

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO.395 OF 2022

1. Anup s/o Omprakash Rai, Aged about 35 years, Occupation – Business,
2. Ankush s/o Omprakash Rai, Aged about 32 years, Occupation – Business,

Both R/o Near Railway Gate, Paramhans Nagar, Dabki Road, Bhaurad, Tq. Akola and Dist. Akola.

... APPLICANTS_

VERSUS

Sau. Priti w/o Pankaj Rai, Aged about 37 years, Occupation – Housewife, R/o C/o Subhash Deolal Malaviya, Village – Mandu, Tah. Dharni, District – Amravati.

... NON APPLICANT_

Shri Sagar Katkar, Advocate for the applicants.
Syed Owais Ahmed, Advocate for the non-applicant.

CORAM : VINAY JOSHI, J.

DATED : 02.08.2022.

JUDGMENT :

Heard. **ADMIT.** By consent of both learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. The applicants raise a challenge to the maintainability of application bearing PWDVA No.71 of 2021 filed by the non-applicant under the provisions of the Protection of Women from Domestic Violence Act 2005 (for short 'the DV Act'). Both applicants are the brother-in-law of non-applicant/lady who initiated the proceeding in the Court of Magistrate claiming to be subjected to domestic violence. It is argued that the applicants never lived in domestic relationship with the non-applicant as they did not live together in a shared household. It is contended that soon-after the marriage, the non-applicant started to live with her husband and in-laws at matrimonial house, which situated at Balwant Colony, Mitra Nagar, Sindhi Camp, Akola whilst both applicants (brother-in-law) were residing separately near Railway Gate, Paramhans Nagar, Dabki Road, Bhaurad, Taluka Akola. So also, the maintainability is challenge on the ground that the entire application is vague which does not specify the day, date time and instances of domestic violence and therefore, continuation of proceeding amounts to abuse of the process of Court.

3. *Per contra*, the learned Counsel appearing for the non-applicant resisted the application on the ground that the applicants are very much residing in matrimonial house. The applicants have falsely posed to be residing at some other place which is their business concern. Secondly, it is contended that the original application bears a specific reference in paragraphs 2 and 3 about the acts of domestic violence at the hands of the applicants.

4. The learned Counsel for the applicants has produced copies of Aadhar Card to support the stand that they are residing separately at the place situated at Dabki Road, Akola. Likewise, one electricity bill of said premises, has also been produced. The non-applicant would submit that the place at Dabki road is family business concern of which Visiting Card has been produced. It is submitted that the applicants have obtained Aadhar Card on the address of business premises and thus, they came with a false case that they are residing separately meaning thereby they did not reside in a shared household.

5. Pertinent to note that in this application, initially the applicants have stated their address of matrimonial house i.e. of Balwant Colony, however, later on, by amendment they have changed the address as Dabki Road. The application filed under Section 12 of

the DV Act says that both applicants are residing in matrimonial house, and thus, it is a matter of trial to establish whether the applicants were residing separately.

6. Learned Counsel for the applicants by placing reliance on the decision of this Court in case of ***Mr. Prabhakar Mohite and anr. vs. State of Maharashtra 2018 ALL MR (Cri) 4508*** would submit that unless the parties reside in matrimonial house and in absence of specific role attributable to the applicants, the petition is liable to be quashed. In said case, the arguing respondents were residing elsewhere and visiting at matrimonial house at the weekend. On the basis of given facts, it has been held that the contentions are vague and of general nature, hence, the application was quashed.

7. In case at hand, in paragraph 2 of the application before the trial Court the non-applicant/lady (present non-applicant) has specified that the non-applicants nos.3 to 5 (including present applicants) always used to raise monetary demand on account of dowry and on that count they were abusing her in filthy language. She stated that the non-applicants used to instigate her husband on which he used to harass her. She also stated that prior to the Holi festival of the year 2017, the non-applicants assaulted her and accordingly she was sent to her

maternal house. Thus, *prima facie* there are specific allegations attributing to present applicants about their act of monetary demand, abuses and assault. In the wake of such a position, the proceedings cannot be throttled at the threshold. The act of harassment and coercing the aggrieved person to meet unlawful demand falls within the purview of the term of domestic violence. Therefore, it cannot be said that there is no *prima facie material* to proceed with the application.

8. In view of the above, no case of interference is made out. Hence, the application stands rejected. No order as to costs.

(VINAY JOSHI, J.)

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