

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

CRIMINAL APPLICATION (APL) NO. 457 OF 2017

- 1) Sheikh Latif s/o Shaikh Gaffur,
Aged about 52 years, Occ.- Service,
- 2) Shamim Bano Shaikh Latif,
Aged about 45 years, Occ. - Household,
- Both 1 & 2 R/o Near Godavari Hall,
Ward No.6, Ghuggus, Tahsil and
District Chandrapur.
- 3) Shaikh Jaleel Shaikh Ahmad,
Aged about 47 years, Occ. - Service,
- 4) Shabana Bano Shaikh Jaleel,
Aged about 40 years, Occ. - Service,
- Both 3 & 4 R/o Raza Nagar, Hadagaon,
Tahsil- Hadagaon, District – Nanded.

.... **APPLICANTS**

VERSUS

Rehnuma w/o Javed Khan,
Aged about 32 years, Occ. - Household,
R/o C/o Abhay Nagpure, Dreamland City,
Ghuggus, Tahsil and District Chandrapur.

.... **NON-APPLICANT**

Mr. E.N. Quazi, Counsel for the applicants,
Mr. N.R. Bhishikar, Counsel for the non-applicant.

CORAM : ROHIT B. DEO, J.
DATED : 11th MARCH, 2021

ORAL JUDGMENT :

This application is preferred by the original non-applicants in Miscellaneous Criminal Case 104/2016 instituted by the non-applicant herein under the provisions of the Protection of Women from Domestic Violence Act ("DV Act" for short), seeking quashment of the said proceedings *inter alia* on the ground that in the absence of the existence of domestic relationship between the parties, the learned Magistrate was not clothed with the jurisdiction to entertain the application under Section 12 of the DV Act.

2. Few facts may be noted :

Non-applicant Rehnuma is the wife of Javed Khan. She has no grievance against her husband Javed Khan. In the proceedings under the DV Act, Rehnuma has arraigned two sisters of Javed Khan, and their husbands, as the only non-applicants.

3. Mr. E.N. Quazi, learned Counsel for the applicants would submit, that apart from the fact that on a holistic reading of the application under the DV Act, the order of issuance of notice is jurisdictionally vitiated since there was no domestic relationship in existence, the application under Section 12 of the DV Act is a gross abuse of the statutory provisions which the legislature intended to serve the aspirations of a woman in distress. Mr. E.N. Quazi would emphasis,

that Rehnuma is not an aggrieved woman, not only from the legalistic perspective or on the touchstone of “aggrieved person” as defined in the DV Act, Rehnuma, acting hand in glove with her husband Javed Khan, is clearly misusing the provisions of the DV Act as a leverage in the dispute between Javed Khan and the other family members touching business and share in the profit.

4. While Mr. Nitin Bhishikar, learned Counsel for the non-applicant stoutly refutes the submission canvassed by Mr. E.N. Quazi, in my considered view, the submission is substantiated from a plain reading of the application under Section 12 of the DV Act.

5. I have noticed the propensity of over implication and roping in all members of husband’s family in the application under Section 12 of the DV Act. Such over implication, whenever and wherever noticed, is nipped in the bud by the High Court. In the factual matrix, Rehnuma has gone a step ahead. The over implication is indeed apparent. A bare reading of the application reveals that the parties did not reside together in a shared household and, therefore, there was no domestic relationship as would empower the learned Magistrate to take cognizance of the application. Rehnuma is not, therefore, an aggrieved person qua the applicants herein and the recourse to DV Act is clearly misconceived.

6. The recourse to DV Act is not only misconceived on the touchstone of the relevant statutory provisions inasmuch as Rehnuma clearly did not live with the applicants herein in a shared household within the meaning of Section 2(s) and (f) of the DV Act, as would clothe her with the character of an “aggrieved person” within the meaning of Section 2(a) of the Act, the substratum of the averments in the application in essence, is that applicants 1 and 2 cheated Javed Khan and purchased several properties from income earned by Javed Khan. Rehnuma further alleges that her husband Javed Khan was pressurized to enter into partnership with Ansar, who is the brother of applicant 1 herein. Rehnuma further alleges that while her husband Javed Khan terminated the partnership, Ansar continued to transact in the name of the firm. In paragraph 21 of the application, Rehnuma contends that she called upon the applicants to submit an appropriate application to WCL and have the name of Ansar deleted from the record, as partner of the firm. One of the reliefs sought is that the applicants be restrained from transferring the alleged benami property purchased from the income of Rehnuma’s husband Javed Khan and that the applicants be restrained from operating the bank accounts on the premise that the amount deposited belongs to Rehnuma’s husband Javed Khan.

7. In my considered view, tested on the anvil of the statutory scheme, there was no domestic relationship between the applicants and Rehnuma and at any rate, there was no domestic violence. What is more disturbing is that the learned Magistrate issued notice mechanically. A plain reading of the application reveals that Rehnuma is not a distressed woman, rather, she and her husband Javed Khan are attempting to abuse the provisions of the DV Act to settle their alleged monetary claims. In this view of the matter, the proceedings are liable to be quashed and the application under Section 482 of the Criminal Procedure Code deserves to be allowed with costs.

8. Miscellaneous Criminal Case 104/2016 is quashed.

9. The application is allowed with costs of Rs.2,000/-. Mr. E.N. Quazi would submit that exemplary costs ought to be imposed since the applicants have suffered unwarranted trauma and agony. While the sentiments expressed are understandable, it would be more appropriate if the applicants institute appropriate proceedings before the appropriate forum and agitate the claim of compensation and/or damages, if so advised, which shall be considered on its own merit,

uninfluenced by any observation herein.

10. The application is allowed.

JUDGE

adgokar