

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.45 OF 2014**

Shri.Hemant Namdeorao Nagrale,  
Aged about 51 years, Occupation : Service,  
R/at – Flat No.13A, Neelima Building,  
B.G.Kher Marg, Malabar Hills,  
Mumbai 400006.

... **Applicant**

**Versus**

1 Smt.Pratima @ Rani Hemant Nagrale,  
Aged about 45 years, Occupation – Nil,  
R/At.C/o.Ms.Kiran Ram Moghe,  
Flat No.1, Jeevan Pradeep Society,  
Hare Krishna Mandir Road,  
Model Colony, Pune 411 016.

2 State of Maharashtra  
Through its Government Pleader.

... **Respondents**

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Mr.Subir Kumar i/b. Mr.Rahul Singh Mr.C.Dhingra, Advocate for  
the Applicant.

Mr.R.S.Apte, Senior Counsel and Ms.Manisha Mohammed with  
Adv.P V. Nelson Rajan, Advocate for the Respondent No.1.

Mr.R.M.Pethe, the Additional Public Prosecutor for the Respondent  
No.2/State.

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**CORAM : A.M.BADAR J.**

**DATED : 24<sup>th</sup> JANUARY 2020.**

**ORAL JUDGMENT :**

1            Heard.

2            Rule. Rule is made returnable forthwith. Heard finally by consent of parties.

3            By this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code” for the sake of brevity), the applicant, who happens to be respondent in an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the D.V.Act” for the sake of brevity) is praying for quashing the proceedings of the said Criminal Miscellaneous Application bearing No.2350 of 2013 including that of summons dated 07/10/2012 issued by the trial Court. The said application bearing No.2350 of 2013 is an application under Section 12 of the D.V.Act filed by respondent No.1 herein i.e. an aggrieved person.

4            Brief facts leading to the institution of the present application can be summarized thus :

              According to the applicant herein/original respondent, he is an officer of the IPS Cadre working as Joint Commissioner of Police at Mumbai. He married the respondent No.1 herein/an aggrieved person on 4<sup>th</sup> May 1990 at Nagpur and out of the said wedlock two children are born. It is pleaded by the applicant

herein in his instant application that allegations leveled in the application under Section 12 of the D.V.Act filed by the respondent herein have been the subject matter of adjudication before this Court in Writ Petition No.2308 of 2008 filed by the respondent herein/aggrieved person so also before the Supreme Court and in the Family Court Appeal bearing No.73 of 2011. Even if those allegations are assumed to be true, application under Section 12 of the D.V.Act bearing Criminal Application No.2350 of 2013 pending on the file of the learned Judicial Magistrate First Class, Pune is not maintainable being barred by limitation prescribed by the Code of Criminal Procedure. Therefore, cognizance taken by the learned trial Magistrate is *ex facie* illegal. Averments regarding medical history of the aggrieved person/respondent herein are also found in the instant application. Various allegations are made against the aggrieved person/respondent herein and it is contended that she is unfortunate victim of a serious genetic disorder and is suffering from acute paranoid schizophrenia resulting into hallucinations and delusions drifting far away from the reality. Facts leading to filing of divorce petition by the applicant herein/original respondent are also pleaded in the instant application with further pleadings regarding an attempt to commit suicide by the respondent herein/aggrieved person in May 2007. It is pleaded that aggrieved by the pressurizing tactics, attempt of defamation, public humiliation and insult, the applicant herein/original respondent was constrained to file a petition for

dissolution of marriage by decree of divorce on the ground of cruelty and other grounds before the Family Court, Bandra. Further pleadings of the applicant shows that respondent No.1 herein/aggrieved person filed Writ Petition bearing No.2308 of 2008 making various allegations on character as well as in respect of amassing disproportionate assets by the applicant herein/original respondent, but that petition came to be disposed of on the basis of Inquiry Reports submitted by the Joint Commissioner of Police (Crime), Mumbai and Directorate of Anti-Corruption Bureau, Mumbai. According to the applicant herein, those reports show that contentions of the aggrieved person are incorrect. Allegations levelled against the applicant herein in the proceedings under the D.V.Act were inquired into by the Joint Commissioner of Police, Mumbai and those were found to be incorrect. The applicant herein/original respondent placed reliance on reports of the Joint Commissioner of Police submitted to this Court during pendency of the writ petition filed by the respondent No.1 herein/aggrieved person. Pleadings regarding dissolution of marriage by decree of divorce dated 25/02/2011 passed by the Family Court, Bandra are mentioned in the instant application. It is pointed out in the application that the applicant herein is already directed to pay Rs.20,000/- per month to the respondent No.1 herein/aggrieved person by the Family Court, Bandra. According to the applicant herein/original respondent, the Judgment and Decree dated 25/02/2011 passed by the Family

Court, Bandra is subject matter of the Family Court Appeal bearing No.71 of 2011 filed by respondent No.1 herein/aggrieved person. The applicant has also contended in the instant application that Civil Application No.147 of 2011 is filed by the respondent No.1 herein/aggrieved person in the said appeal filed by her and the same came to be disposed of on 12/08/2013 by this Court. With this, the applicant herein/original respondent denied the contents raised in the application under Section 12 of the D.V.Act filed by the respondent herein and he is praying for quashing the proceedings of the said application on the grounds raised in the instant application.

5           I have heard the learned Counsel appearing for the applicant herein/original respondent in the proceedings under Section 12 of the D.V.Act. He argued that domestic violence, as alleged in the application under Section 12 of the D.V.Act took place in April 2008, whereas the application is filed in September 2013 and, therefore, proceedings under the D.V.Act initiated by the respondent herein are barred by limitation. It is further urged that the aggrieved person i.e. respondent No.1 herein had preferred Writ Petition No.2308 of 2008 making several allegations regarding character as well as in respect of assets and it was prayed that enquiry into those allegations be made by registering the FIR against the applicant herein. The learned Counsel for the applicant argued that the said petition came to be dismissed by the

Division Bench of this Court after calling reports from the Joint Commissioner of Police, Mumbai and the Honourable Apex Court has confirmed that dismissal. Therefore, according to the learned Counsel, continuance of proceedings under the D.V.Act amounts to abuse of process of Court.

6           The learned Counsel for the applicant further argued that the Family Court while passing the decree of divorce had ordered for payment of maintenance to the respondent No.1 herein/aggrieved person and substantial amount is already permitted to be withdrawn towards arrangement of her residence. Hence, according to the learned Counsel for the applicant herein, the respondent No.1/aggrieved person cannot seek the very same relief by filing proceedings under the D.V.Act. The divorce granted by the Family Court is now subject matter of an appeal before this Court and enhancement of amount of maintenance is also claimed by the respondent No.1 herein in that appeal. Hence, she ought not to have preferred proceedings under the D.V.Act. The learned Counsel for the applicant further argued that on 12/03/2009, the report came to be submitted by the Joint Commissioner of Police in Writ Petition No.2308 of 2008 and a finding is recorded by the said Authority which is to the effect that the complaint is an outcome of matrimonial disharmony. Ultimately, the said writ petition came to be dismissed. It is further argued that the respondent No.1 herein/aggrieved person resides at Nagpur. She

alleged domestic violence at Mumbai. However, the application under Section 12 of the D.V.Act is filed at Pune and hence the same is not maintainable.

7 By drawing my attention to the Order below Exhibits 1 and 58 in Special Civil Suit No.917 of 2012 filed by the respondent No.1 herein/aggrieved person, it is argued that this Order is relevant under Section 41 of the Indian Evidence Act and this Order belies the averments made in the proceedings under the D.V.Act. Reliance is placed on the Judgment of the Honourable Apex Court in the matter of ***K.G.Premshanker versus Inspector of Police & Anr.***<sup>1</sup> With this, the learned Counsel contended that proceedings initiated at the instance of respondent No.1 herein before the learned Judicial Magistrate First Class, Pune under Section 12 of the D.V.Act needs to be quashed and set aside.

8 The learned Senior Counsel appearing for the respondent No.1 herein/aggrieved person opposed the application by contending that the instant application under Section 482 of the Code of Criminal Procedure, as framed and filed, is not maintainable. In his submission, the applicant has invoked Section 482 of the Code and as per Judgment of the Division Bench of this Court in Writ Petition No.2473 of 2016 ***Sukumar Pawanlal Gandhi and Anr. Versus Bhakti Sushil Gandhi*** decided on 27<sup>th</sup> October 2016 at Mumbai (Coram: A.S.Oka and A.A.Sayed,

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<sup>1</sup> (2002) 8 Supreme Court Cases 87.

JJ), the applicant cannot take resort to Section 482 of the Code seeking quashment of application under Section 12 of the D.V.Act as the same is not the proceedings under the Code. It is further urged that reports submitted by the Joint Commissioner of Police were not accepted by the Court.

9 I have considered the submissions so advanced and also perused the material placed on record of this Court.

10 The applicant herein/respondent in an application under Section 12 of the D.V.Act has invoked provisions of Section 482 of the Code for quashing those proceedings initiated by the respondent herein. It is well settled that powers conferred under Section 482 of the Code are to be exercised sparingly and that too in rarest of rare cases for securing ends of justice or to prevent abuse of process of any Court. While exercising such power the High Court has to form an opinion on either of the aforesaid two objectives. Let us, therefore, examine whether the proceedings under Section 12 of the D.V.Act initiated by the respondent No.1 herein/aggrieved person amounts to abuse of process of Court and ends of justice requires quashment of those proceedings.

11 So far as the maintainability of the petition for quashing the proceedings under Section 12 of the D.V.Act, the law is crystallized by the Full Bench of this Court in the matter of ***Nandkishor Pralhad Vyawahare versus Mangala w/o.Pratap***

***Bansar***<sup>2</sup>. The Full Bench of this Court has held thus in paragraph 58 of the said rulings.

“58. A plain reading of Section 482 of Cr.P.C., which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only the respondent-man but also the aggrieved person-woman may feel like approaching the High Court to give effect to any order or to prevent abuse of the process of Court or to secure ends of justice. This would show that this power is capable of being used by either of the parties and not just by the respondent seeking quashing of the proceedings under Section 12 of the D.V. Act. If this power is removed from Section 28 of

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<sup>2</sup> 2008 (3) Mh.L.J. 913.

the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.”

In this view of the matter it cannot be said that the instant application under Section 482 of the Code of Criminal Procedure, as framed and filed, is maintainable.

12           Now, let us see whether in view of the report filed by the Joint Commissioner of Police, Mumbai in Writ Petition No.2308 of 2008, the proceedings under the D.V.Act are required to be quashed and set aside. For that purpose, one has to peruse the application under Section 12 of the D.V.Act filed by the respondent No.1 herein/aggrieved person before the learned Judicial Magistrate First Class, Pune. In the said application, the aggrieved person has categorically stated that she was in domestic relationship with the applicant herein/original respondent he being her husband and they live together in a shared household. She has made categorical averments about domestic violence suffered by her at the instance of the applicant herein/original respondent. Paragraph 7 onwards of the said application contain pleadings regarding domestic violence allegedly committed on her by the applicant herein. Instances of physical, verbal and emotional abuses as well as economic abuses are pleaded in the said application under Section 12 of the D.V.Act. On careful scrutiny of averments made in the application under Section 12 of

the D.V.Act, I am satisfied that the applicant therein has made clear and cogent averments regarding domestic violence while she was in domestic relationship with applicant herein/original respondent.

13           During pendency of the Writ Petition No.2308 of 2008, it seems that the Joint Commissioner of Police made inquiry into the allegations levelled by the respondent No.1 herein/aggrieved person and the said Officer by conducting inquiry gave conclusion on the basis of material collected by him that prior to 28/03/2008, there was no complaint of any harassment by the respondent No.1 herein and *prima facie* her complaints are an outcome of matrimonial disharmony between couple which has unfortunately grown due to the psychiatric disorder of the respondent No.1 herein/aggrieved person. In my considered opinion, report given by the officer of the Police Department on the basis of inquiry conducted by him in the matter of complaints by the wife cannot take place of judicial verdict on commission or non-commission of acts of domestic violence. This report of the office of the Police Department while conducting administrative inquiry cannot made use of to throttle the provisions of welfare legislation such as the D.V.Act. Ultimately, when an application under Section 12 of the D.V.Act is moved by the aggrieved person, it needs to be taken to its logical end by assessing veracity of the averments made by the aggrieved person by the Court of law by which said application is

triable as per the provisions of the D.V.Act. Administrative inquiry and findings arrived at by the Inquiry Officer cannot be a substitute for remedy provided by welfare legislation like the D.V.Act.

14           So far as decree of divorce made by the Family Court and maintenance award by it is concerned, Section 36 of the D.V.Act is very clear. Provisions of D.V.Act are in addition to and not in derogation of provisions of any other law. Therefore, reliefs provided in the D.V.Act can certainly be claimed in addition to reliefs availed in other proceedings. Therefore, award of maintenance or some monetary provisions regarding residence in proceedings before the Family Court cannot prohibit the aggrieved person from claiming reliefs under provisions of the D.V.Act. In the matter of ***Juveria Abdul Majid Patni versus Atif Iqbal Mansoori & Anr.***<sup>3</sup> it is held by the Honourable Supreme Court that an act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the domestic violence including monetary relief under Section 20, compensation under Section 22, etc. Therefore, merely because the Family Court has granted some reliefs to the aggrieved person, she cannot be restrained from invoking provisions of the D.V.Act for claiming appropriate relief. Section 27 of the D.V.Act deals with jurisdiction and aggrieved person has

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<sup>3</sup> (2014) 10 SCC 736.

choice of filing the application even at the place of her temporary residence. She has preferred an application under Section 12 of the D.V.Act when she was residing at Pune. This fact is clear from the cause title of the application under the D.V.Act. Hence, it cannot be said that as now the aggrieved person is residing at Nagpur, the application under Section 12 of the D.V.Act pending on the file of the learned Judicial Magistrate First Class, Pune is not maintainable and, therefore, the proceedings deserves to be quashed.

15           The respondent No.1 herein/aggrieved person has alleged in her application that on 10<sup>th</sup> July 2007, the applicant herein/original respondent had forcibly obtained her signature on a document called as General Power of Attorney by threatening her. According to the learned Counsel for the applicant herein/original respondent, a suit bearing Special Civil Suit No.917 of 2012 came to be filed by the aggrieved person against the applicant herein and that suit came to be dismissed and, therefore, the proceedings under the D.V.Act are not maintainable. It is seen that while deciding the said suit, contentions were not examined on merit, but in the said suit, the plaint came to be rejected under Order VII Rule 11 of the Code of Civil Procedure as the suit was barred by law of limitation. Therefore, the Judgment in the matter of *K.G.Premshanker (supra)* cannot be made use of by the applicant herein. Similarly, findings given by the Family Court in a petition for divorce can be made use of if occasion so arises by the

applicant herein/original respondent while defending the application under Section 12 of the D.V.Act. However, merely because the petition for divorce filed by him is granted, the applicant herein cannot be heard to say that the proceedings under the D.V.Act amounts to abuse of process of the Court.

16           As acts of the domestic violence on the part of the applicant herein are specifically pleaded by the aggrieved person and as it is found that she was sharing domestic relations with the applicant herein, by no stretch of imagination, it can be said that the proceedings under Section 12 of the D.V.Act amount to abuse of process of Court requiring their quashment in the ends of justice.

17           So far as issue of limitation is concerned, Section 468 of the Cr.P.C. has no application so far as proceedings under Section 12 of the D.V.Act is concerned. Various reliefs are claimed in such application and such reliefs can even be claimed under any legal proceedings before a Civil Court as well as Family Court. Section 12 of the D.V.Act is an enabling provision whereas Sections 18 to 22 are providing for rights of the aggrieved persons to seek different reliefs like protection, residence, monetary relief, custody of minor and compensation. For all above mentioned reliefs, there is no limitation prescribed under the Cr.P.C. These reliefs cannot be equated with offence for which limitation is prescribed by Section 468 of the Cr.P.C. Section 468 of the Cr.P.C. speaks about bar to

take cognizance after lapse of the period of limitation. Thus, taking cognizance of offence is necessary and when there is no incident of commission of any offence while applying under section 12 for any of the reliefs under Sections 18 to 22 referred hereinabove, there is no reason for taking cognizance, and therefore provisions of Section 468 of the Cr.P.C. have no application in case of proceedings under section 12 of the D.V.Act. The penal provision under the D.V.Act so far as parties to the proceedings are concerned, is under Section 31. Criminal complaint can be filed when there is a breach of an order in an application under Section 12 of the D.V.Act or any of the reliefs under Sections 18 to 22 thereof. Limitation would be applicable only after breach of an order in an application under Section 12 of the D.V.Act, and therefore, such limitation cannot be made applicable at the stage of an application under Section 12 for reliefs under Sections 18 to 22. Thus, Section 468 of the Cr.P.C. would be applicable only when there is a complaint for offence punishable under Section 31 of D.V.Act and not otherwise. Therefore, when there is no penal provision in the form of Section 12 or Sections 18 to 22 of D.V.Act, there is no reason to restrict the aggrieved person from filing such application with reference to period of limitation prescribed under Section 468 of the Code.

18            In the result, the application is devoid of any substance and, therefore, the Order:

ORDER

- (i) Application is dismissed.
- (ii) Considering the fact that the application under Section 12 of the D.V.Act is pending since the year 2013, the learned trial Court to expedite the hearing thereof.

**(A.M.BADAR, J.)**

Raju D.  
Gaikwad

Digitally signed by  
Raju D. Gaikwad  
Date: 2020.01.27  
15:37:21 +0530