

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

919 CRIMINAL APPLICATION NO.2085 OF 2019

BHAGWAN S/O. KABAJI YADAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicants : Mr Bhide Vinod Y.
APP for Respondent No.1 : Mr. P G Borade
Advocate for Respondent No.2 : Mrs. Gaikwad C. E.

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CORAM : SHRIKANT D. KULKARNI, J.

Dated: August 19, 2022

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PER COURT :-

1. The applicants are seeking quashment of the entire proceedings initiated by respondent no.2 under the Provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter for convenience referred to as 'Act of 2005') vide PWDVA no.566 of 2018, which is pending on the file of Judicial Magistrate First Class, Aurangabad.

2. Heard Mr. Bhide, learned counsel for the applicants and Mr. Borade, learned APP for the Respondent/State and Mrs Gaikwad, learned counsel for respondent no.2. Perused the reply affidavit filed by

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respondent no.2, copy of the original application filed by respondent no.2 under section 12 of the Act of 2005 against the applicants and others.

3. Mr. Bhide, learned counsel for the applicants submitted that, the applicant nos.1 and 2 are the parent in-laws of respondent no.2. They are residing at village Loni, Tq. Partur, District Jalna. He submitted that, these applicants have not resided in shared household with respondent no.2 and her husband. There was no domestic relation as contemplated under the Act of 2005. He submitted that, if the application filed by respondent no.2 is perused carefully, then one would find that most of the allegations are levelled against the husband. There is some casual reference in the pleadings about instigation at the hands of some of the applicants when they had been to matrimonial house, which do not attract the provisions of Act of 2005. Mr. Bhide, learned counsel invited my attention to the prayer clause in the main application filed by respondent no.2 and submitted that the respondent

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no.2 has sought relief only against her husband except the prayer (३) which also indicates that respondent no.2 has grievance against her husband. He submitted that though prayer clause (३) is against all the respondents/opponents, it is by way of joint responsibility attempted to be fastened, which is not permissible.

4. Mr. Bhide, learned counsel for the applicants invited my attention to the definition of Domestic Relationship and shared household and domestic violence. By taking help of these definitions, he took me through the relevant pleadings of the respondent no.2 made in the original application under section 12 of the Act of 2005 and submitted that, those definitions do not attract in respect of these applicants when they are residing away from respondent no.2 and they never resided with respondent no.2 in shared household. There was no domestic relationship between the applicants and respondent no.2 at any point of time. As such, it is an abuse of process of the Court to continue

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the proceedings initiated by respondent no.2 against the applicants under section 12 of the Act of 2005. He, therefore, urged to quash the proceedings under the Act of 2005 filed by respondent no.2 against present set of applicants.

5. Mr. Bhide, learned counsel for the applicants has placed reliance on following two citations :-

- i] **Ganesh s/o Badri Rathod & Ors. Vs. Sau. Nikita w/o. Ganesh Rathod and Anr.** reported in **2021 ALL MR (Cri) 3036.**
- ii] **Sanket S/o Ravindra Dhonge Vs. State of Maharashtra** reported in **2021 ALL MR (Cri) 3508.**

which directly throw light about application of the provisions of the Act of 2005 in the light of definition of domestic relationship, shared household.

6. Mr. Borade, learned APP for the State submitted that the proceedings initiated by the respondent no.2 under the provisions of the Act of 2005 against the applicants is according to the provisions of the Act of 2005. There is no legal lacuna as such. No case is made out to quash the entire proceedings.

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7. Learned counsel for respondent no.2 submitted that, if the pleadings made in the main application under section 12 of the Act of 2005 are studied carefully, it would reveal that the provisions of Act of 2005 attract against all the applicants. The applicants were residing in the shared household at some point of time. They had domestic relationship. There are specific allegations against them in the pleadings. Even though they are residing separately, not any way sufficient to keep away from the provisions of the Act of 2005 in view of the nature of specific allegations levelled against the applicants. She submitted that, the respondent no.2 has elaborately pleaded as to how she was subjected to domestic violence and how she was harassed to pay the amount after after certain intervals. She submitted that the proceedings initiated by respondent no.2 under the Act of 2005 against the applicants under section 12 of the Act of 2005 is within four corners of law. Let the proceedings be continued.

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The parties may be permitted to adduce evidence, so as to decide the application on its own merits.

8. I have considered the submissions of both sides.

9. On going through the main application filed by respondent no.2 under section 12 of the Act of 2005, more particularly, prayer clause, it would reveal that almost all the prayers are against the husband except prayer (३). On going through the relevant paragraph of the pleadings made by respondent no.2, there are some references in respect of present set of applicants and their occasional visits to the matrimonial house. Even, for the sake of moment accepted that applicants visited the matrimonial house of respondent no.2, which is shared household; can it be said to be sufficient to call it within the ambit of shared household with respondent no.2. It appears from the record that the present applicant nos.1 and 2 are parent-in-laws and are residing at village Loni, Tq. Partur, District Jalna. The applicant no.3 is brother-in-law of respondent no.2, who is resident of Deshmukh Nagar, Shivaji Nagar, aaa/-

Aurangabad and the applicant no.4 is elder sister-in-law of respondent no.2. If the definition of “shared household” given in section 2(s) of the Act of 2005 is perused, then, it is difficult to accept that, present applicants can be said to have resided with respondent no.2 in the shared household. According to the pleadings of respondent no.2, more particularly, paragraph no.2 of her application, it would reveal that the partition had effected between three brothers including husband of respondent no.2 and middle brother is residing separately. It is also stated in the same paragraph that, applicant nos. 1 and 2 are residing at their village Loni. In this background of pleadings of respondent no.2, it is difficult to attract the provisions of Act of 2005 particularly, when there was no domestic relationship between the applicants and respondent no.2.

10. ‘Domestic relationship’ is defined under section 2(f) of the Act of 2005 and on going through the same with the pleadings of respondent no.2, it is very difficult to

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accept that there was domestic relationship between the applicants and respondent no.2.

11. In case of **Ganesh s/o Badri Rathod and ors. Vs. Sau Nikita w/o Ganesh Rathod** (supra) this Court Bench at Nagpur has held that in order to attract domestic relationship and shared household as contemplated under the Act of 2005, there must be foundation in the pleadings that parties are residing in the shared household and they were in domestic relationship and they were party to the domestic violence. It is held by this Court that when the applicants are residing away from the place where the complainant wife resided with the applicant husband, allegations in the complaint are to the effect that when the applicants used to visit matrimonial house, certain incidents of harassment had taken place. The applicants were not in domestic relationship nor they had shared household.

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12. Practically, same view is taken in another citation in case of **Sanket s/o Ravindra Dhonge Vs. State of Maharashtra** (supra).

13. On going through the above said citations, it would reveal that this Court has rendered decision in above referred two cases by relying upon the decision of the Hon'ble Supreme Court in the case of **Satish Chander Ahuja Vs. Sneha Ahuja**, reported in, **(2021) 1 SCC 414**, Paragraph no.68 is important which is reproduced herein below :-

“68. The words “lives or at any stage has lived in a domestic relationship” have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household. The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. As noted

above, 2005 Act was enacted to give a higher right in favour of women. The 2005 Act has been enacted to provide for more effective protection of the rights of the women who are victims of violence of any kind occurring within the family. The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read with Sections 17 and 19 of 2005 Act grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.”

14. Having regard to the legal position made clear by the Hon'ble Supreme Court as well as this Court in above referred citations, certainly allegations levelled by respondent no.2 against the present applicants are found to be of vague nature and consequently, those allegations do not attract the provisions of the Act of 2005. This case is squarely covered by the decision delivered by this Court in case of **Sanket Dhonge Vs. State of Maharashtra** (supra).

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15. Under these circumstances, if prosecution is allowed to continue, then, it would be abuse of the process of the Court. It is made clear that husband is not made party to this application for quashing. In the result, following order is passed :-

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- i. The application stands allowed in terms of prayer clause "B".
- ii. Needless to state that the proceedings of PWDVA No.566 of 2018 pending on the file of Judicial Magistrate First Class, Aurangabad, District Aurangabad to continue against the husband.
- iii. Inform the concerned court accordingly.
- iv. Application is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

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