

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

CRIMINAL APPLICATION (APL) NO. 387 OF 2020

- 1) Tulshiram @ Tulsidas S/o Haribhau Patil, aged about 75 years, Occu. Retired
- 2) Lata w/o Tulshiram @ Tulshidas Patil, aged 60 years, Occ. Housewife
- 3) Chintu @ Gunwant s/o Tulshiram Patil aged 36 years, Occ. Business
- 4) Soniya w/o Chintu @ Gunwant Patil aged 32 years, Occu. Housewife

Applicants No.1 to 4 are R/o Plot No.94, Near Buddha Vihar, Ram Nagar, Telankhedi, Nagpur

- 5) Suresh Madhukar Rathod, Aged 37 years, Occu. Service

6) Nilima w/o Suresh Rathod aged about 33 years, occ. Household
Both the Applicant Nos.5 & 6 are R/o.Ravinagar Quarters, Near C.P & Berar High School, Ravinagar, Nagpur

.. Applicants

Versus

- 1) The State of Maharashtra through its Police Station Officer, Police Station, Wadi, Nagpur

- 2) Smt. Babita wd/o Harish Patil Aged about 30 years, Occ. Nil

3) Master Himank S/o Harish Patil, Aged 4 years, being minor represented through his natural guardian mother Smt. Babita wd/o Harish Patil, Both Non-Applicant Nos.2 & 3 are R/o Panchsheel Chowk, Ambedkar Nagar, Wadi Amravati Road, Nagpur

.. Respondents

Mr. Bhushan Dafle, Advocate for applicants.

Mr. Sudhir Malode, Advocate for respondents.

CORAM : MANISH PITALE, J.

RESERVED ON : 15/07/2021

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) The applicants have approached this Court seeking quashing of Miscellaneous Criminal Application No. 3330 of 2019, being an application filed by respondent Nos.2 and 3, invoking provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the '**D.V. Act**'). The applicants claim that the said application under the provisions of the D.V. Act is not maintainable, for the reason that they do not have any domestic relationship with respondent No.2 and that they never lived in a shared household with her. It is submitted that even a bare reading of the application filed under the provisions of the D.V. Act, would show

that respondent No.2 is not entitled to seek any relief under the provisions of the D.V. Act.

(3) The facts leading to filing of the present application are that the respondent No.2 got married on 21/04/2013 to Harish Tulshiram Patil. On 25/07/2016, a son i.e. respondent No.3 herein, was born to the couple. The said Harish Tulshiram Patil, died of heart ailment on 19/06/2018 at Nagpur. On 17/09/2019, the respondent Nos.2 and 3 filed the aforesaid application under the provisions of the D.V. Act before the Court of Chief Judicial Magistrate, Nagpur, seeking various reliefs, including maintenance at the rate of Rs.10,000/- per month, return of a vehicle and generator to respondent No.2, payment of Rs.7000/- per month for residential accommodation, direction to return household articles belonging to the said respondent and compensation for loss of earning, as also an order restraining applicant Nos.1 to 4 from creating third party rights in the house property at Nagpur. In the said application, it was alleged that on 29/10/2018, the respondent Nos.2 and 3 were driven out of the house in which the said respondents had been residing during the life time of the husband of respondent No.2. It was claimed that the respondent No.2 was

deprived of using the said generator and vehicle for earning livelihood, thereby causing domestic violence as defined in the D.V. Act. The application proceeded on the basis that the provisions of the D.V. Act applied to the present case. The applicants before this Court were arrayed as respondents/non-applicants before the Magistrate. The applicant Nos.1 and 2 are the father-in-law and mother-in-law of the respondent No.2, the applicant Nos.3 and 4 are the brother-in-law and sister-in-law of respondent No.2, while applicant Nos.5 and 6 are the daughter and son-in-law of applicant No.1. The applicant Nos.5 and 6 admittedly live in a separate house at Nagpur.

(4) Mr. Bhushan Dafle, learned counsel appearing for the applicants submitted that the aforesaid application filed under the provisions of the D.V. Act by respondent Nos.2 and 3 is not maintainable, because there is no domestic relationship between the applicants and respondent No.2 and they never lived in a shared household. As a consequence, domestic violence, as defined under Section 3 of the D.V. Act could not be alleged by the respondent No.2, thereby showing that the application deserves to be quashed at this stage itself. Attention of this Court was invited to paragraph 3 and 6 of

the application filed by respondent Nos.2 and 3 to submit that when it was specifically pleaded in the application that the respondent No.2 and her late husband lived in a portion on the first floor of the house of which they had exclusive use and possession, it cannot be said that they were living in a shared household with the applicants herein. It was submitted that even as per the contents of the application filed by respondent Nos.2 and 3, applicant Nos.1 and 2 herein lived on the ground floor of the house, while applicant Nos.3 and 4 were residing separately in half portion of the first floor and that the second floor was in the possession of two tenants. It was submitted that such statements made in the application filed before the Magistrate clearly demonstrated that there was no shared household between the applicants herein and the respondent No.2 and further that there cannot be any domestic relationship between them. On this basis, it was submitted that the said application pending before the Magistrate deserves to be quashed.

(5) The learned counsel placed reliance on judgment of the Hon'ble Supreme Court in the case of **Satish Chander Ahuja vs. Sneha Ahuja**¹ and judgments of this Court in the case of **B.Balachandra**

¹ (2021) 1 SCC 414

Rao and another vs. Ms.Sanjna Navneet Rao and others² and Vaibhav s/o Dattuji Jagtap and others vs. Kavita w/o Prakashrao Jagtap and anr.³

(6) On the other hand, Mr. Sudhir Malode, learned counsel appearing for respondent Nos.2 and 3 submitted that the contents of the application were sufficient to demonstrate that the provisions of the D.V. Act could certainly be invoked in the facts and circumstances of the present case. It was submitted that the generator and the vehicle in question were purchased by the late husband of respondent No.2 and that she was certainly entitled to custody of the same. It was further submitted that when the applicants and the respondent No.2 were living with her late husband in the same building, it was clearly a case of shared household and that therefore, the applicants and the respondent No.2 were in a domestic relationship. On this basis it was submitted that sufficient details on facts were stated in the application filed on behalf of the respondent Nos.2 and 3 to demonstrate that the respondent No.2 had suffered domestic violence at the hands of the applicants, as defined in Section

² Cr.Appln.No.208 of 2018 D/d.06/09/2018

³ Cr.Appln.(APL) 737 of 2019 (decided on 28/01/2021)

3 of the D.V. Act. Therefore, it was submitted that the present application deserved to be dismissed and that the application filed by respondent Nos. 2 and 3 under the provisions of the D.V. Act deserved to be considered and decided on its own merits before the Magistrate.

(7) Heard learned counsel for the rival parties and perused the material on record. In order to appreciate the contentions raised before this Court, it would be appropriate to refer to the relevant provisions of the D.V. Act, 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;”

(8) Section 3 of the D.V. Act defines “domestic violence” in an elaborate manner and it covers aspects of physical abuse, sexual abuse, verbal and mental abuse and economic abuse. It is relevant that the conduct of a “respondent” would constitute domestic violence as defined in the aforesaid provision. “Respondent” is defined in the above quoted provision i.e. Section 2(q) of the D.V. Act. The Hon’ble Supreme Court in the case of **Hiral P. Harsora and others vs. Kusum Narottamdas Harsora and others**⁴ considered the definition and struck down the words “adult male” and also directed the deletion of proviso to Section 2(q). As a consequence, a “respondent” in an application under the D.V. Act would mean any person who is or has been in a domestic relationship with the aggrieved person. In the present case,

⁴ (2016) 10 SCC 165

the aggrieved person as defined under Section 2(a) of the said Act is respondent No.2. But, it is crucial to examine, as to whether she can be said to be in a domestic relationship with the applicants before this Court, who have been arrayed as respondents in the application filed before the Magistrate under the provisions of the D.V. Act.

(9) In the case of **Satish Ahuja**(supra), a Bench of three Hon'ble Judges of the Supreme Court held that the law laid down by an earlier judgment of a Bench of two Hon'ble Judges of the said Court in the case of **S.R.Batra vs. Smt. Taruna Batra**⁵ was not good law. But, at the same time, the Hon'ble Supreme Court in the case of **Satish Ahuja**(supra) 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

⁵ (2007) 3 SCC 169

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.”

(10) In the case of **B.Balachandra Rao**(supra), this Court took into consideration, definitions of relevant terms in the D.V. Act and held that if the complaint itself shows that the applicant was living in a separate house with her husband, it cannot be held that she was living in a shared household with the relatives of the husband and that she cannot be said to be in a domestic relationship with them.

(11) In the case of **Vaibhav Jagtap**(supra), this Court considered a case where the applicant in her application specifically stated that the house in which she was living was a three storied construction, in which she and her husband were residing on the ground floor and the other family members were residing on the first floor. After referring to the relevant provisions of the D.V. Act, including definitions of “domestic relationship”, “shared household” and “domestic violence”, this Court in the aforesaid judgment held as follows: -

“12. The D.V. Act intends to cover those women who are or have been relationship with the abuser where

both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. The relationship with family members who live together as a joint family are also included. The intention of the Legislature was certainly not to provide a forum and remedy to every aggrieved woman irrespective of the circumstances, irrespective of the relationship with the offender or the nature of grievance. The statutory scheme reveals that the provisions of the D.V. Act can be invoked only by an aggrieved person who is defined to mean any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The jurisdictional facts which are precondition to taking cognizance are (a) the woman must be, or must have been in a domestic relationship with the respondent, and (b) she must have been subjected to any act of domestic violence by the respondent. Domestic relationship as statutorily defined presupposes that the respondent and the complainant lived or have lived together in a shared householder which is defined to mean a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent. The household could be owned or tenanted either jointly by the aggrieved person or the respondent or owned or tenanted by either of them and could belong to the joint family of which the respondent is a member. Whether the aggrieved person or respondent has any right, title or interest in the shared household is immaterial.

The seminal issue is whether Smt.Kavita is or has been in a domestic relationship with the applicants herein who are the relatives of her husband. Holistically reading the application under Section 12 of the DV Act, it is not possible to infer that Smt.Kavita and the applicants shared a household. Even if it is assumed, that the applicants and Smt. Kavita resided in the same building on different floors, it cannot be said that they lived together in a shared household."

(12) It is in the backdrop of the said position of law that this Court is called upon to appreciate the rival contentions raised in the present application. A perusal of the application filed on behalf of respondent Nos.2 and 3 under the provisions of the D.V. Act shows that in paragraphs 3 and 6, it has been averred as follows: -

"3. That, the house property standing on Plot No.94, Ram Nagar, Telankhedi, Nagpur, consists of Ground Floor Plus Two Floors. Non-Applicants No.1 & 2 & their other deceased Son Avinash, were residing on the Ground Floor portion of the said house. Applicant No.1 & 2 & her Late husband Harish s/o Tulshiram @ Tulshidas Patil were residing till the death of Harish Patil on the half portion of first floor and on the remaining half portion of the first Floor, Non-Applicant No.3 & 4 were residing in the said house property standing on Plot No.94, Ram Nagar, Telankhedi, Nagpur. Similarly, on the portion of the Second Floor two tenants were residing in the three rooms given to them on rent."

4.

5.

6. Thus, in view of the above, Harish, the deceased husband of Applicant No.1 was exclusive owner of those two vehicles & the said Kirloskar Generator & Non-Applicant No.1 to 4 had no legal right to retain the said two vehicles & the said Generator with Non-Applicant No.1 to 4 by driving out Applicants No.1 & 2 from the said first floor portion of said house property standing on Plot No.94, Ram Nagar, Telankhedi, Nagpur in their exclusive use & possession on 29.10.2018. Non-

Applicants No.1 & 3 misbehaved with Applicants & abused Applicant No.1 in filthy language & also took initiative in driving the Applicants no.1 & 2 from their said house by putting their own lock on the said premises & threatening the Applicants of dire consequences, if they try to enter in that portion of their said house, on the instigation of Non-Applicants No.2, 4, 5 & 6 & thereby all of them committed "domestic violence" within the meaning of Section 3 of the Protection of Women From Domestic Violence Act, 2005. Applicant No.1 had lodged police report to Ambazari Police Station and Wadi Police station, Nagpur and Non-Cognizable Receipt was issued to her and no efforts to afford any protection to Applicants was made by the police authorities. Thus, the Non-Applicants No.1 to 4 are liable to restore back the possession of the said first floor portion on the house Plot No.94, Near Budhha Vihar, Ram Nagar, Telankhedi, Nagpur, which was in their exclusive use & possession & also hand over the said two vehicles & the said Generator set to Applicants No.1 my above named client No.1 for making use thereof to earn her livelihood & to reside in the said house property."

(13) The above quoted portion of the application shows that even as per the respondent No.2, she along with her late husband was in exclusive use and possession of half portion of the first floor, while applicant Nos.1 & 2 along with another son resided on the ground floor and there were tenants on the second floor of the building. The husband of respondent No.2 died on 19/06/2018. It is the case of respondent No.2 herself that she and her late husband were in exclusive use and possession of the part of the first floor while the

remaining portion was in possession of applicant Nos.3 and 4 and applicant Nos.1 and 2 lived on the ground floor. It is not disputed that applicant Nos.5 and 6, being the daughter and son-in-law of applicant No.1, live separately at Nagpur. The question that arises for consideration is whether in the face of such admitted facts, can it be said that the respondent No.2 was in a domestic relationship with applicants herein and that they were living in a shared household. A perusal of the above quoted definition of the terms “domestic relationship” defined in Section 2(f) and “shared household” defined in Section 2(s) would show that the two are intertwined.

(14) In the present case, when the respondent No.2 herself has pleaded that she and her late husband were living exclusively in half portion of the first floor of the said building, it cannot be said that she was living in a shared household with the applicants before this Court. It is also not the case of respondent No.2 in the application filed under the provisions of the D.V. Act before the Magistrate that all the family members were living together as a joint family. As a result, it cannot be found even at prima facie stage that there was indeed a domestic relationship between the respondent No.2 and the applicants before this Court. The respondent No.2 certainly

had a domestic relationship and she was living in a shared household with her late husband, but as per the statements made in the application before the Magistrate, at this stage itself it cannot be said that she was living in a shared household with the applicants before this Court. Therefore, she was not in a domestic relationship with them.

(15) Consequently, the applicants before this Court do not fit into the definition of “respondent” as defined in Section 2(q) of the D.V. Act. As laid down by the Hon’ble Supreme Court in the aforementioned judgment in the case of **Hiral P. Harsora**(supra), the applicants would necessarily have to be persons in a “domestic relationship” with the respondent No.2 herein and only then could she claim that she had suffered domestic violence at the hands of the applicants. Section 3 of the D.V. Act states that domestic violence is an act or omission or conduct of the “respondent”. Thereafter, various aspects of domestic violence are elaborately stated in the said definition.

(16) The respondent No.2 may well be entitled to file appropriate civil and criminal proceedings in respect of her grievance regarding the generator and the vehicle allegedly purchased in the

name of her late husband and the extent to which she might be entitled to share in the property, but, in view of the facts pleaded in the application filed under the D.V. Act itself, she cannot maintain prayers for reliefs under the said Act, as the contents of the application negate the concept of “domestic relationship” with the applicants and prima facie show that she cannot be said to be living in a “shared household” with them. Therefore, it is found that the application filed on behalf of the respondent Nos.2 and 3 under the provisions of the D.V. Act before the Magistrate, is not maintainable and deserves to be quashed.

(17) Accordingly, the present application is allowed and the application bearing Miscellaneous Criminal Application No.3330 of 2019 is quashed.

(18) It is made clear that respondent Nos.2 and 3 would be at liberty to initiate appropriate proceedings, under civil and criminal law for asserting their rights in respect of the property and articles to which the said respondents claim to be entitled on their own or through the late husband of respondent No.2.

(19) Application is disposed of.

[MANISH PITALE J.]

KOLHE/P.A.