

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

CRIMINAL APPLICATION (APL) NO.737 OF 2019

1. Vaibhav s/o Dattuji Jagtap,
Aged about 31 yrs.,
Occ: Legal Practitioner.
2. Dattuji s/o Deorao Jagtap,
Aged about 62 yrs.,
Occ: Retired Govt. Servant.
3. Smt. Asha w/o Dattuji Jagtap,
Aged about 56 yrs.,
Occ: Household.
4. Bhushan s/o Dattuji Jagtap,
Aged about 26 yrs.,
Occ: Mechanical Engineer.
5. Smt. Shakuntala w/o Deorao Jagtap,
Aged about 85 yrs., Occ: Nil.

All the applicants are
R/o Plot No.63, Rahatekar Wadi,
Dasra Road, Mahal, Nagpur. **APPLICANTS**

...VERSUS...

1. Smt. Kavita w/o Prakashrao Jagtap
Aged about 36 yrs, Occ: Business
(Grocery Shop).
2. Prakashrao s/o Deorao Jagtap
Aged about 46 yrs.,
Occ: Auto Rickshaw Driver.

Both the Non-Applicants are
R/o Plot No.63, Rahatekar Wadi,
Dasra Road, Mahal, Nagpur. **NON-APPLICANTS**

Mr. Shashibhushan Wahane, Advocate for Applicants.
Mr. P.J. Mehta, Advocate for Non-Applicant 1.
Mr. A.S. Tiwari, Advocate for Non-Applicant 2.

CORAM: **ROHIT B. DEO, J.**
DATE: **28th JANUARY, 2021.**

ORAL JUDGMENT:

The applicants are seeking quashment of Miscellaneous Criminal Application 262 of 2019 instituted by non-applicant 1 – Smt. Kavita under Section 12 of the Protection of Women from Domestic Violence Act (D.V. Act). The applicants are arraigned as non-applicants 2 to 5 in the D.V. Act proceedings, and non-applicant 2 – Prakashrao who is the husband of Smt. Kavita, is arraigned as non-applicant 6.

2. Applicants 2 and 3 are the brothers of Prakashrao. Applicants 1 and 4 are the son of applicant 2 and applicant 5 is the mother of Prakashrao and Dattuji.

3. The learned counsel for the applicants Mr. Wahane would submit that even if the allegations in the complaint are taken at face value, the learned Magistrate erred in taking

cognizance in as much as the applicants and Smt. Kavita were not in a domestic relationship.

4. It would be necessary to consider the averments in the application under Section 12 of the D.V. Act in order to appreciate the submission canvassed.

5. In paragraph 1 the reference is to the marriage between Smt. Kavita and Prakashrao. It is averred that Smt. Kavita started residing at the house mentioned in the cause-title, which was occupied by the joint family of her husband.

6. In paragraph 2 it is specifically averred that the house is a three storied construction which was owned by Mr. Deorao and after his death was inherited by the legal heirs. The next averment is that applicant Kavita and her husband Prakashrao were residing on the ground floor and the other family members were residing on the first floor.

7. In paragraph 3 the reference is to the strained relationship between Smt. Kavita and her matrimonial family and to Smt. Kavita driven out of the house only to return to reside

with her husband Prakashrao after 2½ years.

8. Paragraphs 4, 5 and 6 incorporate certain allegations the substratum of which is that Smt. Kavita was ill-treated to force her to succumb to dowry demand and the intent was that she and her son leaved the house and the relatives of her husband become the absolute owner.

Paragraph 7 then refers to certain complaints lodged with the police and in paragraph 8 the averment is that Smt. Kavita informed her husband Prakashrao that she was ill-treated and yet he did not react which emboldened the present applicants.

9. The question which arises for determination is whether on the face of the averment in the complaint the learned Magistrate could have taken cognizance under the provisions of the D.V. Act.

10. The D.V. Act is enacted to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Section 2(a) defines “aggrieved person” thus:

“2(a). ‘aggrieved person’ means 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.”

Section 2(f) defines “domestic relationship” thus:

“2(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.”

Sub-section (s) of Section 2 defines “shared household” thus:

“2(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.”

11. Domestic violence is elaborately defined in Section 3. The power and duties of protection officers, service providers etc. are spelt out in Chapter III comprising Sections 4 to 11. Chapter IV spells out the procedure for obtaining orders of reliefs. Section 12(1) provides that an aggrieved person or a protection officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act. Sub-section (2) provides that the relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation of damages for the injuries caused by the acts of domestic violence committed by the non-applicant. Section 17 provides that every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same and that she shall not be evicted or excluded from the shared household or any part

of it by the respondent save in accordance with the procedure established by law. Section 18 provides for protection orders which may be issued by the Magistrate if he *prima facie* satisfied that domestic violence has taken place or is likely to take place.

Section 19 provides for residence orders and reads thus:

“Residence orders – (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order —

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides.

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstance so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other

property or valuable security to which she is entitled to.”

Sections 20 to 22 deal with the monetary reliefs, custody orders and compensation orders which may be granted-issued in the proceedings under the DV Act.

Statement of objects and reasons of the DV Act read thus:

“Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention of Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989) has recommended that State parties should act to protect women against violence of any kind specifically that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498-A of the Indian Penal Code. The civil law does not however address this

phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following

(i) It covers those women who are or have been in a 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. In addition, relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single woman, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female

relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.”

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.

13. *Prima facie* it appears that the allegations of domestic violence are levelled, and the husband Prakashrao is arraigned as non-applicant 6 in the proceedings as a strategic ploy, to gain a leverage in the dispute pertaining to property.

14. In my considered view, continuation of the proceedings under the D.V. Act would amount to abuse of the process of law.

15. The application is allowed in terms of prayer clause (i) which reads thus:

- (i) quash and set aside the complaint filed by non-applicant No.1 at Annexure-B, vide Criminal Misc. Application No. 262/2019, Kavita Vs. Vaibhav & others, under Section 12 of the Domestic Violence Act, 2005.

JUDGE