

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition NO. 4588 OF 2018

Vinayak Ashok Walankar	...Petitioner
<i>Versus</i>	
Somakshi Vinayak Walankar	
And others	...Respondents

....
Mr. S.M. Kelkar, i/b. M.M. Agavekar, Advocate for the Petitioner.
....

CORAM : R. G. KETKAR, J.

DATE : 10th JANUARY, 2019

P.C.

1. Not on board. At the request of Mr.Kelkar taken up for admission.
2. Heard Mr.S.M. Kelkar, learned counsel for the petitioner, at length.
3. This Petition takes exception to the order dated 17.8.2018 passed by the learned Judicial Magistrate, First Class at Junnar below Exhibits-10 and 22 in Criminal Misc. Application No.133/2017. By that order, the learned Magistrate rejected the applications Exhibits-10 and 22.
4. The petitioner has instituted P.A. No.105/2017 in the Family Court, Pune for divorce under Section 13(1)(i-a) & (i-b) of the Hindu Marriage Act, 1955 (for short, 'Act'). It appears that respondents No.1

& 2 herein instituted Criminal Case No.133/2017 in the Court of Judicial Magistrate, First Class at Junnar under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V. Act') invoking Sections 12, 18, 19, 20, 22 and 23 of D.V. Act.

5. During pendency of this proceeding, the petitioner filed application Exhibit-10 on 3.5.2017 *inter alia* contending that the proceedings filed by respondents No.1 & 2 under the provisions of the D.V. Act are not maintainable.

6. Respondents No.3, 4 and 5 herein filed application Exhibit-22 again challenging the maintainability of the proceedings filed under the provisions of the D.V. Act. By the impugned order, the learned trial Judge has rejected these applications.

7. In support of this Petition, Mr.Kelkar strenuously contended that respondent No.1 had deserted the petitioner. She has moved respondent No.2 along with her. He submitted that the petitioner has made genuine efforts for bringing back respondents No.1 & 2. The petitioner has issued letters dated 25.3.2015 and 31.3.2015 calling upon respondent No.1 to join his company. Despite making genuine attempts, respondent No.1 has not given positive response to the attempts made by the petitioner. He submitted that without any just cause, respondent No.1 has deserted the petitioner. Present

proceedings are instituted in the year 2017 after filing divorce petition by the petitioner. As respondent No.1 deserted the petitioner in the year 2015 and the present proceedings are instituted after more than three years, the proceedings instituted under the D.V. Act are not maintainable.

8. I have considered the submissions advanced by Mr. Kelkar. The learned trial Judge while rejecting the application observed in paragraph-6 that respondent No.1 came with the case that on 13.4.2014 the petitioner has abused and assaulted her and driven her out of the matrimonial home. Respondent No.1 along with her son was sent to her parental home. In paragraph-8, the learned trial Judge noted that since last two years, respondents No.1 and 2 are residing at respondent No.1's parental home. At this stage one cannot come to the conclusion that as respondent No.1 is residing separately from 2014, the domestic relationship between the aggrieved person and the petitioner herein are not in existence. The offence of domestic violation is continuing. The learned trial Judge has also considered the letters dated 25.3.2015 and 31.3.2015 sent by the petitioner to the wife and observed that merely relying upon these letters, it cannot be held that respondent No.1 herein has deserted the petitioner. It is material to note that the petitioner did not institute any proceedings for restitution of conjugal

rights. As mentioned earlier, the petitioner has instituted divorce proceedings on 23.1.2017.

9. In view thereof and for the reasons stated in paragraphs-6 to 8 of the impugned order, no case is made out for interfering with the impugned order. Hence, the Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)