

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 62/2021

PETITIONERS : 1. Pradeep Shriprakash Agrawal, age - 54
years, Occ. Business.

2. Geeta Shriprakash Agrawal, age - 70 years
Occ. Household,

Both residents of "Prakash Kunj" Plot No.
327, C.P.Mission Compound, Jhansi,
Uttar Pradesh (ori. Appellants)

...VERSUS...

RESPONDENT: Pratibha Pramod Agrawal,
Age - 42 years, Occ. Service,
R/o - Shri Ambe Building, Flat No. 424,
Above Umiya Bank, Wardhaman Nagar,
Nagpur.

Office Address : Deputy Registrar,
Maharashtra Administrative Tribunal,
Nagpur Bench, First Floor, New
Administrative Building, Civil Lines, Nagpur
(Ori. Respondent)

Shri D.R.Galande, Advocate for petitioners
Shri Y.B.Mandpe, Advocate for respondent

CORAM : MANISH PITALE, J.
DATE : 26/07/2021.

Hearing was conducted through video conferencing and
the learned counsel agreed that the audio and visual quality was
proper.

2] By this writ petition, the petitioners who are brother-in-law and mother-in-law of the respondent have challenged the judgment and order dated 02.01.2021, passed by the Court of Additional Sessions Judge, Nagpur, in Criminal Appeal No.130/2020 filed by them under Section 29 of the Protection of Women from Domestic Violence Act, 2005. The appeal filed by these petitioners was dismissed, as a consequence of which order dated 24.04.2019 passed by the Court of the Judicial Magistrate, First Class, Nagpur, in Criminal Misc. Application No. 4453/2018, stood confirmed. By the said order, the Court of Magistrate specifically held that the respondent was in a domestic relationship with the petitioners also, apart from being in such a relationship with her husband. The petitioners before this Court were arrayed as respondent Nos. 2 and 3 in the complaint filed before the Magistrate, while the husband was arrayed as respondent No.1.

3] Mr. Galande, learned counsel appearing for the petitioners submitted that a perusal of the complaint filed on behalf of respondent would show that insofar as the petitioners are concerned, there is absence of sufficient pleadings to show that the petitioners were in a domestic relationship with the respondent. It

was brought to the notice of this Court that the petitioners happen to be residents of Jhansi in Uttar Pradesh, while the respondent after marriage resided with her husband at Thane in Maharashtra. It was pointed out that respondent is a judicial officer, who was posted at Thane at the relevant time and even if the contents of the complaint are accepted as it is, it becomes apparent that the allegations do not show that the petitioners were in a domestic relationship with the respondent. The learned counsel for the petitioners invited attention of this Court to the definitions of the terms, "domestic relationship", "respondent", "shared household" and "domestic violence" under the provisions of the said Act. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Satish Chander Ahuja vs. Sneha Ahuja**, passed on 15.10.2020 in Civil Appeal No. 2483 of 2020.

4] On the other hand, Mr. Mandpe, learned counsel appearing for the respondent submitted that the statements made in the complaint before the Magistrate, specifically paragraph Nos. 4, 5, 6, 8 and 9, sufficiently demonstrated that the relationship was of domestic nature as defined under the provisions of the said Act. It was submitted that the matter deserved to go to trial for examining

the defence raised by the petitioners. On this basis, it is submitted that the impugned order does not deserve any interference.

5] Heard learned counsel for the rival parties and perused the material on record. The complaint dated 14.12.2018, filed by the respondent shows that various reliefs under the provisions of the said Act have been sought by the respondent against the petitioners and her husband. The contents of the complaint show that according to the respondent, the petitioners and her husband harassed and ill-treated her in various manners, which answered the definition of "domestic violence" as provided under Section 3 of the aforesaid Act. A perusal of Section 3 of the said Act shows that it opens with the words "For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence". Thereafter, the elaborate definition of "domestic violence" has been given which includes "physical abuse", "sexual abuse", "verbal and emotional abuse" and "economic abuse". The key word in the opening sentence of Section 3 of the said Act is "respondent".

6] Section 2(q) of the said Act defines "respondent". As per judgment of the Hon'ble Supreme Court in case of *Hiral P Harsora vrs. Kusum N. Harsora*, reported in **(2016) 10 SCC 165**, the Hon'ble Supreme Court was pleased to strike down the words "adult male" from the said definition and the proviso was also deleted. As a consequence, "respondent" under Section 2(q) of the said Act is widely defined to mean any person who is or has been in a domestic relationship with the aggrieved person. Thus, for the respondent in this petition, who is admittedly the aggrieved person before the Court of Magistrate, for maintaining the said complaint against the petitioners herein, has to show that as per the contents of the said complaint, she can be said to be in a domestic relationship with the petitioners. The definition of "domestic relationship" contained in Section 2(f) of the said Act is inter-twined with the definition of "shared household" in Section 2(s). Therefore, it would be relevant to refer to the said definitions, which read as follows;

2(f) - "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a

relationship in the nature of marriage, adoption or are family members living together as a joint family.

2(q) - "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

2(s) - "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person or the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

7] It is clear from the bare perusal of the said definitions, that for an aggrieved person to claim that respondent is in domestic relationship with her, she has to show that she is living or at any point of time lived together with such a person in a shared

household. The definition of "shared household" quoted above, shows that it means a household where the aggrieved person lives or at any stage has lived in a domestic relationship with the respondent.

8] In the case of *Satishchandra* (supra), while dealing with the question pertaining to domestic relationship and shared household, the Hon'ble Supreme Court held as follows.

"63. The words "lives or at any stage has lived in a domestic relationship" have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household. The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. As noted above, Act 2005 was enacted to give a higher right in favour of woman. The Act, 2005 has been enacted to provide more effective protection of the rights of the woman who are victims of violence of any kind occurring within the family. The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read

with Sections 17 and 19 of the Act, 2005, grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not".

9] Applying the said position of law to the facts of the present case, it needs to be appreciated whether the complaint as filed by the respondent, even prima facie indicates existence of a domestic relationship between the petitioner on the one hand and the respondent on the other. Perusal of paragraphs 3, 4, 5, 6, 8 and 9 of the complaint shows that even according to respondent, she joined the company of her husband (respondent no.1 in the complaint filed before Magistrate) at Thane in Maharashtra, the respondent Nos. 2 and 3 i.e. the petitioners before this Court are admittedly the brother-in-law and the mother-in-law of the respondent herein. In the complaint itself, the respondent has stated that the petitioner No.1 i.e her brother-in-law and petitioner No.2 i.e. the mother-in-law are residing at Jhansi, but they were also present in the house at Thane and all the family members were residing many times with each other at Thane. According to the petitioners, the said pleadings are absolutely vague. The complaint

shows that the petitioners before this Court have been shown as resident of Jhansi in the Writ Petition. The tenor of the complaint filed before the Magistrate shows the grievance of the respondent as against her husband i.e. respondent No.1. There is reference made to alleged taunts and other insults inflicted by petitioner No. 2 - Mother-in-law on the respondent, but even if such insults and harassment may constitute an offence under the general criminal law, for the respondent to maintain the complaint against the petitioners before this Court, she ought to show from the contents of the complaint itself that she was in a domestic relationship with the petitioners before this Court.

10] In the case of *Vaibhav s/o Dattuji Jagtap vs. Kavita P Jagtap (Criminal Application (APL) No. 737 of 2019, decided on 28.01.2021)*, this Court has gone to the extent of holding that where the husband and wife were living on the ground floor and the relatives of the husband, including the father-in-law and mother-in-law, were living on the first floor of the same building, it could still not be said that the aggrieved person (wife) was in a domestic relationship with the said relatives of the husband. Therefore, it becomes evident that in the present case, on proper appreciation of

the provisions of the said Act and in the light of law laid down by the Hon'ble Supreme Court and this Court, it cannot be said that the respondent has shown through her complaint that the petitioners were in domestic relationship with her. Therefore, they could not be treated as "respondents" as defined under Section 2(q) of the said Act in the complaint filed before the Magistrate. This aspect of the matter was not appreciated by the Courts below in the proper perspective and therefore, the impugned orders passed by the said Court are liable to be set aside.

11] In view of above, the writ petition is allowed in terms of prayer clauses (i) and (ii). Consequently, the complaint in so far as the petitioners are concerned stands quashed.

12] Rule is made absolute in above terms. No order as to costs.

JUDGE