

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 132 OF 2022

Sarah Asif Kadawala

...Applicant

Versus

1. Zaheer Chugatta
2. Farheen Lokhandwala
3. Irfan Lokhandwala
4. State of Maharashtra

...Respondents

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Mr. Ali Kaashif Khan Deshmukh a/w Ms. Riya Jain, Mr. Shubham Shingade and Ms. S. A. Sayed, Advocate for the Applicant.

Mr. Jatin Sehgal a/w Ms. Devna Soni with Mr. Pradhuman Chauhan i/by Mr. Ashish Singh, Advocate for respondent Nos.1 to 3.

Mr. Arfan Sait, APP for the respondent No.4 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 28th JUNE, 2022.

PER COURT:

1. Heard both sides for final disposal.
2. The applicant is aggrieved by order dated 24th December, 2021 passed by the Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai in Criminal Appeal No.116 of 2021 whereby the appeal was partly allowed and the order dated 18th August, 2021 passed by learned Metropolitan Magistrate 66th Court, Andheri,

Mumbai in CC No.28/DV/2020 was partly set aside. The respondent Nos. 1 to 3 were discharged from the said proceedings.

3. The applicant has filed an application under Section 12 of the Domestic Violence Act before the Court of learned Metropolitan Magistrate 66th Court, Andheri, Mumbai. The respondent Nos.1 to 3 herein were respondent Nos. 5, 6 & 7 in the said proceedings.

4. The respondents preferred application before the Court of learned Magistrate and submitted that they should be dropped from the proceedings as there was no domestic relationship between the applicant and the said respondents. The said application was rejected by learned Magistrate by order dated 18th August, 2021.

5. The respondent Nos. 1 to 3 herein and others preferred Criminal Appeal No.116 of 2021 before the Sessions Court. By order dated 24th December, 2021, the said appeal was partly allowed and respondent Nos. 1 to 3 were discharged and removed from the array of respondents in C.C. No.28/DV/2020.

6. Being aggrieved by the said order, the revision applicant (original applicant /complainant in the proceedings under the Domestic Violence Act) has preferred this revision application challenging the order passed by the Sessions Court partly allowing the appeal of the respondents herein.

7. The learned Advocate for applicant submitted that there is sufficient evidence against respondent Nos. 1 to 3. The application under Section 12 of the Domestic Violence Act, attributes role to the respondents. The Sessions Court has committed an error in allowing the appeal of the respondents. The applicant has been subjected to domestic violence. Specific overt act was attributed to the respondents. Prima facie case was made out against them. The Sessions Court has travelled beyond the scope of discharge and allowed the appeal preferred by the respondents herein. The learned Magistrate had rightly rejected the applications preferred by the respondents. The Appellate Court has failed to take note of Domestic violence caused by the respondents. They frequently visited matrimonial home of the applicant. She was abused and mentally harassed. First Information Report (for short 'FIR') was registered vide C.R. No.386 of 2020 with Amboli Police Station for the offences punishable under Sections 498-A, 406 r/w Section 34 of Indian Penal Code on 28th July, 2020 against all the respondents. There were sufficient averments in the application under Section 12 of Domestic Violence Act to take cognizance of the application/complaint against all respondents. As per Section 2(f) of the Domestic Violence Act, 'domestic relationship' means

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. The allegations made in the complaint were required to be tested in evidence and the findings at this stage dropping them from array of the respondents was unwarranted and premature. There was no reason to set aside the order of learned Metropolitan Magistrate. The Court had taken note of the material on record and judicial pronouncements while rejecting the applications of the respondents. The trial Court has observed that allegations were made against the respondents. She was abused and continuously harassed. They are close relatives and therefore prima facie domestic relationship appears between them. The decision of the appellate Court is beyond the evidence on record. The respondent No.2 in this application, abused and assaulted her. The order discharging respondents is bad in law.

8. Learned Advocate for respondent Nos. 1 to 3 submitted that there is no error in the order passed by the Sessions Court. The appellate Court has assigned reasons for passing the impugned order. Every relative can't be roped in as respondent in the

proceedings initiated under the Domestic Violence Act by making vague allegations. The parties cannot be forced and compelled to undergo the process of attending the proceedings. The Sessions Court has appreciated the material on record, judicial precedents and passed the order allowing the appeal of respondent. There is no reason to set aside the order passed by the Sessions Court. The applicant was in adulterous relationship. She has admitted the said fact. The learned Advocate has placed on record compilation of documents alongwith alleged photographs and adulterous video in sealed cover.

9. Learned Advocate for respondent Nos.1 to 3 has relied upon several decisions in support his submission. Reference can be made to some of them.

(i) Ganesh & Others Vs. Nikita & Anr. 2021 SCC OnLine Bom 1290.

(ii) Sharad Pandey Vs. Mamta Pandey 2010 (118) DRJ 625 decided by Delhi High Court.

10. The applicant was married to Asif Kadawala on 18th January, 2007. The applicant filed an application before the Court of learned Magistrate under the provisions of Section 12 of the Protection of Women from Domestic Violence Act for various

reliefs. The respondent Nos. 1 to 3 herein were respondent Nos. 5, 6 & 7 in the said proceedings. The respondent Nos. 1 to 3 and others filed an application before the learned Magistrate for discharging them as per Section 28(2) of the Domestic Violence Act. Application Exhibit – 5 was filed by original respondent No.4 Shaheen Kadawala. The application Exhibit – 6 was filed by Asif Faruk Kadawala, Faruk Kadawala and Safiya Kadawala (original respondent Nos.1, 2 and 3). Application Exhibit – 11 was filed by Zaheer Chuggata, Farheen Lokhandwala, and Irfan Lokhandwala (respondent Nos.1 to 3 herein). The learned Magistrate rejected the said applications by common order dated 18th August, 2021. It was held that allegations prima facie established that the aggrieved person was subjected to domestic violence at the hands of all the respondents.

11. The Sessions Court rejected an appeal preferred by original respondent Nos.1, 2, 3 & 4, whereas, the appeal preferred by original respondent Nos. 5, 6 & 7 was allowed. The learned Sessions Judge has arrived at the conclusion that the order passed by the learned Magistrate is not sustainable and requires interference. The appeal was partly allowed and respondent Nos. 1 to 3 herein were discharged from the proceedings.

12. The factual aspects of the matter can be summarized as follows :-

The respondent No.1- Asif Kadawala in the proceedings before the trial Court is the husband of applicant whereas the respondent Nos. 2 & 3 in the proceedings before the trial Court are the father-in-law and mother-in-law of the applicant respectively. The respondent No.1 in this application is the brother-in-law of applicant, who married to sister of Asif Kadawala, namely Shabana Chugatta, who has not been arrayed as a party in the complaint bearing C.C. No.28/DV/2020. The respondent Nos. 2 & 3 are married sister-in-law and brother-in-law of applicant. The sister-in-law namely Ms. Shaheen Kadawala has also been arrayed as a respondent and her challenge to the impugned order is pending. Asif Kadawala and the applicant got married on 18th January, 2007 as per Islamic rites and ceremonies at Perry Road Masjid, Bandra (West) Mumbai and they have four daughters namely Aqsa Kadawala (born on 07/11/2009), Ikra Kadawala (born on 24/01/2009), Asra Kadawala (born on 27/08/2011) and Heba Kadawala (born on 28/02/2014). All the four minor daughters are in exclusive care and custody of the husband of applicant. Applicant and her husband – Asif Kadawala are separated since

June – 2017, though applicant claims that she was thrown out of the matrimonial house in the early hours of the morning but her husband claims that she voluntarily abandoned him and their minor children.

13. Respondent Nos. 1 to 3 are leaving in their respective separate houses which is evident from the documents on record. Section 2(f) defines “domestic relationship”. Section 2(q) of the said Act defines “respondent” and Section 2(s) defines “shared household”. The allegations against respondent Nos. 1 to 3 are vague. The Sessions Court has rightly observed that the respondent Nos.1 to 3 are residing separately. The casual and fleeting visits of the said respondents does not constitute the domestic relationship with the applicant herein. The Appellate Court however rejected the applications of original respondent Nos. 1 to 3. The learned Sessions Judge partly allowed the appeal. It is not necessary to see the contents of sealed envelope and hence this court has not opened it. The same may be returned to advocate who had produced it. Considering these aforesaid aspects, no interference is called for in the impugned order dated 24th December, 2021 passed by the Sessions Court discharging respondent Nos.1 to 3.

14. Hence, I pass the following order :

ORDER

(i) Revision Application No.132 of 2022 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)