

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1658 OF 2019

- 1) Manisha Appasaheb Deshmukh,
Age 40 years, occupation Agriculture,
R/o Narkhed Tq. Mohal Dist.Solapur.
- 2) Appasaheb Shrirang Deshmukh,
Age 50 years, Occupation Agriculture,
R/o As above.
- 3) Rajendar Manikrao Pawar,
Age 60 years, Occupation Agriculture,
R/o Ingle Galli, Osmanabad Tq. And
Dist. Osmanabad.
- 4) Nirmalabai Baliram Deshmukh,
Age 61 years, Occupation Agriculture,
R/o Gondegaon Tq. And Dist. Latur.
- 5) Jayram Baliram Deshmukh,
Age 35 years, Occupation Agriculture,
R/o As above.

**...Petitioners.
(Orig.Respondent No.2 to 6)**

VERSUS

Vaishali Mahesh Deshmukh,
Age 30 years, Occupation Household,
R/o Murud Tq. And Dist. Latur.

**...Respondent.
(Original Complainant)**

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Advocate For Petitioners : Mr. G. J. Kore.
Advocate For Respondent : Mr. A. G. Deshmukh.
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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11-02-2020.**

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.

2. Present petition has been filed by original respondents No.2 to 6, invoking the Constitutional powers of this Court under Article 226 of the Constitution of India to challenge the proceedings under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as "D.V. Act") instituted against them bearing Criminal Miscellaneous Application No.26 of 2013 before learned Judicial Magistrate, First Class, Latur for various reliefs.

3. It is not in dispute that the present petitioner No.1 is the sister-in-law of the respondent (married sister of husband of respondent). Petitioner No.2 is the husband of petitioner No.1. Petitioner No.3 is the maternal uncle of the husband of the respondent. Petitioner No.4 is aunt from husband's side and petitioner No.5 is son of petitioner No.4 and the cousin brother of the husband of the respondent.

4. The petitioners are contending that the petitioners No.1 and 2 are resident of Narkhed Tq. Mohal Dist. Solapur, petitioner No.3 resides at Ingle Galli, Osmanabad and petitioners No.4 and 5 are resident of Gondegaon Tq and Dist. Latur. The petitioners are original respondents

No.2 to 6. Respondent No.1 in the original proceeding, is the husband of respondent in the present petition, who is not before this Court in the present petition. Original applicant No.2 is the daughter born to the original applicant No.1 /present respondent No.1. Applicant No.1 and respondent No.1 got married on 24-02-2008. The petitioners have contended that, they being the relatives of original respondent No.1 have been falsely implicated in the proceedings under the D.V.Act. There was dispute between the husband and wife only. The wife had filed First Information Report and on the basis of the same offence under Section 498-A read with 34 of the Indian Penal Code was filed against all of them. Regular Criminal Case No.594 of 2012 was decided by learned Judicial Magistrate, First Class, Latur, Court No.4 on 20-04-2017, and all of them have been acquitted of the offence. Thereafter, the wife had filed appeal under Section 372 of the Criminal Procedure Code, 1973 challenging the said acquittal of the accused persons in Criminal Appeal No.41 of 2017 before the learned Additional Sessions Judge, Latur. After hearing both sides, the said appeal came to be dismissed on 31-08-2019. On the same allegations the wife has filed the application under Section 12 of the D.V.Act. However, she has suppressed many things. Respondent No.1 is serving as teacher at Tadwala in Zilla Parishad School at Osmanabad and the petitioners are staying away from them. They have not committed any act of domestic

violence and the contents of the complaint/ application, as against the present petitioners, are vague. It would be unjust to ask them to face the case and, therefore, they have prayed for quashing the entire proceedings of Criminal Miscellaneous Application No.26 of 2013 against them.

5. Heard learned Advocate Mr. G. J. Kore for petitioners and learned advocate Mr. A. G. Deshmukh for respondent.

6. Learned advocate for petitioners made submission supporting the writ petition as per the contents therein and especially pointed out that, in the deposition of the respondent, in the matter under Section 498-A of the Indian penal Code, before learned Judicial Magistrate, First Class, Latur, she has clearly admitted in cross that the present petitioners are residing separately from the respondent No.1, therefore no act of domestic violence could have been committed by the petitioners.

7. Per contra, the learned advocate appearing for the respondent submitted that, though the respondents – present petitioners are residing separately yet they used to visit the respondent No.1 and the allegations against them is that, they used to instigate the husband in committing the act of domestic violence, therefore a full fledged trial is necessary. It would be very much premature to accept the contention

of the petitioners.

8. At the outset it can be seen that, there appears to be intentional suppression of facts by the present respondent in her application under Section 12 of the D.V.Act. She has given the address of respondents No.2 to 6 as village Murud presently residing at Godegaon Tq. Dist. Latur. The said application was filed on 15-01-2013. However, prior to that the First Information Report for the offence punishable under Section 498-A of Indian Penal Code was filed and the charge-sheet was filed in that case on 20-09-2012. In that case the address of present petitioners No.1 and 2 is shown as Narkhed Tq. Mohol Dist. Solapur, as regards petitioner No.3, it is shown as Ingale Galli, Osmanabad, and as regards petitioners No.4 and 5, it is shown as Gondegaon. The contents of the application is silent on the fact that though respondents No.2 to 6 are residing separately yet they used to visit respondent No.1, and then used to instigate him. A picture has been painted that, they are residing together and then there is instigation. Another fact is that, it is alleged in the application that after the original applicant No.2 was born, the respondent No.1 had, with the aid of respondents No.2 to 6, tried to kill the applicant by forcing administration of poisonous substance. It is also stated that, the respondents No.5 and 6 used to abuse her and used to drove her out of the house. Except these

allegations, of which the second allegation is vague and without any details as to when such incident had taken place, there is no detailed averments. Those allegations have already been tested by competent Courts when same allegations were made stating that it amounted to offence punishable under Section 498-A of the Indian Penal Code, the present petitioners have been acquitted. Further in the evidence that was adduced in that matter, statement was made that the present petitioners are residing separately from original accused No.1 i.e. husband.

9. Therefore, taking into consideration these allegations and also the fact that the main reliefs are for getting financial help, which can be the prime responsibility of the husband only; it would be unjust for the petitioners to ask face the entire proceedings. Hence, definitely case is made out for invoking the powers of this Court under Article 226 of the Constitution of India to quash the proceedings. The writ petition stands allowed in terms of prayer Clause 'B'. It is clarified that, the matter may proceed against original respondent No.1 only. Rule is made absolute in above terms. Writ petition stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.