

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

CRIMINAL APPLICATION NO. 424 OF 2022

1. Mamta Vaibhav Malankar
 2. Shilpa Anil Kadam
 3. Seema Shyam Khot
 4. Shyam Manohar Khot
- ...Applicants

Versus

1. Komal Jitendra Khot
 2. The State of Maharashtra
- ...Respondents

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Mr. N. M. Nadar, Advocate for the Applicant.

Ms. Rupali Sawant and Noorsaba Shaikh i/by S. P. Associates, Advocate for the Respondent No.1.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 26th SEPTEMBER, 2022

PC :

1. The Applicants are facing the proceedings initiated by Respondent No.1 before the Court of learned Metropolitan Magistrate, 67th Court, Borivali, Mumbai under the provisions of Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act').

2. The Applicant Nos.1 & 2 are sisters-in-laws and Applicant Nos.3 & 4 are mother-in-law & father-in-law of Respondent No.1. The marriage between Respondent No.1 and Jitendra Shyam Khot was performed on 16.12.2006. The Respondent No.1 gave birth to

a child on 03.12.2013. The husband of Respondent No.1 had expired in an accident on 25.01.2019. The Respondent No.1 filed an application under Section 12 of the D.V. Act on 26.07.2021. In the application preferred by Respondent No.1 under the D.V. Act, she had prayed for various reliefs under the said Act. It is alleged that the father of Respondent No.1 gave jewellery weighing Seven Tolas during her marriage which are now in custody of her in-laws. After the marriage, the Respondent No.1 and her husband cohabited and lived together in the matrimonial home situated at Kandivali, Mumbai. Her husband died on 25.01.2019. The sisters-in-laws were visiting their house. The applicants had harassed the Respondent No.1. There was physical and mental violence at the hands of applicants. The nature of harassment is spelt out in the application.

3. Learned Advocate for the applicants submitted that, the respondent No.1 has initiated proceedings under the D.V. Act with ulterior motive. The applicant Nos. 3 & 4 are senior citizens. The applicant Nos.1 & 2 are sisters-in-laws of Respondent No.1. The applicant No.1 is married on 18.02.2002 which is much before the marriage of Respondent No.1. The applicant No.1 was not in a domestic relationship with Respondent No.1. She has never lived with Respondent No.1. She is happily residing with her husband

and two children at different place. The applicant No.2 is married on 24.04.2003 which is much before the marriage of Respondent No.1. The applicant No.2 has never been in domestic relationship with Respondent No.1. She is residing with her husband and her two children at a different place. The allegations against the Applicant Nos. 3 & 4 are vague. The allegations do not constitute domestic violence. The applicant Nos. 3 & 4 resided with Respondent No.1 at Flat No.3, Shriram Apartment, B wing, Ground Floor, Kandivali (West), Mumbai. The Respondent No.1 wanted to reside separately, hence accommodation has been provided to her at Flat No.303, 3rd Floor, Vian Classic CHSL, Vasai, Palghar, Thane. The applicant Nos.3 & 4 are residing in a rental premises. The Respondent No.1 and her son were taken care of by Applicant No.4 and his relatives.

4. Learned Advocate for the applicants have relied upon the following decisions :-

i) *Pepsi Foods Ltd and Ors. Vs. Special Judicial Magistrate & Ors*¹.

ii) *Dhariwal Tobacco Products Ltd. and Ors. Vs. State of Maharashtra and Ors*².

¹ AIR 1998 SC 128

² AIR (2009) SC 1032

iii) *Parvez Kapadia And Ors VS Pravin P Kapadia And Anr.* passed by the High Court of Bombay in Criminal Writ Petition No.3652 of 2013 dated 21.04.2015.

iv) *Afia Rasheed Khan Vs. Mr. Dr. Mazharuddin Ali Khan* passed by the High Court of Bombay in Criminal Writ Petition No.4184 of 2021 dated 03.12.2021.

5. Learned Advocate for Respondent No.1 submitted that, the nature of harassment and domestic violence caused to Respondent No.1 is reflected in her application. The proceedings are pending before the concerned Court. At this stage, the version of the applicants cannot be accepted. The respondent No.1 should be given an opportunity to proceed with the application under Section 12 of the D.V. Act. The powers of quashing are to be exercised separately. The application preferred by Respondent No.1 prima facie makes out the domestic violence as contemplated under the provisions of D.V. Act. The applicant Nos.1 & 2 were visiting the matrimonial home of Respondent No.1 and were involved in causing violence against Respondent No.1.

6. Learned Advocate for the Respondent No.1 relied upon the following decisions.

i) *Devmani Thakkar & Others Vs. State of Maharashtra and Another* passed by the High Court of Bombay in Criminal Revision Application No. 152 of 2019 dated 02.11.2020.

ii) Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari & Anr³.

iii) Satish Chander Ahuja Vs. Sneha Ahuja⁴.

7. On perusal of documents on record and the contents of application preferred by Respondent No.1 under the provisions of D.V. Act, it can be seen that, there are specific allegations against the applicant Nos.3 & 4. At this stage, the allegations made against them cannot be brushed aside. The applicant Nos.1 & 2 are sisters-in-laws of Respondent No.1. The allegations against them are vague. The respondent No.1 in her application under the D.V. Act has admitted that, the applicant Nos.1 and 2 are her sisters-in-laws and both were residing in their respective matrimonial house. There is no specific overt act attributed to them. The marriage of Respondent No.1 was solemnized on 16.12.2006. The husband of Respondent No.1 had expired on 25.01.2019. The applicant No.1 is married on 18.02.2002 and the applicant No.2 got married on 24.04.2003. They are residing with their husband and children. Looking at the nature of the allegations made against the applicant No.1 & 2, they cannot be subjected to face the proceedings initiated by Respondent No.1 under the D.V. Act. However, considering the overt act attributed to applicant Nos. 3 & 4 and the nature of reliefs

³ AIR (2016) SCC 2519

⁴ AIR (2020) SC 5397

sought in this application preferred by Respondent No.1, the impugned proceedings against Applicant Nos. 3 & 4 cannot be quashed.

ORDER

- (i) Criminal Application No.424 of 2022 is partly allowed.
- (ii) The proceedings in D. V. Case No.267 of 2021 pending in the Court of Metropolitan Magistrate, 67th Court, Borivali, Mumbai are quashed and set aside as against the petitioner No.1 and 2.
- (iii) The impugned proceedings shall continue against petitioner No.3 and 4.
- (iv) Application stands disposed of.

(PRAKASH D. NAIK, J.)