

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 CRIMINAL WRIT PETITION NO.73 OF 2020

RAJKUMAR BABURAO PHULE AND OTHERS
VERSUS
SULOCHANA W/O. RAJKUMAR PHULE AND ANR

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Advocate for Petitioners : Mr. Gunale V. D.
APP for Respondent No.2-State : Mr. A. M. Phule
Advocate for Respondent No.1 : Mr. R. S. Shinde

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30-06-2022

ORAL ORDER :

1. Present petition has been filed invoking the Constitutional powers of this Court under Article 226 and the inherent powers under Section 482 of the Code of Criminal Procedure to challenge the order of issuance of process in Cri.Misc.Appln.No.579 of 2017 by learned Judicial Magistrate First Class, Udgir District Latur, on 08-11-2017 on the application filed by the present respondent No.1 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act). The entire proceeding has been challenged in the petition.
2. Heard learned Advocate Mr. V. D. Gunale for petitioners and learned Advocate Mr. R. S. Shinde for respondent No.1.

3. It has been vehemently submitted on behalf of the petitioners that petitioner No.1 is not denying the fact pleaded by respondent No.1 that petitioner No.1 and respondent No.1 got married on 04-06-1993, however, she has suppressed the fact that there was a registered divorce deed executed on 06-01-1998 between her and petitioner No.1. She has also received the permanent alimony and she had relinquished her right to claim maintenance by the said document. Further, as per her own pleadings she states that she was driven out of the house in 2000, but then she has filed the present application in 2017. How she could have survived without the source of income, is a question and there is a room to believe then she has a source of income and in order to harass the petitioners she has filed the present application. Petitioners No.2 to 9 cannot be said to be in domestic relationship with respondent No.1 in view of the fact that it is alleged that she was driven out of the house in 2000 itself, therefore, the proceeding deserves to be quashed and set aside.

4. The learned Advocate for respondent No.1 opposed the petition by submitting that the alleged document of divorce cannot be taken into consideration as it is not a legal document. As regards respondents No.2 to 9 are concerned, respondent No.1 is seeking

protection order. Petitioner No.1 has performed second marriage with petitioner No.2 and the other relatives, especially the father and the brother of the petitioner No.1 had supported the act of petitioner No.1 getting married to petitioner No.2, therefore, it amounts to domestic violence. It cannot be stated that as she had not prayed for maintenance in the past, she has sufficient income to support herself. She has pleaded that she was at the mercy of her parents, but the financial condition of her parents as well as her brother is also weak. It is the responsibility of petitioner No.1 to maintain the wife i.e. respondent No.1 and the child born to her. He, therefore, submitted that the writ petition should be dismissed.

5. At the outset, it is to be noted that when petitioner No.1 is not denying the fact of marriage, then he will have to show that the said marriage came to an end by legal provisions. Execution of the customary divorce deed will have to be proved by him at the time of trial. That disputed fact cannot be considered in the writ petition. Whether in the caste of petitioner No.1 and respondent No.1 there was such custom to take customary divorce, should be proved and in absence of that there is no meaning to the document though it is stated that it is registered with the sub-Registrar. One more aspect will have to be considered by the concerned Court as to whether

there can be a waiver against a legal right by way of execution of such document. Even if we consider the said document for a moment, it says that the husband has given amount of Rs.20,000/- towards permanent alimony. It shows that the husband intended to do a mockery and wanted that the wife should survive with his Rs.20,000/- for rest of her life. It also shows the mentality of petitioner No.1. No case is therefore made out to quash the proceedings against petitioner No.1.

6. Petitioner No.2 is alleged to be the second wife of petitioner No.1. Petitioner No.3 is stated to be the daughter of petitioners No.1 and 2. Petitioners No.4 and 5 are the parents of petitioner No.2. Petitioners No.6 and 7 are the sisters of petitioner No.1. Petitioners No.8 and 9 are the father and brother of petitioner No.1 respectively. The second wife cannot be said to be in domestic relationship with the aggrieved person and cannot be considered in the definition of word 'respondent'. Word 'domestic relationship' has been defined in Section 2 (f) of the PWDV Act thus :-

“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.”

There appears to be no proof about at any point of time respondents No.1 and 2 lived in the shared household. Word ‘shared household’ is also defined in Section 2 (s) of the PWDV Act. The pleadings in the petition are not clear enough to state that after allegedly marrying with petitioner No.2 by petitioner No.1, petitioner No.1, 2 and respondent No.2 were staying together. In the entire petition the year of marriage between petitioners No.1 and 2 has not been given. But when it is stated that petitioner No.3 is the daughter of petitioners No.1 and 2 and the age of petitioner No.3 when the application was filed before learned Judicial Magistrate First Class has been given as 20 years. Therefore, the silence on the part of respondent No.1 will have to be considered here. Further, petitioners No.4 and 5 are the parents of petitioner No.2 alleged second wife, definitely they will not come under the definitions of ‘domestic relationship’ as well as ‘shared household’. As regards petitioners No.6 and 7 are concerned, they appear to be married sisters of petitioner No.1. Their year of marriage has not been stated in the application under Section 12 of the Act by respondent No.1. As regards petitioners No.8 and 9 are concerned i.e. father and brother of petitioner No.1, if we consider the pleadings, it is stated that

original respondents No.6 to 9 i.e. present petitioners No.6 to 9 were insisting that she should bring amount of Rs.1 lakh and they were insisting petitioner No.1 that he should perform second marriage. Then it is stated that the second marriage was performed and as aforesaid it might have been 20 years prior to the date of the application. So also she states that she was driven out of the house in the year 2000 and if we consider the prayers, the only prayer which can be said to have been prayed is under protection under Section 18 of the D.V.Act, but for that purpose the details about any such act which amounted to domestic violence, especially in the nature of physical violence, has not been stated to have been occurred since the year 2000. At the most her case may be covered under the financial domestic violence as against petitioner No.1, and therefore, the application needs to be quashed as against respondents No.2 to 9. Hence, following order.

ORDER

- 1) The petition stands partly allowed.
- 2) The prayer to quash the entire proceeding Cri.Misc.Appln. No.579 of 2017, under Section 12 of the Protection of Women from Domestic Violence Act, 2005,

pending before learned Judicial Magistrate First Class, Udigr, District Latur, stands rejected as against petitioner No.1/original respondent No.1.

3) The said petition stands quashed and set aside as against original respondents No.2 to 9 in the application and petitioners No.2 to 9 in present writ petition.

4) Petition stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.