

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

Criminal Application (APL) No. 434 of 2021

Anil S/o Bhaurao Salway and Others

Vs.

Pooja Wd/o Swapnil Salway

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.D. Chopde, Advocate for the applicants
Mr. R.N. Sharma, Appointed Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : AUGUST 23, 2021

By this application, the applicants have prayed for quashing of a Criminal Complaint Case filed against them by the sole respondent. The applicants No.1 and 2 are the father-in-law and mother-in-law of the respondent, while the respondent No.3 is her sister-in-law and the respondent No.4 is husband of respondent No.3.

2. The respondent has filed an application under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "D.V. Act"), against the applicants before this Court, seeking various reliefs, including payment of maintenance, residence order, compensation and other such reliefs. The factual background in which the said application has been

filed by the respondent is that the respondent got married to the son of the applicants No.1 and 2 at Akola on 20/12/2017. It is stated that the respondent then accompanied her husband and the applicants to visit Ahmednagar, where a reception was organized. It is the place where the applicants No.1 and 2 reside. Thereafter, the couple went to Akola for some rituals and after visiting holy places, on 01/01/2018, the respondent and her husband reached Bangalore, where her husband was working. It is an admitted position that on 03/04/2019, the husband of respondent committed suicide. Thereafter, on 15/07/2019, the respondent filed the aforesaid application under the provisions of the D.V. Act before the Court of the Magistrate at Akola.

3. Mr. S.D.Chopde, the learned counsel appearing for the applicants submitted that the said Complaint deserved to be quashed for the reason that the applicants never had any domestic relationship with the respondent, which is a *sine qua non*, for maintaining an application under the provisions of the D.V. Act. It is further submitted that even from the contents of the application, it is clear that the respondent and the applicants never lived in a shared household and that, therefore, there was no question of the parties having a domestic relationship, as defined under the D.V. Act. Attention of this Court was invited to the definitions of the expressions

“aggrieved person”, “domestic relationship”, “respondent” and “shared household”. Reliance was placed on the judgment of the Hon’ble Supreme Court in the case of **Satish Chander Ahuja Vs. Sneha Ahuja (2021) 1 SCC 414** and recent judgment of this Court in the case of **Ganesh s/o Badri Rathod and Others Vs. Sau. Nikita w/o Ganesh Rathod and Another, (Judgment and order dated 27/07/2021, passed in Criminal Application (APL) No. 280 of 2021).**

4. Mr. R.N. Sharma, learned counsel appointed on behalf of the respondent submitted that the application filed by the respondent in the present case did refer to the physical and mental harassment suffered by the respondent at the hands of the applicants. It was submitted that the material on record did show that after marriage between the respondent and the son of applicants No.1 and 2, within a few days, the respondent accompanied her husband to reach Bangalore, where they stayed together in the matrimonial house. The effect of the statements made in the application filed under the D.V. Act would have to be analyzed in the backdrop of the specific definitions of “domestic relationship” and “shared household” given in the D.V. Act. It was submitted that the respondent had also initiated proceedings against the applicants for alleged offence under Section 498-A of the Indian Penal Code, which

is pending and certain proceedings for share in the properties are also initiated at the behest of the respondent.

5. Heard learned counsel for the rival parties. In order to seek relief under the provisions of the D.V. Act, the respondent has to fit into the definition of “aggrieved person” as per Section 2(a) and the applicants have to fit into the definition of “respondent” under Section 2(q) of the D.V. Act. The definitions of the “domestic relationship” under Section 2(f) and “shared household” under Section 2(s) of the D.V. Act also assume significance for examining whether prayer of the applicants for quashing Complaint can be granted. It is relevant that the definition of “respondent” under Section 2(q) of the D.V. Act has been read down by the Hon’ble Supreme Court in the case of **Hiral P. Harsora and others Vs. Kusum Narottamdas Harsora and others (2016) 10 SCC 165**, whereby the words “adult male” have been struck down and proviso to Section 2(q) has also been deleted by the order of the Hon’ble Supreme Court. As a consequence, any person, who is or has been in a domestic relationship with the aggrieved person can be arrayed as respondent in the proceedings under the D.V. Act.

6. In the present case, the respondent claims to the aggrieved person and she has arrayed the

applicants as respondents. A perusal of the definitions of “aggrieved person” and “respondent” under the provisions of the D.V. Act show that there has to be a domestic relationship between the parties.

7. For a domestic relationship to exist between two persons, they ought to be living or ought to have lived at any point in a shared household. The expression “shared household” is defined under Section 2(s) of the D.V. Act, to mean where the aggrieved person lives or at any stage had lived in a domestic relationship with the respondent.

8. The Hon’ble Supreme Court in the case of **Satish Chander Ahuja Vs. Sneha Ahuja** (supra), has categorically held in para 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 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.”

9. In the case of **Vaibhav s/o Dattuju Jagtap and others Vs. Kavita w/o Prakashrao Jagtap and anr. Cri. Appln. (APL) 737 of 2019** (decided on **28/01/2021**, this Court has gone to the extent of holding that when the aggrieved person was living with her husband on a particular floor and the relatives of the husband were living on another floor of the same building, it could not be said that there was a domestic relationship between her and the relatives of the husband.

10. Therefore, it becomes clear that for the respondent to maintain the application filed under the provisions of the D.V. Act, before the Court of Magistrate at Akola, she must *prima facie* satisfy the Court that there has been a domestic relationship between herself and the applicants before this Court. A bare perusal of the Complaint shows that the marriage took place at Akola and within few days the respondent moved with her husband to Bangalore. In the said few days between marriage and moving to Bangalore, the couple had visited Ahmednagar,

where the applicants No.1 and 2 reside, for participating in a reception in the context of their marriage and thereafter, they were moving around for rituals and visiting holy places. Such fleeting visit to Ahmednagar immediately after the marriage would certainly not amount to the respondent sharing a household as defined under the provisions of the D.V. Act with the applicants. The statements made in the Complaint indicate that at best she had a domestic relationship and had shared household with her husband, who is unfortunately no more. There is nothing to indicate in the Complaint itself that the respondent could be said to be in a domestic relation with the applicants. In this backdrop, when Section 3 of the D.V. Act is perused, it becomes clear that domestic violence can be alleged for the conduct of the respondent. In the present case, this Court is of the of the opinion that the applicants could not have been arrayed as respondents before the Magistrate as per the definition of the expression “respondent” under Section 2(q) of the Act. Therefore, the Complaint itself cannot proceed further before the Magistrate.

11. Undoubtedly, there are allegations regarding mental and physical harassment meted out to the respondent at the behest of the applicants, but, in the absence of any *prima facie* indication of a domestic relationship between the parties, the

application filed by the respondent under the provisions of the D.V. Act cannot proceed further before the Magistrate. There can be no doubt about the fact that the respondent may well be entitled to pursue proceedings initiated under the general criminal and civil laws for seeking redressal of her grievances, but, insofar as the special statute in the form of the D.V. Act is concerned, her Complaint cannot be said to be maintainable.

12. In view of the above, the present application is allowed. Criminal Complaint Case No. 1245 of 2019, initiated by the respondent before the Court of Judicial Magistrate First Class, Akola, is quashed.

13. Application is disposed of.

JUDGE