

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4806 OF 2019

PRAKASH VINAYAK GAIKWAD AND ORS.)...PETITIONERS

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

Mr.Kapil Prakash Shah, Advocate for the Petitioners.

Mr.R.M.Pethe, APP for the Respondent – State.

Mr.Chetan Shah, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 2020

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 This is a petition by the original respondents in an application under Section 12 of the Protection of Women from

Domestic Violence Act, 2005 (hereinafter referred to as Domestic Violence Act for the sake of brevity) with a prayer to quash the proceedings in an application under Section 12 of the Domestic Violence Act initiated by the respondent no.2 herein/aggrieved person.

3 Heard the learned counsel appearing for petitioners/original respondents. He argued that there are no averments of commission of domestic violence against petitioner nos.2 to 4/original respondent nos.2 to 4, who happen to be mother, sister and mentally ill brother of the husband. He took me through the entire application and contended that the couple was residing at Pune whereas petitioner nos.2 to 4 were residing at Vikhroli in Mumbai. In his submission, occasional visits of relatives are not sufficient to implicate them in a proceeding under Section 12 of the Domestic Violence Act.

4 As against this, the learned counsel for the respondent no.2/aggrieved person opposed the contention of petitioners by

contending that averments against petitioner nos.2 to 4 are in paragraphs 10 as well as 11 of the application under Section 12 of the Domestic Violence Act.

5 I have considered the submissions so advanced and also perused the material placed before me.

6 So far as petitioner no.1/husband is concerned, pleadings made in the application under Section 12 of the Domestic Violence Act are sufficient to prima facie infer acts and conduct which constitute domestic violence on the aggrieved person. However, so far as petitioner nos.2 to 4/original respondent nos.2 to 4 are concerned, averments made in the application, even if taken at their face value, are not sufficient to constitute domestic violence, as defined by Section 3 of the Domestic Violence Act. It is seen from averments made in the application that the applicant/respondent no.2 herein/aggrieved person married the original respondent no.1 on 16th October 2016 and then the couple went for honeymoon. After returning from

honeymoon, as the husband was in employment of Sipco Company at Pune, the aggrieved person so also the original respondent no.1 shifted from Vikhroli to Pune where they resided in a rented room.

7 So far as original respondent nos.2 to 4 i.e. mother, sister and brother of the husband are concerned, it is averred in the application at paragraph 10 that mother and sister of the husband came to Pune for residing there for fifteen days. During that fifteen days, sister of the husband used to quarrel with the aggrieved person with a reason that the aggrieved person was not preparing chapatis in proper manner and chapatis prepared by her were not liked by mother of the husband. Some routine allegations are made in paragraph 10 and it is averred that on say of the mother and sister, the husband used to beat the aggrieved person. It is further averred that the husband, his mother and sister then took the Mangalsutra from the aggrieved person when she proceeded to her parental house on 25th January 2017. It is apparent from the pleadings in the application that subsequently,

the aggrieved person returned to her matrimonial house and cohabited with her husband. It is not further pleaded that her Mangalsutra was not returned to her thereafter.

8 So far as petitioner no.4/original respondent no.4 – brother of the husband is concerned, it appears that he is suffering from some ailment and for his treatment, he had come to Pune and was admitted at the Jehangir Hospital. It is further averred that the aggrieved person was frightened of this brother of her husband. The learned counsel for petitioners/original respondents submitted that he is suffering from mental ailment and this fact is clear from pleadings made in the application that he was admitted in the Jehangir Hospital at Pune.

9 Definition of domestic violence found in Section 3 is an inclusive definition having wide scope. However, to constitute an act of domestic violence, the act must be having certain intensity as well as repetitions. Short visits of parental relatives of the husband are not sufficient to rope them in a proceeding under

the Domestic Violence Act.

10 Averments made in the application under Section 12 of the Domestic Violence Act against petitioner nos.2 to 4, in my considered opinion, do not constitute domestic violence against the aggrieved person. Therefore, the order :

ORDER

- i) The petition is partly allowed.
- ii) The proceedings of application under Section 12 of the Domestic Violence Act titled P.W.D.V.No.121 of 2017 pending on the file of the learned Judicial Magistrate First Class, Kalyan, qua petitioner nos.2 to 4/original respondent nos.2 to 4 are quashed and set aside.
- iii) Prayer for quashing the proceedings against the petitioner no.1/original respondent no.1 is rejected.
- iv) Rule is made absolute in above terms.

(A. M. BADAR, J.)