

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

CRIMINAL WRIT PETITION NO. 465 OF 2020

- 1) Shri. Baburao s/o Dharmaji Shinde,
Age 92 years, Occ. Household,
R/o. Rahata, Tq. Rahata, Dist.
Ahmednagar.
- 2) Sau. Jayashri w/o Rajan Naik,
Age 55 years, Occ. Household,
R/o. Balewadi, Pune, Tq. &
Dist. Pune.
- 3) Sau. Manisha w/o Manish Pawar,
Age 53 years, Occ. Household,
R/o. Ganga Bhagyodaya Residency
Kasba, Bavada Kolhapur, Tq.
& Dist. Kolhapur.

... **Petitioners.**

VERSUS

Dr. Sau. Aasha w/o Sanket Powar,
Age 34 years, Occ. Service,
R/o. Shri Laxmi Niwas, Gramsevak
Colony, Balepir, Nagar Road,
Beed, District Beed.

... **Respondent.**

...

Advocate for the Petitioners : Mr. Bolkar Yogesh B.
Advocate for the Respondent : Mr. D.S. Sugarde.

CORAM : MANGESH S. PATIL, J.

DATE : 28/09/2020

JUDGMENT :

Heard both the sides. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The respondent initiated a proceeding under Section 12 of the

Protection of Women from Domestic Violence Act, 2005 (hereinafter 'the D.V. Act') against the husband, his parents and the present petitioners in the Court of Chief Judicial Magistrate, Beed. The petitioners are praying for quashing the proceeding as against them on the ground that they are not in domestic relation with the respondent as defined under Section 2(f) of the D.V. Act. The petitioner No. 1 is the maternal grand father and the petitioners No. 2 and 3 are the maternal aunts of the husband of the respondent and never shared the household with the couple.

3. The learned advocate Mr. Bolkar submits that though the respondent may have some grievance and a matrimonial dispute against the husband and the parents in law however the petitioners apart from being the relatives of the husband have never shared any household nor are they having any domestic relationship which is a necessary precondition for enforcing the rights by a woman under Section 12 of the D.V. Act. It is a sheer abuse of process of law. The petitioners cannot be made to face the enquiry. Even if the allegations in the complaint filed by the respondent are taken into consideration those are vague and omnibus. No specific and exclusive allegations have been made against the petitioners.

4. The learned advocate Mr. Bolkar further points out that in the title clause of the complaint itself the respondent has specifically mentioned the addresses of the petitioners to be of Rahata, Pune and Kolhapur respectively. He would also point out that simultaneously the respondent had initiated a prosecution against the husband arraying the petitioners as co-accused for the offences punishable under Section 498A, 323 etc. of the Indian Penal Code in the form of F.I.R. No. 26/2020 at Shivajinagar Police Station Beed. But this Court by the judgment and order in Criminal Application No. 929/2020 dated 09.09.2020 has quashed and set aside the case as against the petitioners. It is in view of such state of affairs the petitioners may not be allowed to face the enquiry.

5. Learned advocate for the respondent submits that there is no dispute that the petitioners are related to the husband of the respondent. The learned advocate takes me through the recitals in the complaint under Section 12 of the D.V. Act and points out as to how at several places there is a reference attributing some role to the petitioners. They were constantly instigating the husband and the parents in law of the respondent to subject her to domestic violence. It is a matter of proof which can be had only after the enquiry is conducted and an opportunity deserves to be extended to the respondent to substantiate her allegations. It would be premature to arrive at some conclusion in favour of the petitioners.

6. I have carefully gone through the papers. In order to appreciate the arguments it is necessary to bear in mind few definitions under the D.V. Act :

“2(a) *“aggrieved person”* means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

2(f) *“domestic relationship”* means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

2(s) *“shared household”* means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in

respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

7. As can be appreciated any woman would be an aggrieved person if she is in a domestic relationship with the respondent and alleges to have been subjected to domestic violence. In turn, since the definition of 'aggrieved person' refers to domestic relationship with respondent one needs to take into consideration the definition of 'domestic relationship'. As can be seen two persons can be said to be in such a relationship if they live or have lived at any point of time together in a shared household being relatives by consanguinity, marriage or relationship in the nature of marriage or family members living as a joint family. Admittedly, the petitioners are distant relatives of the husband of the respondent. The petitioner No. 1 is the maternal grand father and the petitioners No. 2 and 3 are the maternal aunts of the husband. There are no specific allegations in the complaint filed by the respondent that they have ever lived together much less in a shared household.

8. Since this definition of 'domestic relationship' requires the two persons to share a household, one has to take into consideration the definition of 'shared household'. Section 2(s) of the D.V. Act *inter alia* defines 'shared household' to mean that the person aggrieved lives or has lived in a domestic relationship with the respondent in that household. Again, at the cost of repetition, except saying that the petitioners were frequenting to her matrimonial home at Panvel, the respondent has not at all specifically alleged about the petitioners having ever shared the household with her.

9. The upshot of the above discussion is that as far as the petitioners are concerned, they having never shared household as defined under Section 2(s) of the D.V. Act with the respondent and has had no domestic relationship with her as defined under Section 2(f) of the D.V. Act she cannot be said to be an aggrieved person qua them as defined under Section 2(a) of the D.V. Act. Consequently, no proceeding under Section 12 of the D.V. Act would be maintainable as against them at the instance of the respondent.

10. Apart from the legal position adumbrated herein above, even otherwise, perusal of the complaint filed by the respondent under Section 12 of the D.V. Act (Exhibit 'C') would show that in paragraph no. 2 it has been vaguely alleged that these petitioners were instigating her husband and parents in law in subjecting her to harassment and that they were frequenting to her matrimonial home at Panvel. Then in paragraph No. 5 it has been alleged that these petitioners had not been to see her mother who was admitted in Sasoon Hospital, Pune between 24.04.2019 and 18.06.2019, even while she was attending her mother. In paragraph No. 6 it has been alleged in an omnibus manner that the petitioners, her husband and the parents in law used to tease her by saying that she was not compatible with the status of their family. In paragraph No. 7 again it has been alleged in an omnibus manner that all of them were insisting her to leave the job. In paragraph No. 8 it has been vaguely alleged that these petitioners were instigating her husband for demanding money from her. In paragraph no. 9 it has been alleged that all the respondents in that proceeding who include the petitioners did not permit her to enter into the matrimonial home at Panvel when she made an attempt on 26.06.2019 and then she had to lodge non cognizable report with Panvel Police Station.

11. It is thus apparent that as far as the petitioners are concerned the allegations in the complaint are clearly vague and omnibus and it would indeed be a matter of sheer abuse of the process of law if they are made to

face the enquiry based on such vague allegations.

12. Though not of much relevance, it is a matter of record now that this Court has quashed the Criminal case instituted by the respondent against the petitioners in Criminal Application No. 929/2020 which was for the offences *inter alia* punishable under Section 498A etc. of the Indian Penal Code.

13. It is in view of such state of affairs, apart from the fact that the complaint filed by the respondent against the petitioners under Section 12 of the D.V. Act is not maintainable, even factually, the allegations are too vague to make them undergo the enquiry.

14. The Writ Petition is allowed.

15. The proceeding initiated by the respondent against the petitioners under Section 12 of the D.V Act is quashed and set aside to their extent.

16. The observations made herein are confined to the decision of the present matter.

17. Rule is made absolute.

(MANGESH S. PATIL, J.)

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