

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

40 CRIMINAL WRIT PETITION NO.1222 OF 2022

BHIMRAO SAKHARAM NIKAM AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Deshmukh V. V.
APP for Respondent 1 : Mr. P G Borade
Advocate for Respondent 2 : Mr. Sant Tapan Kishor

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CORAM : SHRIKANT D. KULKARNI, J.

Dated: September 12, 2022

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PER COURT :-

1. Heard finally with consent of both parties at admission stage.
2. The petitioners are seeking quashment of the proceedings initiated by respondent no.2 Manisha w/o Pradeep Nikam under the provisions of the Protection of Women From Domestic Violence Act, 2005 (for short hereinafter referred to as 'the DV Act') which is now pending on the file of Judicial Magistrate First Class, Chalisgaon by invoking extra ordinary jurisdiction.

3. For the sake of convenience, relationship between the parties is given hereunder :-

Sr.	Name	Relation with R 2	Place of Residence
1	Bhimrao s/o Sakharam Nikam	Father-in-law	Ganeshpur
2	Laxmibai w/o Bhimrao Nikam	Mother-in-law	Ganeshpur
3	Lata w/o Ravindra Sonawane	Sister-in-law	Chalisgaon
4	Valmik s/o Bhimrao Nikam	brother-in-law	Sion, Mumbai.

4. Respondent no.2 Manisha filed a proceedings under the DV Act in the JMFC Court, at Jalgaon vide PWDVA no.13 of 2021 against the present petitioners and her husband under sections 12, 17(1)(2), 18,19,20,22 and 23 of the DV Act. It is contended in the said application that, she was subjected to domestic violence at the hands of her husband, parents-in-law, married brother-in-law and sister-in-law. She sought various reliefs against them. The learned Magistrate after having gone through the complaint filed under the DV Act and considering the argument advanced on behalf of the wife was pleased to issue notices to the present petitioners and her husband. The learned Magistrate was also pleased to grant interim relief in favour of the wife. Present set of petitioners sought
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quashment of the proceedings initiated by respondent no.2 under the DV Act mainly on the following grounds :-

i] Petitioner nos.1 and 2 are the senior citizens and they happened to be the parents-in-law. The allegations levelled against them are vague and bald. Tenor of the allegations is mostly against the husband. The allegations regarding domestic violence are not specific to their extent and no role is even attributed against mother-in-law.

ii. Petitioner no.3 Lata is married sister-in-law. She is a school teacher. She is residing in her own separate house at different place though in the same town Chalisgaon. She has no role to play in the day-to-day family affairs of respondent no.2 and her husband. Though, she was occasionally visiting to the matrimonial home of respondent no.2, provisions of the DV Act do not attract for want of shared household and domestic relationship as defined under the DV Act. The allegations are also absurd and bald. Though certain allegations are made, no specific prayer against the petitioner no.3 in the prayer clause.

iii. Petitioner no.4 Valmik is serving as Assistant Professor in VJTI College, Mumbai. He is permanent resident of Chuna Bhatti, Sion, Mumbai. The allegations levelled against petitioner no.4 Walmik are also absurd and vague. He has no role to play in the day-to-day family affairs. He had no occasion to stay with respondent no.2 Manisha in the shared household. There is no domestic relationship. Only allegation against petitioner no.4 Valmik is about instigating husband of respondent no.2 on phone which is baseless and illogical.

5. Heard Mr. Deshmukh, learned counsel for the petitioners, Mr. Borade, learned APP for the State/Respondent no.1 and Mr. Sant, learned counsel for respondent no.2.

6. Mr. Deshmukh, learned counsel for the petitioners vehemently submitted that, the allegations levelled against the petitioners are absurd and bald. The petitioner nos.1 and 2 are senior citizens. They are more than 80 years old. Both are resident of Ganeshpur, Tq. Chalisgaon, District Jalgaon. They have no role to play in day-to-day family affairs of their son and daughter in

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law/respondent no.2. There are no specific allegations against mother-in-law. Provisions of the the DV Act do not attract, even then, the learned Magistrate was pleased to issue notice against them. He further invited my attention that petitioner no.3 Lata, happened to be the married sister-in-law of respondent no.2. She is serving in one School at Chalisgaon. Though in the same town, she is residing separately in her own house. She has no role to play in the day-to-day family affairs of respondent no.2 and her husband; though, she was casually visiting to her home. Petitioner no.4 Walmik is serving as Assistant Professor in VJTI College. He is permanent resident of Chuna Bhatti, Sion, Mumbai.

7. Learned counsel for the petitioners seeks leave to place on record photo copies of Aadhar Card and identity card issued by the Election Commission of India and Photocopy of Bank account of the petitioner nos.3 and 4.

8. Leave granted. Copies are taken on record and marked 'X' collectively for identification.

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9. Mr. Deshmukh, learned counsel submitted that though there are allegations regarding alleged 'Stridhan' which is held by the petitioners, no details are given in the complaint under the DV Act. So far as the husband of respondent no.2 is concerned, gold ring etc. are given in the engagement and wedding ceremony and as such do not cover the definition of 'Stridhan'. He submitted that after taking into consideration the allegations levelled against all the petitioners, it is clear that allegations levelled against them are vague in nature. They have no domestic relationship with respondent no.2. The provisions of the DV Act do not attract in absence of domestic relationship and shared household. He submitted that there is tendency to rope in all the family members of husband in the DV Act proceedings like the proceedings under section 498-A of IPC. He submitted that, it would be an abuse of process of law if the proceedings is continued against the present petitioners. He, therefore, urged that the proceedings initiated by respondent no.2 against the present petitioners under the DV Act may be quashed.

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10. Mr. Deshmukh, learned counsel for the petitioners has placed his reliance on following stock of citations in support of his contentions :-

- i. Preeti Gupta & Anr. Vs. State of Jharkhand & Anr., 2010 AIR (SC) 3363.
- ii. Shyamlal Devda Vs. Pramila reported in Aironline 2020 SC 53.
- iii. Vanisha Vincent Rodrigues Vs. Jyoti Vincent Rodrigues reported in Aironline 2021 Bom. 723.

11. Per contra, Mr. Sant, learned counsel for respondent no.2 submitted that, if the allegations levelled against the present petitioners in the complaint under the DV Act are carefully read, one would find that the provisions of the DV Act may attract. The respondent no.2 has made specific allegations against the present petitioners and also attributed their role in subjecting her domestic violence. He submitted that though mistake has been committed in the complaint in naming particular petitioners, it would reveal the role played by each petitioners reflected in the respective paragraphs of the complaint. The complaint needs to be read as a whole in order to decide the matter. He
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submitted that though petitioner nos.3 and 4 are married sister-in-law and brother-in-law respectively, they have played role in instigating husband of respondent no.2 and thereby subjected respondent no.2 for domestic violence. He submitted that in view of specific allegations levelled against the petitioners with their role, it is not a fit case to quash the proceedings against them.

12. Heard Mr. Borade learned APP for the State.

13. I have considered the submissions of Mr. Deshmukh, learned counsel for the petitioners, Mr. Borade, learned APP for the State and Mr. Sant, learned counsel for the respondent no.2. I have also gone through the copy of the complaint filed by respondent no.2 against the present petitioners and her husband before JMFC, at Jalgaon vide PWDVA No.13 of 2021 (page 34), Copy of notice, copy of reply and other documents annexed with the petition. I have also gone through the photo copies placed on record by the learned counsel for the petitioners across the bar while
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submitting the argument regarding residential proof of the respective petitioners.

14. There is no dispute that wedlock between respondent no.2 and her husband Pradip had taken place on 9.12.2018 and out of that wedlock one son is born on 21.8.2019.

15. This quashing petition is filed by the petitioners, who happened to be parents-in-law, sister-in-law and brother-in-law of respondent no.2. Husband is not a party to this quashing petition.

16. 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.”

17. 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. It would reveal that in paragraph no.1 of the complaint, respondent no.2 seems to have given incorrect relationship. However , Mr. Sant, learned counsel for respondent no.2 has been fair enough to admit that fact. As such, the complaint needs to be read as a whole in order to gather whether the allegations levelled against the petitioners are vague or otherwise and, secondly, whether the

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provisions of the DV Act attract against the present petitioners.

18. On going through paragraph no.2 of the complaint, it would reveal that certain allegations are levelled to the extent of gold ornaments which are allegedly given to the husband in the engagement ceremony and marriage. It is stated that gold ornament given to respondent no.2 have been retained and despite of her demand those are not returned to her. On careful study of the complaint, one would find that no details are given about gold ornaments given to respondent no.2 in her wedding which can be termed as Stridhan. So far as golden chain and gold ring allegedly given to husband are concerned, those are given in the wedding and engagement. So, prima facie, it is difficult to term it as Stridhan. As such, allegations to that effect in paragraph no.2 of the complaint are not in any way sufficient to attract the provisions of the DV Act.

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19. So far as paragraph no.3 of the complaint are concerned, it relates to husband, who is not party to this proceeding.

20. In paragraph no.4 of the complaint there are certain allegations about domestic violence against her husband, father-in-law and sister-in-law when they were residing together. It is material to note that, in paragraph no.4 of the complaint, there are no allegations against mother-in-law. Even, for the sake of moment accepted that after marriage respondent no.2 went to the matrimonial house and started cohabiting with the husband and in-laws for certain period, the allegations are found of short nature. Respondent no.2 has not given details and particulars, when she was subjected to domestic violence and when she was residing with her in-laws. Mere making of allegations that she was subjected to domestic violence when she was residing in the joint family are not sufficient.

21. In paragraph no.4 most of the allegations are levelled against the husband.

22. Now coming to paragraph no.5 of the complaint. Again similar type of allegations are made against the husband, father-in law and married sister-in-law, which are found insufficient to attract the provisions of the DV Act.

23. In paragraph no.6 of the complaint there are certain allegations against married sister-in-law/petitioner no.3. It is alleged that the married sister in-law/petitioner no.3 was instigating husband of respondent no.2 and he was acting on the tunes of his sister/petitioner no.3 and subjected to domestic violence. The allegations to that effect are prima facie found to be exaggerated and found unbelievable. Photocopy of the Aadhar card of married sister-in-law/petitioner no.3 Latabai is placed on record ('X' colly), which indicates that she is resident of another place though in the same town. She is residing at Malegaon Naka near Mukbadhir School, Shiv colony, aaa/-

Chalisgaon. She is residing in her own house. She is a married sister-in-law, whose marriage performed in the year 2007. Her husband is serving at Vishkhapattanam. She is serving in Dr. Pramilatai Purnapatre School as assistant teacher. In this background, it is difficult to digest that she had played role in the day-to-day affairs and domestic affairs of husband and wife and that too for instigating husband of respondent no.2 for causing domestic violence. She is a working lady; obviously needs to concentrate on her job. She may be occasionally visiting her parental house, but it does not mean that she has any role in the day-to-day family affairs and family problems of husband and wife.

24. So far as other paragraphs of the complaint are concerned, again it is difficult to find any strong foundation to attract the provisions of the DV Act against the petitioners. So far as the allegations levelled against the petitioner no.4 is concerned, he is also married brother-in-law of respondent no.2. He is serving in VJTI College, Mumbai. He is permanent

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resident of Chunabhatti, Sion, Mumbai. The allegations levelled against him is to the extent of instigating husband of respondent o.2 on phone and thereby her husband used to cause domestic violence. It is difficult to digest such allegations and to attract the provisions of the DV Act.

25. Having regard to the careful scrutiny of the pleadings and allegations levelled by respondent no.2 against present petitioners, it would be clear that there was no domestic relationship between the present petitioners and respondent no.2. Petitioner nos.1 and 2 happened to be old aged parents-in-law and they are residing at different place as appearing from their respective photocopies of Aadhar card. Petitioner no.3 is married sister-in-law, who is also residing in her own house at different place though in the same town Chalisgaon and hardly any role in the day-to-day affairs of respondent no.2 and her husband. Petitioner no.4 is working as Assistant Professor in VJTI Engineering College at Mumbai and permanent resident of Sion,

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Mumbai and again difficult to attract the provisions of DV Act against him.

26. They might be casually visiting the house of respondent no.2 when she was residing with her husband, it may not be sufficient to attract the provisions of the DV Act. The petitioners have been roped in the DV Act proceedings alongwith husband perhaps out of anger against the husband.

27. In case ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.*** (*supra*), it is held by the Hon'ble Supreme Court that when there are no specific allegations in the complaint against the petitioners/sister-in-law and unmarried brother-in-law of complainant and they are residing at different places and no occasion to visit; nor even lived together in a shared household, the complaint against them is liable to be quashed. It would be abuse of process of law, if the complainant is allowed to pursue the same. In the present case, as discussed herein-above, old aged parents-in-law have been roped in the proceedings
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under the DV Act though they have no role to play. No specific acts in the complaint against them. Similar is the case of petitioner no.3, who is married sister-in-law and petitioner no.4 who is married brother-in-law.

28. It is also rightly pointed out by the learned counsel for the petitioners that though allegations are made against married sister-in-law, no relief is sought against her. In this context, Mr. Deshmukh has placed his reliance in case of **Vanisha Vincent Rodrigues Vs. Jyoti Vincent Rodrigues** (supra), wherein it is held that in a proceeding under DV Act, when no relief is sought by the complainant in the said proceedings against the petitioners and found that the allegations are exaggerated and out of anger and bitterness with husband, pendency of proceedings under the DV Act is unnecessary and liable to be quashed.

29. In the present case, no relief is sought against married sister-in-law though allegations are made against her in certain paragraphs of the complaint; but those are found exaggerated and vague. As such, the
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complaint under the D.V. Act against married sister-in-law/petitioner no.3 is liable to be quashed.

30. In case of **Shyamlal Devda Vs. Pramila** (supra), the Hon'ble Supreme Court was pleased to quash the proceedings under the DV Act to the extent of the appellants when they are found to be relatives and residents of different places. In the present case, the allegations against the present petitioners are found vague. The petitioners are resident of different places and hardly any occasion to stay with respondent no.2 in shared house hold, hardly any domestic relationship with petitioner nos.1 and 2, petitioner nos.3 and 4 as well.

31. In the above background, if the complaint filed by respondent no.2 against petitioners is allowed to continue, it may amount to abuse of process of law and unnecessarily dragging the petitioners till decision of case which may not get any fruits. In view of the guidelines laid down by the Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Ch.**

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Bhajan Lal and others, reported in, ***AIR 1992 Supreme Court 604***, it would be an abuse of process of the Court if the prosecution is allowed to continue against the petitioners 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 a party to rope as many as family members out of family dispute. It may 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. The petitioners have made out a case so as to invoke the powers vested with this Court under section 482 of the Criminal Procedure Code and Article 227 of the Constitution of India to quash the proceedings to their extent to prevent abuse of process of the Court.

32. Having regard to the guidelines laid down by the Hon'ble 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 the present petitioners under the DV Act. The

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proceedings under the DV Act may proceed against the husband according to the provisions of the DV Act. In the result, the petition needs to be allowed as under : -

ORDER

- I. The Criminal Writ Petition is allowed.
- II. The complaint/application filed by respondent Nos.2 under Sections 12, 17(1)(2), 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 vide PWDVA Application No.13 of 2021, is hereby quashed to the extent of petitioner no. 1 to 4 namely (1-Bhimrao Sakharam Nikam, 2-Laxmibai w/o Bhimrao Nikam, 3-Lata w/o Ravindra Sonawane and 4-Valmik s/o Bhimrao Nikam).
- III. The Trial Court may proceed with the proceedings under the Protection of Women from Domestic Violence Act, 2005 against the husband of respondent no.2 according to law.
- V. No order as to costs.

VI. Criminal Writ Petition is accordingly
disposed off.

(SHRIKANT D. KULKARNI, J.)

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