

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

CRIMINAL APPLICATION (APL) NO. 166/2019

- APPLICANT :**
1. Sanket S/o Ravindra Dhonge,
aged about 26 years, Occ. Service,
 2. Ravindra s/o Doma Dhonge,
aged about 50 years, Occ. Agriculturist,
 3. Sau. Usha w/o Ravindra Dhonge,
aged about 45 years, Occ. Service,

Nos. 1 to 3 are R/o. Kondasawali, Post
Navegaon Khairi, Tah. Parshioni, District -
Nagpur.

...VERSUS...

- NON-APPLICANTS:**
1. State of Maharashtra,
through Police Station Officer,
Police Station Umred, Tah. Umred,
District - Nagpur.
 2. Sau. Punam Ashutosh Dhonge,
aged : 24 years, Occ. Household,
 3. Adwait s/o Ashutosh Dhonge,
aged : 1 years, being minor through
natural guardian mother non-applicantNo.2
Both R/o. C/o. Uttam Dhole,
Waigaon Ghoturli, Umred, Tah. Umred,
District - Nagpur.

Shri R.M.Patwardhan, Advocate for applicants
Shri S.A.Ashirgade, APP for non-applicant No. 1 - State

CORAM : MANISH PITALE, J.

DATE : 02/08/2021.

1] Heard learned counsel for the applicants.

Admit.

Learned APP appearing on behalf of non-applicant No.1

- State waives notice.

2] Heard the learned counsel for the applicant and the learned APP for non-applicant No.1-State. Non-applicant Nos. 2 and 3 were duly served, but they have chosen not to appear before this Court. On 15.07.2021, this Court had adjourned the present application to give a last chance to non-applicant Nos. 2 and 3 to appear before this Court.

3] Today, when the application is called out for hearing, again there is no representation on behalf of non-applicant Nos. 2 & 3. In this situation, the application was taken up for final hearing.

4] Mr. Patwardhan, the learned counsel appearing for the applicant submitted that the application/complaint filed by non-applicant Nos. 2 and 3 before the Magistrate under the

provisions of the Protection of Women from Domestic Violence Act, 2003, (hereinafter referred to as "DV Act"), is not maintainable against the applicants. It is pointed out that Applicant No.1 is brother-in-law, Applicant No. 2 is father-in-law and applicant No. 3 is mother-in-law of non-applicant No.2. The complaint before the Magistrate has been filed against the husband of non-applicant No.2 and the applicants before this Court. By inviting attention to the contents of the said complaint dated 17.11.2018, filed under Sections 11, 18, 19, 20 and 21 of the DV Act, the learned counsel for the applicants highlighted that all the allegations have been made against the husband and the specific prayers made in the application also pertain to the husband. It is emphasized that nowhere in the complaint, it is stated that applicants before this Court have lived in the same house with non-applicant No. 2 and her husband. The learned counsel for the applicant invited attention of this Court to various provisions of the DV Act and submitted that the applicants cannot be said to be having a domestic relationship with non-applicant No.2 and that, therefore, the complaint deserves to be quashed at this stage itself. Reliance is placed on the judgment of this Court in case of **Mr. Prabhakar**

Mohite & Anr vrs. The State of Maharashtra and anr reported in 2018 ALL MR (Cri) 4508.

5] Mr. Ashirgade, learned APP has also referred to the contents of the complaint filed by non-applicant No.2 and it is stated that the allegations appeared to be made against the husband and there is no averment regarding the applicants having shared a household with non-applicant No.2. As noted above, non-applicant Nos. 2 and 3 have chosen not to appear before this Court, despite being served.

6] Having heard the learned counsel for the applicants and the learned APP, for arriving at a conclusion as to whether the application filed by non-applicant Nos. 2 and 3, under the provisions of DV Act, deserves to be quashed insofar as the applicants are concerned, it is necessary to refer to the definitions of relevant terms in the DV Act. Section 2(f) defines "Domestic Relationship"; Section 2(g) defines "Domestic Violence"; Section 2(q) defines "Respondent" and Section 2(s) defines "Shared Household".

7] A perusal of the aforesaid terms, as defined under DV Act, would show that the definitions of "Domestic Relationship" and "Shared Household" are inter-related and that a person can be said to have a domestic relationship with the aggrieved woman, if that person lives or at any stage has lived in a shared household with the aggrieved woman. The definition of "respondent" also specifically states that it has to be a person who has been in a domestic relationship with the aggrieved woman.

8] Therefore, to answer the said definitions, it would be necessary that the applicants before this Court fall within the definition of "respondent", in the backdrop of the definitions of "domestic relationship" and "shared household", as given in the DV Act. It is only then that they can be alleged to have committed domestic violence as defined in Section 2(g) read with Section 3 of the DV Act.

9] The Hon'ble Supreme Court in case of ***Satish Chander Ahuja vs. Snehal Ahuja***, reported in (2021) 1 SCC 414, has specifically held in paragraph No. 68 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 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 Section 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."

10] In the case of *Prabhakar Mohite and anr vrs. State of Maharashtra and anr* (supra), this Court has referred to the aforementioned definitions under the DV Act and found that unless the persons arrayed as respondents in a complaint filed under the provisions of the DV Act, can be said to be in a domestic relationship with the aggrieved person, such a complaint cannot proceed further against the respondents.

11] Applying the provisions of law laid down by the Hon'ble Supreme Court and this Court in the context of provisions of DV Act, it needs to be examined whether, in the facts and circumstances of

the present case, it can be said that the complaint deserves to be maintained against the applicants before this Court.

12] Applicant No.1 is brother-in-law, applicant No. 2 is father-in-law and applicant No. 3 is mother-in-law of non-applicant No.2. A perusal of the complaint shows that non-applicant No.2 has not stated at any place in the said complaint that the said applicants live or have lived with non-applicant No.2 at any stage in a shared household. The prayer clauses in the complaint filed by non-applicant Nos. 2 and 3, all pertain to reliefs sought only against the husband and none of the prayers pertain to any other relief sought against the applicants before this Court. Therefore, the mandatory requirement of the persons arrayed as respondents having a domestic relationship, is not satisfied on the face of it in the present case. Once it is found that the applicants before this Court could not have been arrayed as respondents by non-applicant No.2 herein, in the complaint filed under the provisions of DV Act, it becomes clear that the proceedings pending before the Magistrate do not deserve to continue as against the applicants herein.

13] In view of the above, the application is allowed. The complaint filed by non-applicant No.2 under Sections 12, 18, 19, 20 and 21 of the DV Act, bearing Misc. Criminal Case No. 40/2018, pending before the Court of Judicial Magistrate, First Class, Umred, stands quashed as against the applicants before this Court.

14] It is made clear that the observations made in the present judgment will not come in the way of non-applicant No.2 in airing her grievance against the applicants herein for any other reliefs, in accordance with law.

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

JUDGE

Rvjalit