

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.974 OF 2022

Mrs.Mohini Uday Bobade, Age 68 years,
R/o.A/101, Amrit CHS, 15, Carter Road,
Khar (West), Mumbai-400 052.

Petitioner

versus

1. Mrs.Shailaja Bharatsinh Ghorpade
@ Shailaja Shitole, Age 45 years,
R/o.Anuved, Behind Balasaheb Shitole Market,
Anand Nagar, Old Sanghvi,
Pune-411 027

2. The State of Maharashtra

Respondents

Mr.Ashok Mundargi, Senior Advocate, i/by Mr.Jeetendra H.
Ramugade, Advocate for petitioner.
Ms.Gulestan M. Dubash with Mr.Sanket G. Telang and
Mr.Prathamesh A. Gokhale, Advocate for respondent no.1.
Mr.Arfa Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd June 2022

PC :

1. The petitioner has invoked Article 227 of Constitution of India and Section 482 of Code of Criminal Procedure challenging proceedings in Miscellaneous Application No.459 of 2019 filed by respondent no.1 under Sections 12, 18, 19, 20, 22, 23 of Protection of Women from Domestic Violence Act, 2005 ('D.V.Act') along with order dated 19th June 2019 passed by learned Judicial Magistrate, First Class, Pimpri Morwadi issuing notice.

2. The aforesaid proceedings were initiated by respondent no.1 against petitioner, husband and mother-in-law. It is alleged that

marriage between respondent no.1 and her husband was solemnized on 30th April 2015. Respondent no.1 in the proceedings is her husband. Respondent no.2 is the mother-in-law and respondent no.3 (petitioner) is the paternal aunt of her husband. It is alleged that mother-in-law and aunt of her husband used to instigate her husband against her. The complainant was ill-treated, subjected to harassment.

3. The said application-complaint was filed on 9th May 2019. Learned Magistrate vide order dated 19th June 2019 issued notice to respondents therein and directed them to appear before Court. While passing the said order it was observed that prima facie it appears that applicant therein was subjected to domestic violence.

4. Learned counsel for petitioner submitted as under :-

(a) The petitioner is not residing nor have ever resided in a common shelter. She is the aunt of husband of respondent no.1;

(b) Learned Magistrate has issued summons without application of mind;

(c) The petitioner is residing at different place since last 40 years, which is evident from the documents annexed to this application;

(d) It cannot be said that respondent no.1 is leaving in shared household with petitioner. It is not the case of respondent no.1 that all the family members were living jointly as a family. There was no domestic relationship between respondent no.1 and petitioner;

(e) The petitioner does not fall within the definition of word

“Respondent” as defined in Section 2(q) of D.V.Act. The person has to be in domestic relationship with complainant;

(f) The application preferred by respondent no.1 contains vague allegations of instigation and harassment;

(g) In the absence of any material on record to invoke the proceedings under D.V.Act, the petitioner cannot be directed to participate in the proceedings by issuing notice/summons;

5. Learned advocate for respondent no.1 submit that there are specific allegations against petitioner in the application filed by respondent no.1 before the Court of learned JMFC. In the application it is stated that petitioner is the paternal aunt of husband of applicant in the said proceedings. It is also stated that behaviour of all the respondents therein towards applicant was violent and abusive. The petitioner was instigating husband of respondent no.1 over phone. Respondent no.1 was ill-treated by petitioner and others. This is not the stage to consider grounds urged by petitioner. She has been summoned to appear before the Court. The allegations made against petitioner will be proved during the course of proceedings. At this stage the proceedings may not be quashed by considering the grounds urged in this petition. Respondent no.1 may be given an opportunity to prove the allegations. Petitioner has been attributed role causing domestic violence in the application under Section 12 of the D.V.Act.

6. The marriage between respondent no.1 and her husband who was impleaded as respondent no.1 in the proceedings pending before the Court of learned Magistrate was performed on 30th April 2015. In the title of application preferred by respondent no.1 under Section 12 of the said Act, the address of petitioner mentioned therein indicate that

she is residing at Khar. The application also mentions that petitioner is paternal aunt of husband of respondent no.1. The application contains vague allegations against petitioner. In the application it is not stated that respondent no.1 was residing with petitioner at any point of time. It is vaguely stated that behaviour of all the respondents towards applicant-complainant through out her stay at the matrimonial home was violent and abusive. It is stated that petitioner and mother-in-law of respondent no.1 would provoke her husband. There are no details of visits of petitioner to the matrimonial home of respondent no.1.

7. Section 2(f) of D.V.Act defines “domestic relationship” to mean 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.

8. Section 2(q) defines “respondent” to mean any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

9. Domestic violence as defined in Section 3 of D.V.Act means any act, omission or commission or conduct of the respondent in case it harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any

dowry or other property or valuable security; act having effect of threatening the aggrieved person or any person related to her, or otherwise injures or causes harm, whether physical or mental to the aggrieved person.

10. On perusal of the contents of application under Section 12 of D.V.Act, I do not find any material to invoke the proceedings under said Act against petitioner. It would be an abuse of process of law to initiate such proceedings against petitioner. The allegations are vague. The petitioner is residing separately. Application does not specify instances of domestic violence against the petitioner.

ORDER

- (i) Writ Petition No.974 of 2022 is allowed and disposed of;
- (ii) The order of issuance of notice dated 19th June 2019 passed by learned 3rd Joint Civil Judge, Junior Division and JMFC, Pimpri, Pune, and the proceedings in Criminal Miscellaneous Application No.459 of 2019 as against petitioner are quashed.

(PRAKASH D. NAIK, J.)

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