

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 CRIMINAL WRIT PETITION NO.1752 OF 2019

GOPALSING S/O. DEVICHAND DHAVLIYA
VERSUS
SARITA W/O. GOPALSING DHAVLIYA

Mr.R.G. Joshi, Advocate for the petitioner.

Mr.Muhammad Aseem h/f. Mr. T.Y. Sayyed, Advocate for the respondent.

CORAM : N.R.BORKAR, J.

DATED : 23.11.2021

PC :-

01. This petition takes an exception to the order dated 30.07.2019 passed by the learned Magistrate below Exh.15 in PWDV Application No.652 of 2017.

02. The respondent herein has filed an application in the Court of JMFC, Aurangabad, under the provisions of the Protection of Women from Domestic Violence Act, 2005 for various reliefs. By application at Exh.15 the petitioner took objection to the jurisdiction of the Court at Aurangabad to entertain the said application filed by the respondent. Learned Magistrate rejected application by the order impugned.

03. I have heard learned Counsel for the petitioner and learned Counsel for the respondent.

04. Learned Counsel for the petitioner submits that admittedly marriage of the petitioner and the respondent took place at Davargaon, Tal. Jafrabad, Dist. Jalna. After the marriage, the petitioner and the respondent were residing at Jafrabad. It is further submitted that according to the respondent the alleged domestic violence took place at Jafrabad. It is submitted that in such circumstances the Court at Aurangbad has no jurisdiction to entertain the application filed by the respondent. Learned Counsel for the petitioner has pointed out the averments made in the application by the respondent in para 9 of the application, wherein the respondent has stated that after she was thrown out of the house with her minor daughter, she took shelter in the house of her parents. It is submitted that admittedly, the parents of the respondent are resident of Jafrabad. Learned Counsel

for the petitioner submits that there is no document on record to show that at the time of filing of the application even temporarily the petitioner was residing at Aurangabad. It is submitted that in such circumstances, the learned Trial Court was not justified in rejecting the application filed by the petitioner at Exh.15.

05. On the other hand, learned Counsel for the respondent submits that after the respondent was driven out of the house, initially she came to the house of her parents. It is submitted that as the financial condition of parents of the respondent is not sound, she came to reside with her brother at Aurangabad. It is further submitted that the respondent even got her daughter admitted in the school at Aurangabad. It is submitted that the Trial Court was therefore justified in rejecting the application.

06. The fact that the brother of the respondent is

residing at Aurangabad is not disputed. It appears from the documents placed on record that the respondent got her daughter admitted in school at Aurangabad.

07. Section 27 of the DV Act, which is relevant for the purpose of deciding the issue involved in the matter reads thus :-

"27. Jurisdiction - (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India."

08. Considering the fact that the respondent is residing with her brother and even got her daughter admitted in the school at Aurangabad, the present case is covered by clause (a) i.e. temporarily resides. The learned Counsel for the petitioner submits that this Court in the case of Vijay Sudhakar Patil Vs. Sau Asha

Vijay Patil, in Criminal Application No.851 of 2014 decided on 08.05.2014, has held that temporarily residing cannot be equated with casual visit or casual stay or a place with no intention to reside there. However, considering the facts and circumstances of the present case, it cannot be said that the stay of the respondent at Aurangabad is casual stay. As regards the submission that there is no document to show that at the time of filing of application, the respondent was residing at Aurangabad, according to the petitioner at the time of filing of application, she was residing at Aurangabad with her brother. It is not shown that at that time the petitioner was not residing at Aurangabad and she was residing somewhere else. In view of this, no interference is called for in the order impugned.

09. The petition is dismissed.

[N.R.BORKAR,J.]