

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 130 OF 2019

1. Rehana Parveen Shaikh Rahim
Age: 47 years, Occu.: Household,
R/o Bismillah Colony, Aurangabad
Tq. & Dist. Aurangabad
2. Nasrin Begum Wahajoddin Siddiqui
Age: 42 years, Occu.: Teacher,
R/o Mustafa Park, Vaijapur,
Tq. & Dist. Aurangabad
3. Razia Begum Sharifuddin
Age: 67 years, Occu.: Household,
R/o Aref Colony, Aurangabad,
Tq. & Dist. Aurangabad
4. Mohammad Javed Mohammad Sharifuddin
Age: 44 years, Occu.: Nil,
R/o Aref Colony, Aurangabad,
Tq. & Dist. Aurangabad
5. Mohammed Mujahid Sharifuddin
Age: 40 years, Occu.: Nil,
R/o Aref Colony, Aurangabad,
Tq. & Dist. Aurangabad

..APPLICANTS

VERSUS

Humaira Firdos Quazi Javed
Age: 38 years, Occu.: Household,
R/o Bhadkal Gate, Near I.T.I. College,
Aurangabad, Tq. & Dist. Aurangabad

..RESPONDENT

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Mr. R.H. Wagh, Advocate for applicants
Mr. M.N. Shaikh, Advocate h/f Mr. S.S. Kazi, Advocate for respondent

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 01st MARCH, 2022
PRONOUNCED ON : 23rd AUGUST, 2022

ORDER :

1. This is an application under Section 482 of the Code of Criminal Procedure. It has been filed with following prayer :-

“B. The proceeding PWDVA No. 05/2018 filed by respondent against present applicants before the Ld. Judicial Magistrate First Class at Aurangabad under sections 17, 18, 19, 20, 21, 22, 23 of Protection of Women from Domestic Violence Act, 2005 against all applicants may kindly be quashed and set aside in the interest of justice.”

2. The respondent is the wife of Applicant No.4 – Mohammad Javed. Their marriage took place way back in 2005. Applicant Nos. 1 and 2 are the married sisters-in-law of the respondent. Their marriages took place before respondent married Applicant No.4. Both these applicants reside at their respective marital houses. Applicant No.3 is said to be the age old mother-in-law of the respondent. Applicant No.5 is her disabled brother-in-law.

3. The respondent has filed a proceeding (PWDVA No. 5 of 2018) against the applicants herein under Section 12 of the Protection of Women

from Domestic Violence Act, 2005 ('PWDV Act'). Prayers in the said proceeding are as under :-

“B) The non-applicant may kindly be directed to produce the minor children before this Hon’ble Court and the Court may kindly hand over the custody of minor children to the applicant, otherwise the City Chowk Police may kindly be directed to receive the custody of minor children of applicant and hand over them to the applicant.

C) The non-applicant may kindly be directed to pay Rs.50,000/- per month to applicant no.1 and her three children from the date of 17/10/2017.

D) Non-applicant no.1 be further directed to pay Rs.5,00,000/- to the applicant towards marriage expenses.

E) Non-applicant no.1 may kindly be further directed to pay Rs.5,00,000/- to applicant as a compensation for spoiling the life of the applicant and abused her physically, mentally, economically and sexually.

F) The respondent no.1 may kindly be further directed to provide separate residential house in shared house or to pay Rs.5,000/- per month towards rent.”

4. Learned counsel for the applicants would submit that a false and concocted proceeding has been initiated by the respondent. The documents on record would indicate that all was not well between the respondent and her husband. The respondent made number of complaints with various authorities. On 2-3 occasions, the matter was settled between the two. Applicant No.4 had brought the respondent back to her matrimonial home.

He had also agreed to allow her to stay at her parental house with a view to maintain her and keep conjugal rights. The respondent has also filed proceeding under Section 498A of the Indian Penal Code against all the applicants. According to learned counsel, the submissions made by the respondent in her complaint applications to various authorities are grossly inconsistent with each other. According to him, if proceeding under the PWDV Act is allowed to continue against the present applicants, it would be an abuse of process of Court. He, therefore, urged for grant of application.

5. Learned counsel for the respondent adverted this Court's attention to the affidavit-in-reply filed by the respondent. All the allegations in the application under Section 482 of the Cr.PC. have been denied. According to learned counsel, the averments made in the complaint are only to be seen. Veracity thereof would be subject of trial of the case. He has relied on judgment of the Apex Court in case of ***Bhaskar Lal Sharma and Another Vs. Monica and Others*** reported in ***(2014) 3 SCC 383***. According to learned counsel, the averments in the proceeding under the PWDV Act are of questions of fact. Such proceedings cannot be quashed in exercise of inherent power of this Court under Section 482 of Cr.PC. Learned counsel took this Court through the complaint/PWDVA No.5 of 2018 to ultimately urge for rejection of the application.

6. Considered the submissions advanced. Perused the complaint and the related admitted documents. The respondent married Applicant No.4 way back in 2005. Applicant Nos. 1 and 2 are the married sisters-in-law of the respondent. Applicant No.1's marriage took place way back in 1995. She has been residing at her matrimonial home. Applicant No.2 got married in 2005 and has been residing at Vaijapur. She has been serving as a teacher in a Urdu school. Applicant No.3 is sixty-seven years old mother-in-law of the respondent. Applicant No.5, the brother-in-law, is physically disabled. The documents on record indicate it is a case of long standing marital discord between Applicant No.4 and the respondent. Way back in 2009, the respondent had made a complaint against her husband to Imam of Jama Masjid, Aurangabad. A compromise was worked out. The terms of settlement were inked. From the recitals thereof it doesn't appear that the respondent had any grievance against her in-laws. Even after the settlement, that took place in August 2009, again dispute arose. Again the settlement was arrived at in June 2012. A copy of the settlement is on record. From the recitals thereof it appears that the respondent did not have grievance against any of her in-laws.

7. This Court is basically concerned with the averments in PWDVA NO. 5 of 2018. A close reading thereof would indicate that general and omnibus allegations are levied against all the applicants. It has not been specified therein as to when Applicant Nos. 1 and 2 had come to their

parental home and harassed the respondent. True, all the possible allegations made against all the applicants herein without any details thereof. Had the respondent any grievance against her in-laws, all of them would have been privy to the terms of settlement/s. True, the respondent has a prima facie justifiable grievance against her husband – Applicant No.4. A prayer has also been made against him for payment of Rs.50,000/- towards maintenance of respondent and minor children. For want of specific averments attributing to Applicant Nos. 1 to 3 and 5 with particular overt act and details thereof, this Court finds that continuing the proceeding of PWDV Act against these applicants would be an abuse of process of Court. There can be no dispute over what has been observed by the Apex Court in case of Bhaskar Lal Sharma (supra). The facts of the said case would indicate that a detailed recital of the manner in which the appellants and Respondent No.2 therein had allegedly ill-treated the respondent – complainant after the marriage had been set out. Same is not the case herein.

8. For the reasons stated hereinabove, the Court is inclined to allow the application so far as Applicant Nos.1 to 3 and 5 are concerned in terms of prayer clause (B). Application stands dismissed so far as Applicant No.4 is concerned.

(R.G. AVACHAT, J.)

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