

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

CRIMINAL APPLICATION NO. 671 OF 2021

1) Heena w/o Majit Shaikh,
Age 34 years, Occ. Household.

2) Majit @ Majid Sardar Shaikh,
Age 38 years, Occ. Advocate.

Both r/o. Bharatnagar, Garkheda
Parisad, Aurangabad, Dist.
Aurangabad.

3) Gajala w/o Javed Shaikh,
Age 32 years, Occ. Household.

4) Javed Mehatab Shaikh,
Age 35 years, Occ. Advocate.

Both r/o. Undirgaon, Tq. Shrirampur,
District Ahmednagar.

... **Applicants.**

VERSUS

Saniya Sahil Sayyad,
Age 25 years, Occ. Household,
R/o. Lalbi Manzil, Ganeshwadi,
Govindnagar, Shirdi, Tq. Rahata,
Dist. Ahmednagar.

... **Respondent.**

...

Advocate for the Applicants : Mr. Deshmukh Sachin S.

Advocate for the Respondent : Mr. A. D. Sonkawade.

CORAM	:	MANGESH S. PATIL, J.
DATE	:	13.07.2021.

ORAL JUDGMENT :

Heard. 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 sisters in law of the respondent and their husbands are invoking the powers of this Court under Section 482 of the Code of Criminal Procedure for quashing a proceeding initiated by her under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act.) for various reliefs under that Act.

3. The respondent lodged the complaint under Section 12 of the D.V. Act with the allegations inter alia that she was married on 02.02.2019. After marriage she started cohabiting with the husband and in laws. However, soon she was subjected to physical and mental illtreatment. They all were expecting her to simply discharge the daily chores. Though she was educationally qualified she was not allowed to secure a job. They asserted that she should only work like a maid. Going against her religious proclivity she was made to perform some rituals. There was demand for money. The applicants also instigated the husband, the parents in law and the brother in law in subjecting her to cruelty. She continued to cohabit tolerating all such illtreatment for about nine months. She became ill in November 2019 however she was not provided any medical treatment. It was her relations from the parental side who admitted her in a hospital. She was thereafter taken back to her parental home and they never thereafter made any effort to take her back. With these allegations she claimed various reliefs as provided under the D. V. Act.

4. The Applicants are now seeking quashment of the proceeding qua them.

5. The learned advocate for the applicants would submit that it is usual tendency to rope in all the family relations in such a domestic dispute with an ulterior motive to put them to some harassment. Even the Supreme Court in the case of **Preeti Gupta and Anr. V/s. State of Jharkhand and Anr. [(2010) 7 Supreme Court Cases 667]**, **Amar Singh Vs. State of Rajasthan; 2010(4) RCR (Criminal)**, **Geeta Mehrotra & Anr V/s. State of U.P. & Anr.**

[2013 (AIR) (SC) 181] and even this Court in several matters has experienced that apart from the husband and his immediate relations, even married sisters and their husbands are unnecessarily roped in without there being substance with the only object of harassing everybody from the side of the husband. The learned advocate would submit that the respondent's marriage had taken place on 02.02.2019 whereas the applicants were already married long back in the year 2006 and 2007. Obviously, they have been residing at different places other than her matrimonial home. He would also point out the copies of their Adhar Cards to substantiate his version.

6. Learned advocate would submit that there are no specific and exclusive allegations against the applicants. The allegations are vague and omnibus. Following the decision in the case of **State of Haryana and Ors V/ s. Bhajan Lal and Ors., AIR 1992 Supreme Court 604** , it would be a sheer misuse of the process of law if even the married sisters and their husbands are made to face an enquiry under Section 12 of the D.V. Act.

7. Lastly, the learned advocate would submit that there are no allegations about the applicants having ever shared a household so that they could be said to have had some domestic relationship with the respondent so that they can be attributed with the charge of domestic violence. He would therefore submit that even without application of mind the learned Magistrate has taken cognizance and has proceeded against the applicants without sufficient basis and the proceeding may be quashed.

8. The learned advocate for the respondent takes me through the contents of the complaint filed by her under Section 12 of the D.V. Act. He would endeavour to point out that not only the husband and parents in law but even there are specific allegations attributing some role to the applicants at least of instigating the husband and parents in law in subjecting her to cruelty. He would submit that it is not necessary that these applicants should

be in continuous cohabitation with the respondent and it is suffice that they have been sharing the household intermittently. Being the near relatives, they must have frequented to her matrimonial home and at this juncture this should be sufficient to make them face the proceeding. He would take me through the contents of the complaint to point out as to how the applicants have subjected the respondent to cruelty and have even instigated the husband and the parents in law. The learned advocate would submit that since the matter is at a preliminary stage an opportunity deserves to be extended to the respondent to substantiate her allegations and there should not be any hurry in closing the doors of justice at the threshold. He would therefore submit that there is no substance in the application and it may be rejected.

9. I have carefully considered the rival submissions and the papers. Going by the scheme of the D.V. Act, an 'aggrieved person' is the one against whom domestic violence is done as defined under section 2(a) of the D.V. Act. The 'domestic violence' as defined under Section 3 of the D.V. Act would include inter alia physical and mental harassment extending threats, physical abuse, sexual abuse, verbal abuse, economic abuse etc. Going by the definition of 'respondent' as defined under section 2(q) of the D.V. Act, the respondent vis a vis an aggrieved person would mean an adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom a relief is claimed under the Act. This leads to the understanding of concept of 'domestic relationship' as defined under section 2(f) to mean that the relationship between two persons who live or have, at some point of time lived together in a 'shared household'. Section 2(s) of the D.V. Act then defines 'shared household' to mean a household where the person aggrieved lives or has lived in a domestic relation with the respondent.

10. If one carefully bears in mind all these definitions, it would be highly imperative for the respondent herein to have come out with specific

allegations so as to reveal existence of domestic relationship between her and the applicants within the meaning of section 2(f) of the D.V. Act. Though past cohabitation is sufficient to constitute a domestic relationship as also sharing of household, there is a serious doubt as to if there could be an intermittent sharing of the household or domestic relationship comprehended by the statute. Apparently, the applicants No. 1 and 3 are married to the applicants No. 2 and 4 long before the marriage of the respondent. Though they could be frequenting to her matrimonial home, in my considered view, they cannot be said to be sharing a household and having a domestic relationship within the meaning of section 2(s) and 2(f) respectively under the D.V. Act.

11. Apart from the above state of affairs, a careful perusal of the complaint filed by the respondent under Section 12 of the D.V. Act would reveal that the allegations against the applicants are vague and omnibus. They are being attributed with the allegations of instigating her husband and her parents in law for subjecting her to cruelty. Primarily the allegations regarding actual subjecting her to cruelty are being levelled against the husband, parents in law and the brother in law. It is pertinent to note that this proceeding is preceded by a legal notice issued by the respondent through her advocate wherein, vague and omnibus allegations are made against the applicants which are of similar kind as are made in the present complaint.

12. Suffice to bear in mind the observations of the Supreme Court in the case of Preeti Gupta, Geeta Mehrotra and Amar Singh (supra). The common tendency to rope in as many relations of the husband as possible has been taken note of by the Supreme Court. Bearing in mind the parameters laid down in the case of Bhajanlal (supra), it would be a sheer abuse of process of law if in the facts and circumstances discussed herein above even the applicants are made to face the proceeding under Section 12 of the D.V. Act initiated by the respondent. The Application therefore deserves to be

allowed.

13. The Criminal Application is allowed in terms of prayer clause 'A'.

14. The Rule is made absolute.

(MANGESH S. PATIL, J.)

mkd/-