

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

36 CRIMINAL APPLICATION NO. 1522 OF 2020

Diggaj Ramesh Dapke,
Age. 43 years, Occ. Medical Practitioner,
R/o. Samta nagar, Osmanabad,
Tq & Dist. Osmanabad.

...Applicant.

Versus

1. The State of Maharashtra.
 2. Kanchan Mahesh Tambare,
Age. 30 years, Occ. Household,
R/o. Income Tax Colony,
Opposite Shivaji School,
Old Jalna, Tq & Dist. Jalna.
 3. Akshaj Mahesh Tambare,
Age. 02 years, Occ. Nil,
Being a minor, under the guardianship of his mother
i.e. respondent No. 2 - Kanchan Mahesh Tambare,
R/o. Income Tax Colony,
Opposite Shivaji School,
Old Jalna, Tq & Dist. Jalna.
- ...Respondents.

Advocate for Applicant : Mr. V.B. Deshmukh.
APP for Respondent No. 1 : Mr. P.G. Borade.
Advocate for Respondent Nos. 2 & 3 : Mr. A.B. Gaikwad.

**CORAM : MANGESH S. PATIL, J.
DATED : 25.01.2021**

Judgment :

In this proceeding under Section 482 of the Code of Criminal Procedure, the applicant who is respondent No. 8 in an original proceeding preferred by the respondent No. 2 under Section 12 of the

Protection of Women from Domestic Violence Act, 2005 (For short, “Act of 2005”) is seeking its quashment on the ground that he is not in a domestic relation with respondent No. 2 or her husband.

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

3. The learned Advocate for the applicant submits that it is the case of the applicant that he is not related to the family of respondent No. 2 and her husband in any manner. A specific averment can be found in the proceeding preferred by her under Section 12 of the Act of 2005. There is no question of he having ever resided with the family in a shared house hold and cannot be said to be having at any time in the domestic relationship with them. Consequently, he could not have been arrayed as a respondent in that proceeding and still the Magistrate has directed a notice to be issued.

4. The learned Advocate for the respondent Nos. 2 and 3 submits that it is a matter of record that in the proceeding under Section 12 of the Act of 2005, it has been specifically mentioned in paragraph No. 10 that the present applicant does not have any relation with the

family of theirs.

5. As can be seen, going by the definition of 'domestic relationship' as contained in Section 2 (f) coupled with the definition of 'shared household' contained in Section 2 (s), when admittedly the applicant is not related to respondent Nos. 2 and 3, the proceeding under Section 12 of the Act of 2005, would not be maintainable.

6. It appears that the Magistrate, oblivious of the fact and specific averments in paragraph No. 10 of the application, has directed a notice to be issued.

7. The proceeding under Section 12 of the Act of 2005 not being maintainable as against the applicant, the application is allowed. The proceeding to the extent of the applicant is quashed and set aside.

8. Rule is accordingly made absolute in the above terms.

(MANGESH S. PATIL, J.)