

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

901 CRIMINAL APPLICATION NO.2196 OF 2018

- 1) Gopal s/o. Vithhalrao Sonkhede .. Applicants
Age.69 years, Occ. Pensioner,
- 2) Shobha w/o. Gopal Sonkhede
Age. 50 years, Occ. Service,
- 3) Neha d/o. Gopal Sonkhede
Age. 28 years, Occ. Household

All R/o. Gurunagar Housing Society,
N-8, Plot No.18, F-4, Sawarkar Chowk,
CIDCO, Aurangabad.

VERSUS

Sou. Suman w/o. Gopal Sonkhede, .. Respondent
Age. 60 years, Occ. Household,
R/o. Sidharth Housing Society,
Somnathpur Road, Udgir,
Tq. Udgir, Dist. Latur.

Mr.V.D. Patnoorkar, Advocate for the applicants.
Ms.A.S. Mantri, Advocate for sole respondent.

CORAM : N.R.BORKAR, J.
DATED : 21.10.2021

PC :-

01. The respondent herein has filed Misc. Criminal Application No. 6 of 2018, under the provisions of the Protection of Women from Domestic Violence Act, 2005 for various reliefs. By this application under Section 482

of the Code of Criminal Procedure, prayer is made to quash the said proceedings.

02. I have heard learned Counsel for the applicants and learned Counsel for the respondent.

03. Learned Counsel for the applicants submits that in the year 1984, an application was filed by the present respondent for maintenance under section 125 of Cr.P.C. and the said application was dismissed with a specific finding that there is no evidence of alleged neglect or refuse to maintain. It is submitted that against the said order of the learned Magistrate, revision application was filed before the Sessions Court. It is submitted that the Sessions Court dismissed the revision application filed by the respondent and confirmed the findings of the learned Magistrate.

04. It is further submitted that in the year 1990, again an application for maintenance under section 125 of

Cr.P.C. was filed by the respondent. It is submitted that the said application was dismissed with a specific finding that the respondent is living in a adultery.

05. It is further submitted that thereafter in the year 2010 an application under section 127 of Cr.P.C. was filed by the respondent without there being any order of maintenance in her favour. It is submitted that the applicant No.1 was thus constrained to approach this Court and this Court was pleased to quash the said proceedings. It is submitted that now present proceedings under the provisions of the Domestic Violence Act, are filed without there being any change in the circumstance. It is submitted that the present proceedings under the Domestic Violence Act are nothing but abuse of process of Court. It is submitted that the proceedings in question thus need to be quashed and set aside.

06. On the other hand, the learned counsel for the respondent submits that the respondent has no source of

income to maintain herself. It is submitted that proceedings under the provisions of the Domestic Violence Act, cannot be quashed just because the application for maintenance under Section 125 of the Code of Criminal Procedure was rejected. It is submitted that the present application therefore, needs to be dismissed.

07. It is not disputed that initially in the year 1984 application under section 125 of the Cr.P.C. was filed and the said application was rejected. The revision application was filed and it was also dismissed.

08. Thereafter, in the year 1990, again an application under section 125 of Cr.P.C. for maintenance was filed and the said application was rejected as it was found that the respondent is living in adultery. The respondent has not challenged the said finding and it has attained finality.

09. Thereafter, again application under section 127

of Cr.P.C. was filed and this Court was pleased to quash the said proceedings.

10. Considering the facts and circumstances of the case, proceedings filed by respondent under the provisions of the Domestic Violence Act are nothing but abuse of the Court process. I am, therefore, constrained to quash the proceedings in question filed by the respondent. In the result, following order is passed :-

O R D E R

i) The application is allowed.

ii) The proceedings filed by the respondents under the Provisions of Protection of Women From Domestic Violence Act (Misc. Criminal Application No.6 of 2018) pending on the file of Judicial Magistrate, First Class, Udgir are quashed.

[N.R.BORKAR,J.]