

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2885 OF 2021

1. Hemant s/o Dharmaraj Adhe,
Age: 36 Years, Occu: Private Service,
R/o. Silver Gardeniya, Flat No. F-902,
BRT Road, Wing F, Ravet, Near Silver Palm
Society, Pimpri-Chichwad, Pune-412 101.
2. Dharmraj Meharban Adhe,
Age: 70 Years, Occu: Retired,
R/o. Plot No.50, Vasant Nagar, Jawahar Colony,
Aurangabad.
3. Leela W/o Dharmaraj Adhe,
Age: 65 Years, Occu: Household,
R/o. Plot No.50, Vasant Nagar, Jawahar Colony,
Aurangabad.
4. Deepa Ganesh Rathod,
Age: 40 Years, Occu: Household,
R/o: Sector-1, Near Shanti Niketan High School,
B-4, Gitanjali CHS Plot No. 3, Near Panvel,
Raigad, Dist. Raigad.
5. Ganesh Shahu Rathod
Age: 45 Years, Occu: Service,
R/o: Sector-1, Near Shanti Niketan High School,
B-4, Gitanjali CHS Plot No. 3, Near Panvel,
Raigad, Dist. Raigad.
6. Manoj Dharamraj Adhe,
Age: 38 Years, Occu: Doctor,
R/o. Plot No.10, II Row House,
Sun City, In front of Podar International
School, Jalna, Dist. Jalna.
7. Ravi Ramesh Rathod,
Age: 34 Years, Occu: Service,
R/o. Khambewadi, Post Shevali,
Dist. Jalna.

8. Ramesh Balasaheb Rathod,
Age: 59 Years, Occu: Agriculture,
R/o. Khambewadi, Post Shevali,
Dis. Jalna.

... Applicants

Versus

1. The State of Maharashtra,
Through Police Inspector,
Jawahar Colony Police Station,
Aurangabad, Tq. & Dist. Aurangabad.
2. Dipali Hemant Adhe,
Age: 31 Years, Occu: Service,
R/o. Nawsai, Plot No.29-B,
Rajmata Jijau Co-Op. Housing Society,
Aurangabad.
3. Trijja @ Radha Hemant Adhe,
Age: 2 Years, Occu: Nil,
Under Guardianship of,
Dipali Hemant Adhe
Nawsai, Plot No.29-B,
Rajmata Jijau Co-Op. Housing Society,
Aurangabad.

... Respondents

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Mr. Nikhilesh K. Tungar, Advocate for Applicants.

Mr. G. O. Wattamwar, learned APP for Respondent No.1 / State.

Mr. Rajendra B. Dhakane, Advocate for Respondent Nos.2 & 3.

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CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 29th August, 2022.

PRONOUNCED ON : 06th September, 2022.

JUDGMENT :

. Rule. Rule made returnable forthwith. Heard finally at admission stage with consent of both the sides.

2 The applicants are seeking quashment of the proceedings initiated by respondent No.2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the “DV Act” for the sake of convenience). The names of the applicants and relationship with respondent No.2 is as under:

Sr.	Name	Relation with R 2	Place of Residence
1	Hemant Dharmaraj Adhe	Husband	Pune
2	Dharmraj Meharban Adhe	Father-in-law	Aurangabad
3	Leela Dharmaraj Adhe	Mother-in-law	Aurangabad
4	Deepa Ganesh Rathod	Sister-in-law	Raigadh
5	Ganesh Shahu Rathod	Husband of sister-in-law	Raigadh
6	Manoj Dharamraj Adhe	Brother of husband	Jalna
7	Ravi Ramesh Rathod	Maternal cousin of husband	Khambewadi, Jalna
8	Ramesh Balasaheb Rathod	Maternal uncle of husband	Khambewadi, Jalna

3 The marriage between applicant No.1 and respondent No.2 was solemnized on 29th January, 2015. Out of wedlock, a girl

child namely Trijja @ Radha was born on 3rd September, 2019. Applicant No.1/Hemant (husband) is B.E. and M.B.A. whereas respondent No.2/Dipali (wife) is D.Pharm, B.Pharm and M.B.A.

4 Applicant No.1 and respondent No.2 lastly lived together at Pune. The date of separation is 13th January, 2020.

5 The following proceedings are pending between the parties:

Sr.	Case No.	Filed By	Status
1	PWDVA Application No.279/2021	Wife	Pending
2	Family Court Petition No. A 358/2021	Husband	Dismissed
3	Criminal Application No.2885/2022	Husband	Pending
4	PWDV Appeal No.19/2022	Husband	Pending
5	PWDV Appeal No.3/2022	Wife	Pending
6	Family Court A 384/2022	Husband	Pending
7	FIR No.236/2022	Wife	Bail granted
8	ACB 154/2022	Wife	Pending

6 Heard Mr. N. K. Tungar, learned counsel for the applicants, Mr. G. O. Wattamwar, learned APP for respondent No.1/State and Mr. R. B. Dhakane, learned counsel for respondent Nos.2 and 3. Perused the documents placed on record by the

applicants, affidavit-in-reply filed by respondent No.2 with various documents and papers, and the order passed by the Family Court in Petition No.A-358 of 2021 dated 18th January, 2022.

7 Mr. Tungar, learned counsel for the applicants vehemently submitted that the entire family of the husband with distant relatives are roped in the proceedings under the DV Act. He submitted that the applicant Nos.2 and 3 are old aged parent-in-laws. They are residing at Jawahar Colony, Aurangabad. There was no domestic relationship between the parent-in-laws and respondent No.2 as defined under the DV Act. He further submitted that the parent-in-laws have also not resided in the shared household as defined under the DV Act. Applicant Nos.4 and 8 were never in domestic relationship even then they have been roped in the proceedings. Applicant Nos.4 and 5 are the husband and wife. The marriage of applicant No.4 was much prior to the marriage of applicant No.1 with respondent No.2. Applicant Nos.6 to 8 are also residing at different places. Applicant Nos.7 and 8 are distant relatives and not even family members. Respondent No.2 has roped in the proceedings the above said family members and distant relatives of applicant No.1 only with a view to harass them. They have no role to play in subjecting to respondent No.2 for domestic violence. He, therefore, urged that the complaint

deserves to be quashed and set aside.

8 Mr. Tungar, learned counsel for the applicants has placed his reliance on the following citations in support of his argument:

- a) ***Dipa Vijay Anand and others Vs. The State of Maharashtra and others***, decided by this Court in Criminal Application No.3778 of 2019 dated 29th June, 2021 ;
- b) ***Suresh Bajarang Zarekar & Ors. Vs. State of Maharashtra & Ors., 2018(4) Bom.C.R.(Cri.) 810*** ; and
- c) ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr., 2010 AIR (SC) 3363***.

9 Per contra, Mr. R. B. Dhakane, learned counsel for respondent Nos.2 and 3 took me through the pleadings made in the application under Section 12 of the DV Act. He submitted that respondent No.2 has given the details when she was subjected to domestic violence at the hands of the present applicants. He submitted that the role of each applicant is categorically described in the application. The provisions of the DV Act attract against all the applicants in view of specific contentions raised by respondent No.2/wife. Respondent No.2 / Dipali has categorically stated about

the domestic violence incidents, which had taken place at Jalna, Pimpri-Chichwad, Pune and Panvel.

10 Mr. Dhakane, learned counsel for respondent Nos.2 and 3 submitted that the proceedings under the DV Act is at initial stage. Respondent No.2 would prove her case during the trial. The applicants have not made out *prima-facie* case to quash the proceedings. He submitted that the citations relied upon by the learned counsel for the applicants are not applicable to this case. The learned counsel for respondent Nos.2 and 3 submitted that it is not a fit case to quash the proceedings against the applicants in view of specific pleadings and role attributed to the respective applicants.

11 I have considered the submissions made by the learned counsel for the respective sides. As pointed out earlier, there is no dispute about the relationship between the parties, marriage and baby girl born out of wedlock. There are in all eight proceedings pending between the parties before various Courts.

12 The definition of “domestic violence” is given under Section 3 of the DV Act. It is also necessary to have a look on the definitions of “domestic relationship” and “shared household” defined

under the DV 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.”

13 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 DV Act. On careful examination of the pleadings, one would find that there are

specific allegations against the husband (applicant No.1) and parent-in-laws (applicant Nos.2 and 3). Respondent No.2 has given details with particulars and the places when she was subjected to domestic violence when residing with applicant Nos.1 to 3 in a shared household. Applicant Nos.2 and 3 though stated to be old parent-in-laws, it is *prima-facie* seen that they were visiting to the house of applicant No.1 and respondent No.2 though rarely, which attracts definition of “shared household”. As of now, applicant Nos.2 and 3 though permanent resident of Aurangabad, the allegations levelled against them at the relevant point of time, of their visit at “shared household”, cannot rescue from the clutches of the definitions of “domestic violence”, “shared household” and “domestic relationship”.

14 Applicant No.1 being husband and applicant Nos.2 and 3 being parent-in-laws are closely related with respondent No.2 by marriage and for some point of time, they lived together as members of the family by way of domestic relationship. The truthfulness of the allegations levelled against applicant Nos.2 and 3 would be examined by the Trial Court after recording of evidence while deciding the application on its own merits. Having regard to the nature of allegations levelled against applicant Nos.1 to 3, their close relationship with respondent No.2 by way of marriage and in view of

their domestic relationship when they resided even on certain intervals in the shared household, at this stage, it may not be proper to quash the proceedings against them in view of specific allegations levelled against them.

15 Now, coming to respondent Nos.4 and 5, who are husband and wife. Applicant No.4 is elder sister of applicant No.1, who got married much prior to the marriage of applicant No.1 with respondent No.2. Though they are residing at a short distance from the house of applicant No.1 at Panvel, it is difficult to digest that they have played role in day-to-day family affairs of the husband and wife (applicant No.1 and respondent No.2). They have to look after their own family. Their occasional visit to the house of applicant No.1 and respondent No.2, does not fall within the definition of “domestic relationship”. They cannot be said to have resided in the shared household.

16 Applicant No.6 is brother of applicant No.1, who is a doctor by profession and resident of Jalna. Same is the position to attract domestic relationship and shared household when he is permanent resident of Jalna. He has no role to play in day-to-day family affairs of applicant No.1 and respondent No.2 being husband

and wife. The story described in the application regarding their visit to Jalna coupled with other allegations are found to be baseless for want of particulars and details.

17 Applicant No.7 is the maternal cousin of the husband / applicant No.1 and applicant No.8 happens to be maternal uncle of the husband / applicant No.1. Both of them are resident of Khambewadi, Jalna. Again they have no role to play in the day-to-day family affairs and quarrels between the husband and wife. Applicant No.1 and respondent Nos.2 and 3 lastly lived together at Pune when respondent No.2 was residing alongwith her husband/applicant No.1.

18 Having regard to the above reasons and discussion and by examining the pleadings made by respondent No.2 in her application under the DV Act, it would be clear that applicant Nos.4 to 8 are unnecessarily roped in the dispute of husband and wife though they have no concern. They are not in domestic relationship. They never resided in the shared household with respondent No.2.

19 In case of ***Suresh Bajarang Zarekar*** (supra), this Court was pleased to quash the proceedings to the extent of distant relatives having regard to the vague allegations for want of domestic

relationship. The facts of the cited case and the facts of the case in hand are practically similar. In the case in hand, there are specific allegations against applicant No.1 / husband and applicant Nos.2 and 3 / parent-in-laws about domestic violence, physical abuse and mental torture. However, if the allegations levelled against applicant Nos.4 to 8 are taken into consideration, at its face value and accepted, it would be difficult to attract the provisions of the DV Act against them, particularly for want of domestic relationship and shared household.

20 Having regard to the principles laid down in the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others***, reported in, ***AIR 1992 Supreme Court 604***, the case in hand is governed by category No.1. It would be an abuse of process of the Court if the prosecution is allowed to continue against applicant Nos.4 to 8 in view of vague allegations and for want of domestic relationship and shared household as contemplated under the DV Act. It is usual tendency of the party to rope as many as family members out of family dispute. It would cause harassment of those parties, who are distant relatives and who have no role to play in day-to-day domestic affairs of the husband and wife.

21 In case of ***Preeti Gupta*** (supra), the Honourable Supreme

Court has held that when there are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants, it would be abuse of the process of law. The High Court may use its inherent power under Section 482 of the Code of Criminal Procedure and quash the proceedings to their extent to prevent abuse of the process of the Court.

22 Having regard to the guidelines laid down by the Honourable Supreme Court in above referred two citations and considering the facts of the case in hand, it is a fit case to quash the proceedings filed by respondent No.2 against applicant Nos.4 to 8 under the DV Act. The proceedings under the DV Act may proceed against the husband and parent-in-laws according to the DV Act. In the result, the application needs to be allowed partly as under:

ORDER

- I. The criminal application is partly allowed.
- II. The complaint/application filed by respondent Nos.2 and 3 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 vide PWDVA Application No.279 of 2021, is hereby quashed to the extent of applicant Nos.4 to 8 (Deepa Ganesh Rathod,

Ganesh Shahu Rathod, Manoj Dharamraj Adhe, Ravi Ramesh Rathod and Ramesh Balasaheb Rathod).

- III. The criminal application is dismissed to the extent of applicant Nos.1 to 3.
- IV. The Trial Court may proceed with the proceedings under the Protection of Women from Domestic Violence Act, 2005 against applicant Nos.1 to 3 according to law.
- V. No order as to costs.
- VI. Rule is made absolute in above terms.
- VII. The criminal application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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