

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 470 OF 2015

- (1) Dr. Sumit S/o Narayanprasad Fogla,
Aged 35 years, Occ : Doctor,
R/o 45469, Indian Greek
DrCantonMichigan, 48187U.S.A.
- (2) Narayanprasad S/o Bhagwandas Fogla,
Aged about 63 years, Occ : Retired
- (3) Mrs. Sushiladevi W/o Narayanprasad Fogla
Aged about 61 years, Occ : Housewife
- (4) Amit S/o Narayanprasad Fogla
Aged about 38 years, Occ : Business
- (5) Mrs. Bhavana W/o Amit Fogla
Aged about 37 year, Occ : Housewife
Nos. (2) to (5) residents of 301, 302
Fogla House, IraniWadi, Hamukalyani
Road, Kandivli West Mumbai.

.... Petitioners

- Versus -

- (1) Sou. Shradha W/o Sumit Fogla,
aged 33 years, R/o C/o Hanuman
Purushottamji Sigtia, Opp. Gorakshan
Sansthan, Gorakshan Road, Akola,
Tah: & Dist : Akola 444 004.
- (2) The State of Maharashtra
Through the Office of Governement Pleader.

.... Respondents

Mr. R. R. Vyas with Shri S. S. Paliwal, Advocates for the petitioners
Mr. S. V. Sohoni, Advocate for respondent no. 1
Mr. S. S. Doifode, APP for the State/respondent no. 2

CORAM : ROHIT B. DEO, J.

DATED : 22nd FEBRUARY, 2021.

ORAL JUDGMENT

Rule. Rule made returnable forthwith.

2. With consent, the petition is finally heard at the admission stage.

3. During the course of hearing, the learned counsel for respondent 1 - wife points out certain dates and events, which render the maintainability of the petition extremely contentious.

4. The challenge in this petition is to the institution of application 336/2015 under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short 'D. V. Act') and the order dated 25-2-2015 rendered by the learned Magistrate of issuing notice to the petitioners.

5. Petitioner 1 is the husband, petitioners 2 and 3 are the parents-in-laws and petitioners 4 and 5 are the brother-in-law of the respondent 1 and his wife respectively.

6. Proceedings under the D.V. Act are filed on 24-2-2015 and the learned Magistrate issued notice.

7. On 17-4-2015, petitioners 2 to 5 preferred an application seeking their deletion.

8. The petitioners filed this application under Section 482 of the Code of Criminal Procedure, 1973 (Code) on 16-6-2015 in which the only prayer was that the proceedings under the D.V. Act be quashed.

9. The petitioners amended the petition on 22-7-2015. However, by amendment in the petition, the only additional relief which was sought was quashment of the notice.

10. It appears that all the petitioners preferred an application purportedly under Section 9A of the Code of Civil Procedure seeking dismissal of the proceedings under the D.V. Act which is rejected by order dated 8-9-2015. The said order is not challenged till date.

11. It further appears that notice was issued by this Court and stay to the proceedings granted without being made aware of the developments referred to supra.

12. Learned counsel Mr. S. V. Sohoni would contend that the petitioners are guilty of suppressing material facts and securing interim relief without disclosing that their application seeking dismissal of the domestic violence proceedings stood dismissed by the learned Magistrate on merits.

13. It is not necessary to record any finding on the said submission. However, what is noticed is that the said order whereby the learned Magistrate dismissed the application preferred challenging the jurisdiction to entertain the domestic violence proceedings is appealable under Section 29 of the D.V. Act. In the context of the factual matrix, I do not consider it appropriate to entertain the application under Section 482 of the Code.

14. Mr. R. R. Vyas, learned counsel for the petitioners would submit that the petitioners may be permitted to avail the statutory

remedy. A categorical statement is made on behalf of the petitioners that the maintenance awarded shall be scrupulously and regularly paid. The statement is accepted as an undertaking to the Court.

15. The petitioners are at liberty to prefer the statutory appeal within the next 30 days, and if such an appeal is preferred within the prescribed period, the same shall be decided by the appellate court within 60 days from the filing of the appeal.

16. The petitioners shall serve advance copies of the memo of appeal and disclose the date on which the appeal shall come up for hearing to the respondents herein and also to learned Counsel Mr. S. V. Sohoni.

17. The interim order granted by this Court is vacated.

18. Irrespective of the decision in appeal, the learned Magistrate shall endeavour to conclude the domestic violence proceedings as expeditiously as possible, and in any event, within the next six months.

19. The writ petition is disposed of in the aforestated terms.

JUDGE

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