

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

CRIMINAL APPLICATION NO. 2473 OF 2021

Tarachand Dagadu Tivhade
and others

.. Applicants

Versus

The State of Maharashtra and another

.. Respondent

Smt. Sunita G. Sonawane, Advocate for the Applicants.

Smt. D. S. Jape, APP for Respondent No. 1.

Smt. Anuradha S. Mantri, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 23rd NOVEMBER, 2022.

P. C. :-

1. By consent of the parties, taken up for final disposal.
2. Heard learned advocate for the applicants, learned advocate for respondent No. 2 and learned A.P.P. for State.
3. By way of this application, the applicants are praying for quashing of the proceedings of Criminal Miscellaneous Application No. 232/2021 pending before the Court of learned J.M.F.C., Kannad. The proceeding is filed for relief under Sections 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (for short "D.V. Act").

4. Learned advocate for the applicants has taken the Court through the application. She submits that the present applicant Nos. 1 and 2 are father in law and mother in law. Applicant Nos. 3 and 4 are brother in law and his wife. Applicant Nos. 5 and 6 are sister in law and her husband. Applicant Nos. 7 and 8 are children of respondent Nos. 5 and 6. Applicant No. 9 is sister in law. Learned advocate states that except husband there is no specific allegation against any of the applicants before this Court. She further submits that, the applicants are not sharing common house and therefore, will not come under the definition of Section 2 (s) of the D.V. Act. She states that, the respondent No. 2 is a habit of filing false complaints against the applicants. She had also filed a complaint under Section 498-A of the Indian Penal Code and the same was quashed by this Court by judgment and order dated 27.09.2022 passed in Criminal Application No. 884/2022. She further relied upon the judgment passed by this Court in Criminal Application No. 3778/2019 dated 29.06.2021 wherein, this Court has considered the definition under Section 2 (s) “shared household” to canvass her case. She further states that, the marriage has taken place in the year 2004. There is no issue out of the said wedlock. Since last four years, the respondent No. 2 is not residing with the husband. She thus submits that, when there is no sharing household and the applicants and respondent No. 2 are not

staying together and when they cannot be said to be persons falling in the definition under Section 2 (s) of the D.V. Act, the continuance of the proceeding as against them would be abuse of process of law.

5. Learned advocate for respondent No. 2 submits that, the applicants are in laws. The applicant Nos. 1 and 2 are staying in the same house where the respondent No. 2 is staying. She further submits that respondent Nos. 3 and 4 though are not residing in the same house, but they are residents of the same locality and thus, they are very much indulging into the acts of domestic violence.

6. Learned A.P.P. submits that, the allegations are specific and prays for rejection of the application.

7. On going through the application it appears that all the allegations are made against husband only. So far as allegations against these applicants are concerned, those are general in nature. The main allegation appears to be only that, the husband is acting as per the say of these applicants.

8. Learned advocate for respondent No. 2 has produced on record the copies of two NCRs registered with the Police from Kannad City Police Station dated 10.06.2022 and 16.06.2022. However, she has not produced anything to show that she has taken any steps in furtherance

of these complaints when the Police has not taken any cognizance. Thus, there appears no substance in the submission of respondent No. 2.

9. Considering the above position, I feel that a case is made out to quash the proceedings. Hence, the following order.

ORDER

(I) The proceeding of Criminal Miscellaneous Application No. 232/2021 pending before the learned J.M.F.C., Kannad under the provisions of D.V. Act is quashed only to the extent of these applicants who are non applicant Nos. 2 to 10 in Criminal M. A. No. 232/2021.

(II) The criminal application stands disposed of accordingly.

(KISHORE C. SANT, J.)

PS.B.