

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

13 CRIMINAL APPLICATION NO.1491 OF 2019

**DHANASHRI SAHEBRAO MORE
VERSUS
ANITA W/O. BALASAHEB CHAVAN AND OTHERS**

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Advocate for Applicant : Mr. N. T. Tribhuwan

APP for the State: Mr. S. P. Tiwari

Advocate for Respondents : Mr. S. B. Bhosale

CORAM : ANIL L. PANSARE, J.

DATE : 25th July, 2022

ORDER:

1. Heard both sides.
2. The applicant/original non-applicant No.6, by this application filed under section 482 of the Code of Criminal Procedure (for short 'the Code'), is seeking to quash the proceedings bearings Misc. Criminal Application No. 15 of 2019 pending before the learned Judicial Magistrate First Class, Majalgaon. The respondents herein are the applicants before the learned Judicial Magistrate First Class, Majalgaon. The respondent No.1-wife alongwith her two sons viz respondent Nos. 2 and 3 have filed a criminal complaint against the husband of respondent No.1 (Non-

applicant No.1 before the trial court) and his relatives. So also against the present applicant under the Protection of Women from Domestic Violence Act, 2005 (for short, the Domestic Violence Act) alleging therein that, amongst others, that the husband of respondent No.1 and present applicant are living in illicit relationship.

3. The learned Advocate for the applicant has referred to Section 2(a) of the D. V. Act. It defines 'aggrieved person' to mean any woman who is, or has been, in a domestic relationship with the respondent. He has then referred to the definition of respondent under section 2(q). It defines 'respondent' to mean any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act. The proviso to the definition of the respondent provides that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner. He submits that so far as the respondents are concerned, they cannot be said to be an aggrieved persons nor can the applicant be arrayed as party

non-applicant in the proceedings before the trial court, in view of the definitions of aggrieved person and the respondent.

4. The learned counsel for the respondents/original applicants would contend that the definition of 'the respondent' and the proviso thereto would include a female, living in a relationship in the nature of a marriage and that she can also be prosecuted under the D. V. Act.

5. It is well settled that quashing of proceedings would depend upon the averments made in the complaint. The original applicants-respondent Nos. 1 to 3 herein, have sought various reliefs on the ground that the applicant and non-applicant No.1-husband are in illicit relationship. It is not the case of the respondent Nos. 1 to 3 that the present applicant was residing with them. It is also not the case of the original applicants that present applicant is the relative of husband.

6. The argument canvassed by the learned counsel for the respondents is contrary to what has been provided under section 2(q) of the D. V. Act, which defines 'the respondent'. The proviso clause would entitle the aggrieved wife or the female living in relationship

in the nature of marriage to have remedy in the form of filing application raising complaint against the relatives of the husband or the male partner. It doesn't really empower wife to file complaint against the person who is in illicit relationship with husband.

7. It is not the case of the respondents before the trial court that the no one of them is in domestic relationship with the present applicant, nor there is allegations against the present applicant that she has committed any act of domestic violence upon the respondents. It is further not the case of the respondents that they are/were in domestic relationship with the applicant as defined under Section 2-f of the D. V. Act. Despite such status the applicant has been arrayed as respondent No.6 (Non-applicant No.6) before the trial court on the ground that she is living in illicit relationship with husband of respondent No.1 (applicant No.1).

8. In the case of **Ashish Dixit Vs. State of U.P. and others, 2013 SC 1077**, the proceedings under Domestic Violence Act were initiated by wife against husband, in-laws and many others including tenants. The Supreme Court held that the proceedings under the

Domestic Violence Act could be continued only against husband and in-laws. The proceedings against other persons were quashed.

9. In the present case also, the present applicant who allegedly is in illicit relationship with original non-applicant No.1 cannot be said to be the relative of the non-applicant No. 1-husband. The learned Advocate has correctly relied upon the definition clauses defining the 'aggrieved person' and the 'respondent' to contend that the proceedings are not maintainable against the present applicant.

10. In view thereof, the Criminal Application No.15 of 2019 pending before the Judicial Magistrate First Class, Majalgaon stand quashed against the applicant /original Non-applicant No.6.

11. The criminal application is accordingly allowed in above terms.

(ANIL L. PANSARE, J.)

JPChavan