

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
CRIMINAL APPLICATION (APL) NO. 280 OF 2021

.. Applicants

- 1) Ganesh S/o Badri Rathod
Aged 36 years, Occ : Private,
R/o Kamothe, Khargar,
Navi Mumbai. (Husband)
- 2) Panchafulla Badri Rathod
Aged 71 years, Occ : Nil
R/o Near Shrikrushna Mandir,
Hudco Colony, Tq. Mangrulpir,
Dist. Washim. (Mother-in-law)
- 3) Chintaman Raisingh Chauhan
Aged 56 years, Occ : Service
R/o Old Subhedar Layout,
Ayodhya Nagar, Nagpur. (Brother-in-law)
- 4) Varsha W/o Chintaman Chauhan
Aged 42 years, Occ : Housewife
R/o Old Subhedar Layout,
Ayodhya Nagar, Nagpur. (Sister-in-law)
- 5) Harish/Rushabh S/o Chintaman
Chauhan, Aged 22 years, Occ : Education
R/o Old Subhedar Layout,
Ayodhya Nagar, Nagpur.
(Son of applicant no.3 and 4.)
- 6) Aditya S/o Chintaman Chauhan
Aged 20 years, Occ : Education
(MBBS), R/o Old Subhedar Layout,
Ayodhya Nagar, Nagpur.
(Son of applicant no.3 and 4)
- 7) Nitin S/o Tulshiram Naik,
aged 40 years, Occ : Service,
(Brother-in-law)
- 8) Sau. Manish W/o Nitin Naik,
aged 31 years, Occ : Housewife,
(Sister in law)
No.7 & 8 R/o Flat No. 603, Platinum
Aura, Plot No. 27, Sector 20, Rowadpali
Kalambodi Node, Raigarh (Maharashtra)

Versus

1) Sau. Nikita w/o Ganesh Rathod,
Age 29 years, Occ : Housewife,
R/o C/o Dhanraj Pawar,
Sudharshan Colony, Bypass, Karanja (Lad)
Tq. Karanja, Dist. Washim.

2) Ku. Kritika d/o Ganesh Rathod
Aged 7 years, Occ : Education
Minor through her mother non-applicant
no.1, Sau. Nikita Ganesh Rathod,
R/o C/o Dhanraj Pawar, Sudharshan
Colony, Bypass, Karanja (Lad),
Tq. Karanja, Dist. Washim

.. Respondents

Mr. A. V. Band, Advocate for applicants.

Mr. Abdul Subhan, Advocate for respondents.

CORAM : MANISH PITALE, J.

RESERVED ON : 12/07/2021

PRONOUNCED ON : 27/07/2021

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) By this application, the applicants are seeking quashing of complaint dated 16/01/2020, filed by the respondents under the provisions of the Protection of Women from Domestic

Violence Act, 2005 (hereinafter referred to as the ‘D.V.Act’). The applicant No.1 is the husband of respondent No.1, while the other applicants are relatives of the applicant No.1.

(3) It is contended on behalf of the applicants that provisions of the D.V. Act could not have been invoked by the respondents in the facts and circumstances of the present case. This contention is based on interpretation of the terms “aggrieved person”, “domestic relationship”, “domestic violence”, “respondent” and “shared household”, as defined under the provisions of the D.V.Act. The applicants have placed on record documents to support their contention that applicant Nos.2 to 8 are residents of various places and they were not living in the matrimonial house or the shared household, as claimed by the respondent No.1. On this basis it is submitted that insofar as said applicants are concerned, on the face of it, the provisions of the D.V. Act could not have been invoked.

(4) Mr. Band, learned counsel appearing for the applicants submitted that insofar as applicant Nos.2 to 8 are concerned, the provisions of the D.V. Act could not have been invoked

and this is evident from the complaint filed by the respondents, wherein addresses of applicant Nos.2 to 8 would show that they were not living with the applicant No.1 and the respondent No.1 after their marriage. By inviting attention to the provisions of the D.V. Act, learned counsel for the applicant submitted that when a bare reading of the complaint itself did not divulge domestic relationship or shared household between the applicant Nos.2 to 8 and the respondent No.1, there was no question of the complaint proceeding against the said applicants any further. The learned counsel invited attention of this Court to Section 2(f) which defines “domestic relationship” and Section 2(s) which defines “shared household”, to contend that applicant Nos.2 to 8 could not be arrayed as respondents in the said complaint, and the allegation of domestic violence under Section 3 of the D.V. Act also could not be made against them.

(5) The learned counsel for the applicant relied upon the judgments of the Hon’ble Supreme Court in the cases of **Satish Chander Ahuja vs. Sneha Ahuja**¹, **Shyamlal Devda and others vs. Parimala**² and judgments of this Court in the cases of **Prabhakar**

¹ (2021) 1 SCC 414

² 2020(3) Mh.L.J. (Cri.)(S.C.) 33

Mohite & anr. vs. The State of Maharashtra and anr.³ and Vaibhav s/o Dattuji Jagtap and others vs. Kavita w/o Prakashrao Jagtap and anr.⁴

(6) It was also submitted that vague, general and omnibus allegations were made against the applicants and that the complaint deserves to be quashed on that ground also.

(7) On the other hand Mr. Abdul Subhan, learned counsel appearing for the respondents raised a preliminary objection regarding maintainability of the present application, on the ground that alternative remedy of filing an appeal before the Sessions Court under Section 29 of the D.V. Act was available to the applicants. For this purpose, the learned counsel for the respondents relied upon judgment of Full Bench of this Court in the case of **Nandkishor Pralhad Vyawahare vs. Mangala w/o Pratap Bansar⁵** and judgment of Punjab and Haryana High Court in the case of **Roop Lal and others vs. Manpreet Kaur⁶**.

(8) Apart from the aforesaid preliminary objection, the learned counsel for the respondent submitted that the complaint

3 2018 SCC OnLine Bom 3775

4 Cr.Appln.(APL) 737 of 2019 (decided on 28/01/2021)

5 2018(3) Mh.L.J. 913

6 2020 ALL MR (Cri.) Journal 435

elaborately raised allegations against all the applicants and that their specific roles had been stated. The allegations could not be said to be vague and omnibus. It is further submitted that the proper interpretation of the provisions of the D.V. Act would show that even if the applicant Nos.2 to 8 were residents of said places, they would be liable to face proceedings under the D.V. Act and that the respondents were entitled for relief against them under the said Act. The learned counsel for the respondents relied upon the definition of “respondent” under Section 2(q) of the D.V. Act and submitted that as per judgment of the Hon’ble Supreme Court in the case of **Hiral P. Harsora and others vs. Kusum Narottamdas Harsora and others**⁷, the words “adult male” had been struck down and the proviso to Section 2(q) of the D.V. Act also stood deleted, thereby demonstrating that applicant Nos.2 to 8 were also liable to face proceedings under the provisions of the D.V. Act. Reliance was also placed on the other provisions of the D.V. Act to demonstrate that the complaint deserves to be considered on merits, even as against applicant Nos.2 to 8, in the context of allegations regarding domestic violence raised against them.

(9) Heard learned counsel for the rival parties. Insofar

⁷ (2016) 10 SCC 165

as the preliminary objection is concerned, the learned counsel for the respondents has relied upon the Full Bench judgment of this Court in the case of **Nandkishor Pralhad Vyawahare** (supra) and judgment of Punjab and Haryana High Court in the case of **Roop Lal** (supra). It is claimed that the applicants should have filed an appeal under Section 29 of the D.V. Act. The aforesaid Full Bench Judgment of this Court recognizes that inherent power of this Court, under Section 482 of the Cr.PC., will be available for redressal of grievances of parties from orders arising under the D.V. Act, subject to self-imposed restrictions, including availability of efficacious remedy under Section 29 of the D.V. Act. The Punjab and Haryana High Court in the said judgment also indicated that appeals under Section 29 can be filed, instead of rushing to the High Court under Section 482 of the Cr.PC.

(10) But, the question of availability of alternative remedy under Section 29 of the D.V. Act, would not arise in the facts and circumstances of the present case, because under the said provision an appeal shall lie before the Sessions Court from an order passed by the Magistrate. In the present case, the applicants have not challenged any order passed by the Magistrate under the D.V. Act.

Instead, it is the contention of the applicants that the complaint itself deserves to be quashed as not maintainable under the provisions of the D.V. Act. Therefore, the preliminary objection is rejected.

(11) Considering the tenor of the arguments raised on behalf of the rival parties, this Court finds that at least insofar as applicant No.1(Husband), is concerned, there is hardly anything to show that the complaint filed by the respondents could be quashed as against him.

(12) A perusal of the contents of the complaint would show that specific allegations of domestic violence have been levelled against him and he admittedly was in a domestic relationship with the respondent No.1 and they were indeed part of a shared household. Therefore, insofar as the applicant No.1 is concerned the present application deserves to be dismissed.

(13) Insofar as applicant Nos.2 to 8 are concerned, it is an admitted position that applicant No.2 is the mother-in-law, applicant No.3 is brother-in-law, applicant No.4 is sister-in-law, applicant Nos.5 and 6 are sons of applicant Nos.3 and 4, applicant

No.7 is brother-in-law and applicant No.8 is sister-in-law of the respondent No.1. A perusal of the complaint filed by the respondents shows that the applicant Nos.2 to 8 are residents of places away from the place where the respondent No.1 resided with the applicant No.1 after marriage. In the present application also, the addresses of applicant Nos.2 to 8 have been stated, which show that they are indeed residents of places away from the place where the applicant No.1 and the respondent No.1 resided after marriage. Documents have been placed on record as address proofs of applicant Nos.2 to 8 to support the said statement. In fact, no serious dispute is raised on behalf of the respondents, with regard to the said position on facts.

(14) It is in this backdrop, that this Court is called upon to examine whether the respondents can be permitted to prosecute the complaint against applicant Nos.2 to 8 also. In this regard, few provisions of the D.V. Act are relevant, the same are as follows :-

"2. Definitions.— In this Act, unless the context otherwise requires,—

(a) to (e)

(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;

(g) to (p)

(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 :

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

(r)

(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 and 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;”

(15) Section 2(g) defines “domestic violence” as having the same meaning as assigned in Section 3 of the aforesaid Act. The aforesaid provision elaborately defines physical, mental, psychological, sexual and economic abuse faced by a woman in a domestic relationship.

(16) The aforementioned terms defined in the D.V. Act have been subject matter of consideration in various judgments of the Hon'ble Supreme Court and this Court. As noted above, in the case of **Hiral Harsora** (supra), the Hon'ble Supreme Court found that the words "adult male" used in Section 2(q), which defines "respondent", deserve to be struck down. Accordingly, the said words have been struck down and the proviso to Section 2(q) also stands deleted as per the said judgment. Therefore, in a complaint filed under the provisions of the D.V. Act by an aggrieved person, "respondent" means any 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 the D.V. Act.

(17) There can be no dispute about the fact that even applicant Nos.2 to 8 can be arrayed as respondents in the complaint filed by the respondents under the D.V. Act, provided other relevant provisions of the said Act are also satisfied. In this context, it needs to be examined whether the respondent No.1 could be said to be in a "domestic relationship" and living in a "shared household" with the applicant Nos.2 to 8. It is when she satisfies the said requirements of the aforesaid terms defined under the D.V. Act, that the Court can

examine whether she had indeed suffered any domestic violence at the hands of applicant Nos.2 to 8.

(18) In the case of **Satish Chander Ahuja** (supra), in the context of Section 2(f) of the D.V. Act, which defines “domestic relationship” and 2(s) thereof, which defines “shared household”, the Hon’ble Supreme Court in the said judgment has held as follows :-

“68. 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, 2005 Act was enacted to give a higher right in favour of women. The 2005 Act has been enacted to provide for more effective protection of the rights of the women 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 2005 Act 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.”

(19) In the case of **Shyamlal Devda** (supra), the Hon’ble Supreme Court was concerned with a similar situation where number of relatives of the husband were made respondents in a complaint filed

under the D.V. Act. The Hon'ble Supreme Court held in the said judgment as follows :-

"9. In the present case, the respondent has made allegations of domestic violence against fourteen appellants. Appellant No.14 is the husband and appellants No.1 and 2 are the parents-in-law of the respondent. All other appellants are relatives of parents-in-law of the respondent. Appellants No.3, 5, 9, 11 and 12 are the brothers of father-in-law of the respondent. Appellants No.4, 6 and 10 are the wives of appellants No.3, 5 and 9 respectively. Appellants No.7 and 8 are the parents of appellant No.1. Appellants No.1 to 6 and 14 are residents of Chennai. Appellants No.7 to 10 are the residents of State of Rajasthan and appellants No.11 to 13 are the residents of State of Gujarat. Admittedly, the matrimonial house of the respondent and appellant No.1 has been at Chennai. Insofar as appellant No.14-husband of the respondent and appellants No.1 and 2-Parents-in-law, there are averments of alleging domestic violence alleging that they have taken away the jewellery of the respondent gifted to her by her father during marriage and the alleged acts of harassment to the respondent. There are no specific allegations as to how other relatives of appellant No.14 have caused the acts of domestic violence. It is also not known as to how other relatives who are residents of Gujarat and Rajasthan can be held responsible for award of monetary relief to the respondent. The High Court was not right in saying that there was prima facie case against the other appellants No.3 to 13. Since there are no specific allegations against appellants No.3 to 13, the criminal case of domestic violence against them cannot be continued and is liable to be quashed."

(20) In the case of **Prabhakar Mohite** (supra), this Court was concerned with a complaint filed under the D.V. Act against the husband and his relatives. This Court found that the relatives of the husband, even as per the contents of the complaint, had not stayed in

the matrimonial house or with the husband and wife at any point of time. Taking into consideration, the said factor, this Court in the aforesaid case held that such a complaint under the provisions of the D. V. Act against such relatives of the husband could not be sustained.

(21) In the case of **Vaibhav Jagtap** (supra), this Court went to the extent of holding that even where husband and wife in a domestic relationship were staying on a particular floor of a building and relatives of the husband including the father-in-law and mother-in-law were staying in separate floors within the same building, the complainant wife could not claim that all such relatives and family members staying in the building on separate floors were part of shared household or that she was in a domestic relationship with them.

(22) The said position of law, in the context of the provisions of the D.V. Act, needs to be applied to the facts of the present case. A perusal of the complaint would show that even as per the respondents, the applicant Nos.2 to 8 were residents of different places and cities, not having lived with the husband and wife in the matrimonial house. The allegations in the complaint as against applicant Nos.2 to 8 are to the effect that when they visited the house

of the husband and wife i.e. the applicant No.1 and respondent No.1 during vacation, they used to provoke the applicant No.1 – husband to harass the respondent No.1 mentally, physically and psychologically. Although certain incidents have been narrated by the respondents as regards such harassment at the hands of applicant Nos.2 to 8, all of them are in the context of visits allegedly made by the said applicants to the matrimonial house. The respondents did not claim that after marriage, the respondent No.1 went to reside with her husband i.e. applicant No.1 in a house wherein applicant Nos.2 to 8 were also residing. The allegations in the complaint are to the effect that when the applicant Nos.2 to 8 used to visit the matrimonial house, certain incidents of harassment had taken place. It is relevant that respondent No.1 also caused an FIR dated 15/06/2019, to be registered against the applicants herein for offences under the Indian Penal Code including under Section 498-A thereof. A Division Bench of this Court, in an application filed by the applicants seeking quashing of the said FIR, has issued notice and directed that the investigation may continue, but the and charge-sheet will not be filed without leave of this Court.

(23) Insofar as applicant Nos.2 to 8 are concerned, the question of them inflicting domestic violence on the respondent No.1 would depend on whether they could be said to be in domestic relationship with the said respondent and their living or at any stage having lived in a shared household with the said respondent. A perusal of the definition of the aforesaid two terms i.e. “domestic relationship” and “shared household”, as well as, the law laid down in that context in the aforementioned judgments would show that insofar as the said applicants are concerned, the respondent No.1 cannot claim relief under the provisions of the D.V. Act. Even if all the contents of the complaint are taken as it is, the applicant Nos.2 to 8 cannot be said to have had a domestic relationship with the respondent No.1 and it cannot be said that they are either living or had lived at any stage in a shared household. The Hon’ble Supreme Court in the case of **Satish Chander Ahuja** (supra) has clearly laid down that living of the complainant woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living shall not make a shared household and therefore, alleged visits of applicant Nos.2 to 8 during vacation or otherwise, during which the respondent No.1 allegedly suffered harassment, cannot come within the definition of

shared household, although it may give rise to some other offence. The respondent No.1 cannot be said to have been in a domestic relationship with applicant Nos.2 to 8, for the very same reason that they cannot be said to have lived at any stage or presently living in a shared household with the respondent No.1. Therefore, it becomes evident that the complaint insofar as applicant Nos.2 to 8 is concerned, cannot be permitted to progress further under the provisions of the D.V. Act.

(24) In view of the above, the application is partly allowed. Insofar as applicant No.1 (Husband) is concerned, the present application is dismissed, while the present application is allowed in favour of the applicant Nos.2 to 8. As a consequence, the complaint filed by the respondents bearing Miscellaneous Criminal Case No.07 of 2020, stands quashed, insofar as applicant Nos.2 to 8 are concerned.

(25) Application is disposed of.

[MANISH PITALE J.]

KOLME/P.A.