

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 91/2018

Mohd. Rafique Mohammad Yakub

..VS..

Farzana Parveen Mohd. Anis & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.P. Kariya, Advocate for the applicant
Shri N.B. Raut, Advocate for the non-applicant no. 1
Ms. Shamsi Haider, APP for the non-applicant no. 3

CORAM : Z.A.HAQ, J.
DATED : 21/01/2019

Heard.

The non-applicant no. 1 has filed a complaint under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (for short "the Act of 2005") contending that marriage between the non-applicant no. 1 and the present applicant was solemnized on 12/04/2001, out of the wedlock and two sons are born who are staying with the applicant, however, the non-applicant no. 1 was driven out of the house one year prior to 30/04/2012. The non-applicant no. 1 has prayed for the reliefs under Sections 18, 19, 20 and 22 of the Act of 2005.

The claim made by the non-applicant no. 1 is opposed by the applicant on various grounds, one of the ground being that the domestic relationship between the applicant and the non-applicant no. 1 has come to an end in

2009 when the applicant gave Talak to the non-applicant no. 1. According to the applicant, the non-applicant no. 1 has re-married and is now residing with the non-applicant no. 2.

The applicant had filed an application (Exh. 71) praying that the complaint filed by the non-applicant no. 1 be dismissed. This application was dismissed by the learned Magistrate by the order dated 06/10/2017. The applicant approached the Sessions Court by filing revision which is dismissed by the impugned judgment.

The applicant seeks dismissal of the complaint filed by the non-applicant no. 1 mainly on the ground that the non-applicant no. 1 cannot be said to be an “aggrieved person” as contemplated by Section 2 (a) of the Act of 2005, in as much as there is no domestic relationship as contemplated by Section 2 (f) of the Act of 2005 after the applicant gave Talak to the non-applicant no. 1. It is submitted that in any case, the complaint filed by the non-applicant no. 1 is not maintainable as the non-applicant no. 1 has re-married and is residing with the non-applicant no. 2.

The learned advocate for the non-applicant no. 1 has submitted that the factual aspects as contended by the applicant are not admitted.

I find that the contentions raised on behalf of the applicant will have to be examined in the light of the evidence which comes on record at the trial before the learned Magistrate. It would not be appropriate for this Court to appreciate the evidence directly, exercising jurisdiction under Section 482 of the Code of Criminal Procedure.

Hence, keeping the issues open for consideration by the learned Magistrate at appropriate stage, this criminal application is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari