

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

CRIMINAL WRIT PETITION NO. 2466 OF 2021

1. Sony Thomas
2. Mr. C. S. Thomas ..Petitioners
Versus
1. The State Of Maharashtra
2. Litta Staney ...Respondents

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Ms. Vidhya Iyengar with Mr.Shridhar S., Advocate for the Petitioners.

Ms. Divya V. Parab for Respondent No.2.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 22nd July, 2022

PC :

1. The Petitioners have challenged the proceeding initiated by Respondent No.2 under the provisions of Protection of Women from Domestic Violence Act, 2005 (herein after referred to “Domestic Violence Act”) vide Criminal M.A. No.82 of 2020 pending before the Court of learned 6th Joint JMFC, Vashi at CBD Belapur, Navi Mumbai. The learned Magistrate had taken cognizance of proceedings and issued notice to the petitioners vide Order dated 28th September 2020.

2. The brief allegations in the impugned proceeding initiated by Respondent No.2 under the provisions of Protection of Women from Domestic Violence Act is that the Respondent No.2 is

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the wife of Petitioner No.1. The marriage between them was solemnized on 29th December 2019. The Petitioner No.1 had represented that he was working in Multi-National Company and earning good salary. The Petitioner No.2 directed the Respondent No.2 to keep all her ornaments in the wooden box for safety. On 4th January 2020, the Respondent No.2 and Petitioner No.1 moved for honeymoon. Their expenses were borne by father of Respondent No.2. The Petitioner No.1 could not perform physical relationship with Respondent No.2. Their honeymoon was ruined. Respondent No.2 requested the Petitioner No.1 to get his medical check up. The Petitioner No.1 however asserted that, he is compatible, potent and refused to undergo medical check up. The Petitioner No.2 had once in a fit of anger thrown his cellphone at Respondent No.2 which hit of badly at her face. Petitioner No.1 abused Respondent No.2 and threatened her. She was not allowed to switch on fan in her room. She was not allowed to use washing machine. The Petitioner No.1 assaulted Respondent No.2. She was humiliated and exploited. She was subjected to cruelty.

3. Learned Advocate for the Petitioners submitted that the Respondent No.2 was not subjected to any domestic violence. The contents of the complaint under the Domestic Violence Act are false. The allegations are afterthought. The allegations are not supported

by any evidence. The Petitioner No.1 has filed Divorce Petition before the Court of learned District Judge at Thane. The proceedings under Domestic Violence Act were initiated after filing of Divorce Petition. The Respondent No.2 has suppressed vital facts while filing the complaint. The Respondent No.2 had voluntarily withdrawn herself from the Company of Petitioner No.1 on 18th August 2020. The Respondent No.2 had dislike for Petitioner No.1. She refused to consummate the marriage. Whats-App chats and photographs falsifies the allegations in the Domestic Violence proceeding. The Petitioner No.1 had filed complaint with NRI Sagari Police Station against Respondent No.2 on 18th August 2020. It was treated as Non Cognizable Complaint. The Respondent No.2 left with her father and sent a legal notice with illegal demand. The Respondent No.2 had also lodged FIR on 20th October 2020 with NRI Sagari Police Station against the Petitioners vide C.R. No. 276 of 2020 for offences punishable under Sections 307, 323, 341, 354(A), 376, 377, 406, 498-A, 323, 504, 509 read with 34 of the Indian Penal Code. The Petitioners had filed an application on the point of jurisdiction before the trial Court. The allegations in the Domestic Violence complaint are contradictory to FIR.

4. Learned Advocate for Respondent No.2 submitted that the complaint under the Domestic Violence Act refers to incidents of

Domestic Violence. The version of Petitioners cannot be accepted at this stage. The Respondent No.2 was subjected to cruelty. She must be given an opportunity to prove the charges levelled in the complaint filed by her. FIR was registered with NRI Sagari Police Station against Petitioners under Sections 307, 323, 341, 354(A), 376, 377, 406, 498-A, 323, 504, 509 read with 34 of the Indian Penal Code. The Respondent No.2 has filed affidavit in reply opposing the relief prayed in this petition. It is submitted that both the Petitioners have subjected Respondent No.2 to cruelty. The Petitioner No.1 could not perform physical relationship with Respondent No.2. She was assaulted. She was abused.

5. The complaint under the provisions of the Domestic Violence Act was filed on 2nd September 2020. The learned Magistrate took cognizance of the complaint on 28th September 2020. The FIR was registered on 20th October 2020 by Respondent No.2 with NRI Sagari Police Station vide C.R. No.276 of 2020. Although it contains certain allegations against Petitioner No.2, the same were not reflected in the complaint under Domestic Violence Act. The Petitioner No.2 is father of Petitioner No.1. The Respondent No.2 is wife of Petitioner No.1. The Petitioner No.2 is the senior citizen aged around 78 years. Complaint under the Domestic Violence Act contains several allegations against the Petitioner No.1.

The allegations against the Petitioner No.2 are vague. On the basis of such allegations, the Petitioner No.2 cannot be prosecuted under the provisions of Domestic Violence Act. However, Considering the nature of allegations against the Petitioner No.1, the proceedings cannot be quashed against him.

6. In the light of factual matrix of this proceedings, the impugned proceedings against the Petitioner No.2 are required to be quashed and set aside. Hence, I pass the following order:-

ORDER

- (i) Writ Petition No. 2466 of 2021 is partly allowed.
- (ii) The prayer for quashing order dated 28.09.2020 issuing notice passed by JMFC, Vashi, Belapur and proceedings in Criminal M.A. No. 82 of 2020 under the provision of Protection of Women from Domestic Violence Act qua petitioner No.1 stands rejected.
- (iii) The order dated 28.09.2020 issuing notice passed by JMFC, Vashi, Belapur and proceedings in Criminal M. A. No. 82 of 2020 under the provision of Protection of Women from Domestic Violence Act pending before the Learned 6th Joint JMFC, Vashi at CBD Belapur are quashed and set aside qua petitioner No.2.
- (iv) Writ Petition stands disposed of.

(PRAKASH D. NAIK, J.)