

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

CRIMINAL APPLICATION (APL) NO.282 OF 2020

1. Abdul hamid Khan Abdul Karim, aged about 78 years, Occupation – Retired.
2. Salma Khan Abdul Hamid Khan, age – 76 years, Occ – Household, Both 1 & 2 R/o Undri Ta. Chikhali, Dist. Buldhana.
3. Jamil Ahamad Khan Abdul Hamid, age – 52 years, occ – Service, r/o Abrar Colony, Patur, Tal. Patur, Dist. Akola.
4. Javed Ahamad Khan Abdul Hamid Khan, Age – 51 years, occ – Labour.
5. Jafar Ahamad Khan Abdul Hamid Khan, Age – 43 years, Occ Service, Both 4 & 5 R/o Undri, Tal. Chikhli, Dist. Buldhana.
6. Jamshid Ahamad Khan Abdul Hamid Khan, Age – 43 years, Occ – Labour, R/o Fattesingpura, Kirhadpura, Aurangabad, Tal. & Dist. Aurangabad.

... APPLICANTS_

VERSUS

1. Umme Habiba Begum Jalil Ahmed Khan, Age – 46 years,
2. Faraha Diba d/o Jalil Ahemad Khan, Age – 27 years, Occ – Service, Both R/o Millat Colony, Khamgaon, Tal. Khamgaon, Dist. Buldhana.

... NON-APPLICANTS

Shri N.R. Tekade, Advocate for the applicants.
Shri Junaid Ahmed, Advocate for the non-applicants.

CORAM : VINAY JOSHI, J.
DATED. : 21.09.2022.

ORAL JUDGMENT :

Heard finally by consent of learned Counsel appearing for the parties.

2. The applicants are the respondent nos.2 to 7 of Misc. Criminal Application No.42 of 2012 filed by the non-applicants/wife and daughter under Section 12 of the Protection of Women From Domestic Violence Act, 2005 ('the DV Act'). The applicants are seeking to quash and set aside the said application (complaint) on the premise that the complaint nowhere discloses the specific role attributing to applicants. It is contended that the applicants have not lived in the shared household with the couple and therefore, continuation of proceedings against them, is abuse of the process of Court.

3. The other side resisted the application by contending that the complaint bears the specific act of harassment meted out by applicants. According to non-applicants, the triable case has been made

out and therefore, this application carries no merit.

4. At the instance of the complaint filed by the wife and daughter, notices were issued to the applicants for responding the action in terms of Section 12 of the DV Act. Though the original complaint was filed against the husband, parents-in-law and four brothers of the husband, however, this application has been moved by rest than the husband. In another words, the husband has not challenged the maintainability of the DV proceeding, meaning thereby, he would face the proceeding in the Trial Court.

5. The applicants are parents-in-law and four brothers of the husband of aggrieved person. It is their contention that they never lived along with the couple. The complaint does not discloses specific acts on their part. The entire allegations are general, vague and thus, the complaint is not tenable.

6. With the assistance of both sides, the entire complaint is perused. It is the grievance of the aggrieved person (i.e. wife) that she got married with Jalil Khan in the year 1998. She started to live with her husband and his relatives initially at village Undri, Tq. Chikhali, Distt. Buldhana. Thereafter, they shifted to Khamgaon where her

husband was employed as an Assistant Teacher. She stated that time and again, her husband harassed her, beat her and raised monetary demand. Several instances and specific allegations have been leveled against the husband for which we are not concerned, as he has not applied for quashing. So far as the present applicants are concerned, it is submitted that applicant nos. 1 and 2 (parents-in-law) are residing in Chikhali, Dist. Buldhana where initially the couples started to reside. However, applicant no. 3 is residing at Akola, applicant nos. 4 and 5 are residing at Undri, Tq. Chikhali and applicant no.6 is residing at Aurangabad. It is submitted that all four brothers are married and residing separately with their respective family.

7. Reading of the entire complaint reveals that supporting role has been assigned to the brothers in joining the husband in raising monetary demand and pressurizing for compliance. It is stated that they have also participated in manhandling the wife. Besides the general allegations against brothers, there is nothing to show their specific role. It reveals that initially the parents-in-law were sharing the residence with the couple, who can be at the most treated as instigator. The brothers have naturally no interest in the life of couple, unless a specific act attributing their complicity has been pleaded. Certain reported decisions have been cited by both sides. However, on the basis

of emerging facts, the maintainability of the complaint, is to be primarily decided.

8. The husband has appeared in the domestic violence proceedings in which applied for dismissal, however, he failed. Interim maintenance order has been passed against the husband, which is prevailing. Having regard to the initial residence and the character of parents-in-law, it cannot be said that they had no role at all. However, as regards to the case of married brothers their role is distinguishable. Since they were separately residing with their families, merely on the basis of general and vague allegations, they shall not be required to face the action. Moreover, no relief could be upheld against them.

9. In view of above, the application is partly allowed. Insofar as, applicant nos. 1 and 2 (Parents-in-law) is concern, the application is dismissed. The application is allowed as regards to applicant nos.3 to 6 as a consequence the complaint under the DV Act, is quashed and set aside against them only. The Trial Court shall proceed against the rest. Since the proceeding is 10 years old, the Trial Court shall make an every endeavour to decide it expeditiously.