not to file any civil or criminal cases against applicants and not to disturb each others peace in future life.
- F) Ad interim relief with regard to prayer clause (C) be granted.”

4. A perusal of the above reliefs shows that the applicants cannot get any relief in the present proceedings. In view thereof, leave to amend was granted so as to challenge the order dated 9.8.2018 whereby the learned trial Judge has directed applicant No.1 to pay Rs.4,000/- per month towards the maintenance from the date of the application till its final disposal.

5. In support of this Petition, Ms.Rajgor strenuously contended that the marriage between applicant No.1 Amjad Abdul Aziz Pagarkar and respondent No.1 Taiseer Amjad Abdul Pagarkar was solemnized on 16.1.2017 at Mumbai. She left the company of applicant No.1 on 18.2.2017. Thus, the first respondent hardly stayed with applicant No.1

for 15 to 20 days. The proceedings instituted by her under the provisions of the D.V. Act are, therefore, not maintainable. She submitted that the marriage between applicant No.1 and the first respondent is not consummated. Respondent No.1 is working as a Director / Supervisor of Anganwadi. In fact said Anganwadi is under her control. All appointments are made by the first respondent. She submitted that as the first respondent stayed hardly between 16.1.2017 and 18.2.2017 and left the matrimonial home, she has not established commission of domestic violence. She also invited my attention to the cause title of the present application to contend that applicants No.2 to 6 are staying in Boatawala Building whereas the matrimonial home is Fatima Manzil Building. Despite this position, respondent No.1 has impleaded applicants No.2 to 6 in the D.V. proceedings.

6. Ms.Rajgor relied upon the decision of Delhi High Court in the case of **Hima Chugh Vs. Pritam Ashok Sadaphule and others**, passed in Criminal M.C. No.3273/2011 dated 10.4.2013 to contend that the persons who were not living in a joint shared household ought not to have been impleaded. She also relied upon the decision of Delhi High Court in the case of **Sonia Chauhan Raghove Vs. Sanjiv Raghove and others** passed in Criminal M.C. No.452/2012 dated 7.2.2012 to contend that the expression 'at any point of time' cannot be defined as

“at any point of time in the past”. Present proceedings are instituted by the first respondent under the D.V. Act on or about 23.5.2017 whereas she had deserted applicant No.1 on 18.2.2017.

7. Ms.Rajgor also relied upon the decision of this Court in the case of **Prakash Kumar Singhee Vs. Amrapali Singhee** passed in W.P. No.3553/2018 with Contempt Petition No.459/2017 dated 4.5.2018 to contend that the learned trial Judge has not recorded *prima facie* satisfaction that the first respondent is an aggrieved person. In the absence of any such finding, respondent No.1 could not have invoked the provisions of the D.V. Act.

8. I have considered the submissions advanced by Ms. Rajgor. I have also perused the material on record. A perusal of the impugned order shows that respondent No.1 came with the case that she married applicant No.1 on 16.1.2017 and since then applicant No.1 has caused mental and physical cruelty to her. Applicant No.1 was acting at the behest of applicants No.2 to 6. Applicant No.1 is working as a Vice President in Universal Insurance Company and gets Rs.60,000/- to Rs.75,000/- by way of salary. Applicants No.2 and 3 are also gainfully employed. No one depends upon applicant No.1. She claimed maintenance of Rs.10,000/- per month. Applicant No.1 came with the case that respondent No.1 voluntarily left her parental home on

18.2.2017. In paragraph-8, the learned trial Judge observed that respondent No.1 has established her relationship and said fact is also not disputed by applicant No.1. Thus, there is domestic relations between the parties. Applicant No.1 also did not deny the fact that respondent No.1 is staying at her parental home. Though applicant No.1 claimed that respondent No.1 is gainfully employed in marketing field, no documents were produced in support of that claim. After considering the material on record, the learned trial Judge was of the view that maintenance of Rs.4,000/- will be reasonable. Consistent with this finding, the learned trial Judge directed applicant No.1 to pay amount of Rs.4,000/- per month from the date of the application till disposal of the main application. I do not find that the learned trial Judge has committed any error in passing the impugned order.

9. Ms. Rajgor relied upon the decision of Delhi High Court in the case of **Hima Chugh** (supra) to contend that respondent No.1 was not justified in impleading applicants No.2 to 6. I have already dealt with the contentions advanced by the first respondent in the D.V. proceedings. Respondent No.1 contended that applicant No.1 is acting at the behest of petitioners No.2 to 6. In view thereof, *prima facie* I do not find that the decision in **Hima Chugh's** case (supra) advances the case of the petitioner.

10. Ms. Rajgor relied upon the decision in **Sonia Raghove** (supra) to contend that the phrase “at any point of time” cannot be defined as “at any point of time in the past”. As mentioned earlier, the first respondent left the company of applicant No.1 on 18.2.2017 and the proceedings under the D.V. Act are instituted in May, 2017. In view thereof, the decision in **Sonia Raghove's** case (supra) also does not assist the petitioner's case.

11. Ms. Rajgor further relied upon the decision of this Court in the case of **Prakash Singhee** (supra) to contend that the learned trial Judge did not record *prima facie* finding that the first respondent is an aggrieved person. She, therefore, cannot invoke the provisions of the D.V. Act. After perusing the proceedings filed by the petitioner under the D.V. Act as also findings recorded by the learned trial Judge, I do not find that the decision relied upon by Ms. Rajgor is any way applicable to the facts of the present case.

12. In view of the aforesaid discussion, the application fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)