

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

CRIMINAL WRIT PETITION NO.637 OF 2022

1. Purushottam S/o Dayaram Dusane
 2. Sulochanabai W/o Purushottam Dusane
 3. Archana W/o Bhaiyya Dusane
 4. Mohan @ Bhaiyya S/o Purushottam Dusane
 5. Vishal S/o Purushottam Dusane
 6. Jyoti W/o Vishal Dusane
 7. Kavita Bai W/o Rajesh Bhamare
 8. Rajesh Bhamare
- ... Petitioners.

Versus

1. The State of Maharashtra
 2. Rupali W/o Manohar Dusane
- ... Respondents

....

Mr. Suniket A. Kulkarni, Advocate for the Petitioners

Mr. P.G. Borade, APP for Respondent No.1/State

Mr. A.D. Sonar, Advocate for Respondent No.2

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 29 SEPTEMBER 2022

PER COURT:-

. The petitioners are seeking the quashment of the proceedings vide Criminal Miscellaneous Application No. 198 of 2022, pending on the file of learned Judicial Magistrate, First Class at Dhule by invoking writ jurisdiction.

2. Heard Mr. Suniket Kulkarni, learned counsel for the petitioners, Mr. A.D. Sonar, learned counsel for Respondent No.2 and Mr. P.G. Borade, learned APP for respondent No.1/State.

3. Mr. Suniket Kulkarni, learned counsel for the petitioners vehemently submitted that the allegations levelled against the present petitioners in the application under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the D.V. Act for the sake of convenience) filed by respondent No.2 are absurd and vague. No specific role is attributed to them. Petitioner Nos. 1 and 2 are the old parents-in-law, and they have no role to play in the day to day family affairs of husband and wife (Respondent No.2 Rupali and her husband Manohar).

4. Respondent Nos.3 and 4 are the sister-in-law and brother-in-law, respectively. Petitioner Nos. 5 and 6 are also the brother-in-law and his wife respectively. Respondent Nos. 7 and 8 are the married sister-in-law and her husband. Petitioner Nos. 3 to 8 have no domestic relationship with

respondent No.2. They never lived with respondent No.2 in their share household. Petitioner Nos. 3 and 4 though resident of Dhule, they are residing in a different house. Petitioner Nos. 5 and 6 are permanent resident of Thane. Petitioner Nos. 7 and 8 are permanent resident of State of Gujarat. They have unnecessarily roped in the proceedings under the D.V. Act, only because they are distant relatives of the husband of respondent No.2. It is nothing but abuse of process of law. He submitted that the husband of respondent No.2 is not made party to this petition. He, therefore, urged to quash the proceedings to the extent of present petitioners.

5. Per contra, Mr. Sonar, learned counsel for respondent No.2 submitted that the allegations levelled against the petitioners in the application under the D.V. Act are specific with role against the respective petitioners. It is categorically described in the application. Even though, the petitioner Nos. 3 and 4 are married, they are residing with petitioner Nos. 1 and 2 in the same house situated at Shivaji Nagar, Vadi Bhokar Road, Deopur, Dhule. There was a domestic relationship between respondent No.2 and the present petitioners. Even though, petitioner Nos. 5 and 6 are resident of Thane and petitioner Nos. 7 and 8 are resident of State of

Gujarat, they were regularly visiting the matrimonial house of respondent No.2 and used to instigate the husband of respondent No.2, and thereby she was subjected to domestic violence at the hands of her husband.

6. Mr. Sonar, learned counsel for respondent No.2 invited my attention to the copy of the charge-sheet filed against the present petitioners in connection with Crime No.406 of 2021 registered at the instance of respondent No.2 for the offences punishable under Section 498-A, 323, 504, 506, 34 of the Indian Penal Code. He submitted that the address of petitioner Nos. 1 to 4 and husband of respondent No.2 given therein is same and one. He, therefore, submitted that there is no merit in the application and liable to be dismissed.

7. I have considered the submissions of both the sides. Perused the copy of application filed by respondent No.2 vide Criminal Misc. Application No.198 of 2022 under the provisions of the D.V. Act, copy of the charge-sheet, and other papers.

8. It is necessary to have a look on the relationship between the parties.

Petitioners No.	Petitioners Name	Relations with Respondent No.2
1.	Purushottam S/o Dayaram Dusane	Father in Law R/o Dhule
2.	Sulochanabai W/o Purushottam Dusane	Mother in Law R/o Dhule
3.	Archana W/o Bhaiyya Dusane	wife of Brother in Law R/o Dhule,
4.	Mohan @ Bhaiyya S/o Purushottam Dusane	Brother in Law R/o Dhule,
5.	Vishal S/o Purushottam Dusane	Brother in Law R/o Thane
6.	Jyoti W/o Vishal Dusane	Wife of Brother in Law R/o Thane
7.	Kavitabai W/o Rajesh Bhamare	Married Sister in Law R/o Mahesana, State of Gujarat
8	Rajesh Bhamare	Husband of Sister in Law R/o Mahesana, State of Gujarat

9. This Court while deciding the criminal application No.2885 of 2021 (Hemant S/o Dharmaraj Adhe and others Vs. The State of Maharashtra and others) dated 06.09.2022, after considering the provisions of the D.V. Act, and the allegations levelled in the application under the D.V. Act, was pleased to quash the proceedings to the extent of the distant relatives.

10. The definition of “domestic violence” is given under Section 3 of the D.V. Act. It is also necessary to have a look on the definitions of “domestic relationship” and “shared household” defined under the D.V. Act, which read as under:

“2. Definitions.-

(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;

(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith 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. Having regard to the definitions of “domestic relationship” and “shared household”, I have gone through the pleadings made by respondent No.2/wife in her application filed under the D.V. Act. On careful examination of the pleadings, one would find that there are specific allegations to the extent of husband, parents-in-law / petitioner Nos.1 and 2, and petitioner Nos. 3 and 4. On perusing the copy of charge-sheet referred above, the address of the present petitioner Nos. 1 to 4 is found same and one. It is, therefore, clear that petitioner Nos. 1 to 4 are residing in the same house situated at Shivaji Nagar, Vadi Bhokar Road, Deopur, Dhule. The husband of respondent No.2 also stays there. Respondent No.2 was residing in the above said house with petitioner Nos.1 to 4, which can be termed as “shared household”. She was having domestic relationship with petitioner Nos.1 to 4, when she was residing there. In view of the nature of allegations levelled against petitioner Nos. 1 to 4, and looking to the definitions of “domestic relationship” and “shared household” (supra), no case is made out against them to drop the proceeding initiated by respondent No.2 under the D.V. Act.

12. So far as petitioner Nos. 5 and 6 are concerned, petitioner No.5 is the married brother-in-law and petitioner No.6 is his wife. Both of them are permanent resident of Thane as appearing from their copies of Aadhaar Card placed on record. Petitioner No.7 is the married sister-in-law, and petitioner No.8 happens to be her husband. Both of them are permanent resident of Mahesana, State of Gujarat. It is difficult to accept the contention of respondent No.2 that they were visiting their share household regularly, and instigate her husband, and thereby respondent No.2 was subjected to domestic violence. They might be visiting the house of respondent No.2. However, on account of certain festivals, occasions and weddings in the family, which can be termed as "casual visits". It cannot be termed that petitioner Nos. 7 and 8 lived with respondent No.2 in their shared household. It is also difficult to accept the contention of respondent No.2 that petitioner Nos. 5 to 8 have domestic relationship at the relevant point of time, when she was allegedly subjected to the domestic violence.

13. Having regard to the above factual scenario, and in view of guidelines laid down in case of ***K. Subba Rao Vs. The State Of Telangana*** (Criminal Appeal No.1045 of 2018 decided on 21.08.2018), the present case is covered by the said decision. Petitioner Nos. 5 to 8 seem to have been unnecessarily roped in the proceedings under the D.V. Act, when they had not at any point of time lived in their household, and secondly, the domestic relationship between petitioner Nos. 5 to 8 with respondent No.2 is not established. Therefore, the allegations levelled against the above said set of petitioners about domestic violence are not sustainable.

14. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others***, reported in, ***AIR 1992 Supreme Court 604***, this Court may use its inherent power under Section 482 of the Code of Criminal Procedure and under Articles 226 and 227 of the Constitution of India, the proceedings can be quashed to the extent of petitioner Nos. 5 to 8, when the allegations made against them in the complaint under the D.V. Act do not *prima facie* attract the provisions of the D.V. Act. No *prima facie* case is made out against petitioner Nos.5 to 8.

15. In view of the aforesaid reasoning and findings recorded above and on examination of the entire matter, the present criminal writ petition deserves to be allowed to the extent of petitioner Nos. 5 to 8.

ORDER

- (i) The petition is partly allowed.
- (ii) The complaint/application filed by respondent No.2 under the provisions of the Protection of Women from Domestic Violence Act, 2005. vide Criminal Miscellaneous Application No. 198 of 2022 pending on the file of learned Judicial Magistrate, First Class at Dhule, is hereby quashed to the extent of petitioner Nos. 5 to 8, namely **Vishal Purushottam Dusane, Jyoti W/o Vishal Dusane, Kavita Bai w/o Rajesh Bhamare and Rajesh Bhamare**, respectively.
- (iii) Criminal Miscellaneous Application No. 198 of 2022 stands dismissed to the extent of petitioner Nos.1 to 4, namely **Purushottam S/o Dayaram Dusane, Sulochanabai W/o Purushottam Dusane, Archana W/o Bhaiyya Dusane and Mohan @ Bhaiyya S/o Purushottam Dusane**.

(iv) The trial Court to proceed further with the trial of Criminal Miscellaneous Application No. 198 of 2022 under the provisions of the Protection of Women from Domestic Violence Act, 2005 against petitioner Nos. 1 to 5.

(v) The criminal writ petition is accordingly disposed of.

(vi) No order as to costs.

16. The observations made hereinabove are *prima facie* in nature and confined to the adjudication of present application, and the trial Court shall not get influenced by the said observations during the trial in respect of petitioner Nos. 1 to 4.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane