

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

CRIMINAL APPLICATION (APL) NO. 462 OF 2016

- 1) Sanjay s/o Narayan Sapkal,
Aged 40 years, Occ. - Teacher,
- 2) SAu. Pratibha Sanjay Sapkal,
Aged 38 years, Occ.- Household,

Both R/o Khamgaon, Tq. Khamgaon,
District Buldhana.

.... **APPLICANTS**

VERSUS

- 1) Smt. Jayashri Yogesh Gavhale,
Aged 27 years, Occ.- Household,
Presently residing at "Bhaskar Niwas"
c/o Sanjay Bhaskar Tale, Javahar
Nagar, Akola, Tq. and District Akola.
- 2) State of Maharashtra,
through P.S.O. Sangrampur, Tq.
Khamgaon, District Buldhana.

.... **NON-APPLICANTS**

Mr. A.V. Bhide, Counsel for the applicants,
Mr. N.B. Bargat, Counsel for non-applicant 1,
Mr. N.R. Rode, Addl.PP for non-applicant 2.

CORAM : ROHIT B. DEO, J.
DATED : 21st JANUARY, 2021

ORAL JUDGMENT :

The applicants are arraigned as non-applicants 4 and 5 in

an application preferred by Mrs. Jayashri/non-applicant 1 herein under Section 12 of the Protection of Women from Domestic Violence Act (DV Act).

2. Applicant 1-Mr. Sanjay is the husband of applicant 2-Mrs. Pratibha, who is the sister of late Yogesh-Mrs. Jayashri's husband, who committed suicide on 02-5-2012.

3. Mr. A.V. Bhide, learned Counsel for Mr. Sanjay and Mrs. Pratibha would submit that even if the averments in the application are holistically read, and taken at face value, the application is liable to be dismissed qua Mr. Sanjay and Mrs. Pratibha. This submission is on the premise that there was no 'domestic relationship' within the meaning of Section 2(f) of the DV Act between Mrs. Jayashri on one hand and Mr. Sanjay and Mrs. Pratibha on the other. The submission is that there was no sharing of household.

4. Mr. Nitin Bargat, learned Counsel for Mrs. Jayashri makes a strenuous effort to persuade me to hold that the averments in the application do make out a case to proceed against Mr. Sanjay and Mrs. Pratibha.

5. Having heard the learned Counsel Mr. A.V. Bhide and Mr. Nitin Bargat, and having carefully perused the averments in the application Section 12 of the DV Act, in my considered view, continuation of the proceedings shall amount to an abuse of the process of law since even if the averments are taken at face value, no *prima facie* case is made out against Mr. Sanjay and Mrs. Pratibha under the provisions of the DV Act.

6. Mrs. Jayashri herself contends that she and deceased Yogesh were residing in rented accommodation owned by Mr. Deshmane, at Khamgaon, till her husband unfortunately took the extreme step. The only allegation against Mr. Sanjay is that he and Mrs. Pratibha went to the rented accommodation at Khamgaon, after the death of Yogesh and took away certain personal belongings. This averment is hardly relevant in the context of deciding the tenability of the application. The next averment is that alongwith the other brothers of Yogesh, Mrs. Pratibha is in illegal possession of an agricultural field owned by Yogesh. Again, assuming the said averment to be correct, no case of domestic relationship can be inferred.

7. In my considered view, there is absolutely no averment as would *prima facie* demonstrate that Mr. Sanjay and Mrs. Pratibha shared

common household with Mrs. Jayashri and were in a domestic relationship.

8. The complaint Domestic Violence Case 5/2015 is quashed qua Mr. Sanjay and Mrs. Pratibha- the applicants herein.

JUDGE

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