

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

CRIMINAL APPLICATION [APL] No. 541/2021.

1.Sayyad Firoz s/o Sayyad Sabir,
Aged about 34 years, Occupation Service;

2.Smt. Rehana Sayyad Sabir,
Aged about 60 years, Occupation -
Household,

3.Sayyed Awez s/o Sayyed Sabir,
Aged about 38 years, Occupation
Service.

Nos.1 to 3 are residents of 24,
Bakar Villa, Sainagar, Godhani
Road, Zingabai Takli, Nagpur.

4.Mohd. Jamil Bakar Sheikh,
aged about 62 years, Occupation
Business, resident of Plot No.43,
Rathod Layout, Ram Krishna Store,
Swagat Nagar, Nagpur.

5.Smt. Anwar Fatema,
aged about 60 years, Occupation
Household, resident of Godhani
Road, Zingabai Takli, Nagpur.

...

APPLICANTS.

VERSUS

Afreen Naaz w/o Sayyad Firoz,
aged about 26 years, Occupation
Housewife, resident of 114, Eros Villa,
Awasti Nagar, Nagpur.

... **NON-APPLICANT.**

Mr. S.S. Voditel, Advocate for Applicants.
Mr. Gulam Mohd. Advocate for the Non-applicant.

CORAM : VINAY JOSHI, J.

CLOSED FOR JUDGMENT ON : 07.09.2022.
JUDGMENT PRONOUNCED ON : 14.09.2022.

JUDGMENT :

Heard. Considering the controversy involved in the matter
and by consent of the learned Counsel appearing for the parties,
Criminal Application is taken up for final disposal at the stage of
admission.

Admit.

2. Applicant nos. 1 to 5 who are respondents in Misc.

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Criminal Application No.2521/2021, have challenged the maintainability of the said proceedings filed in terms of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the D.V. Act” for short), by the non-applicant – wife.

3. Applicants has challenged the maintainability on the ground that the marriage between the spouse was short lived, barely for 4 months. It is difficult to believe the alleged harassment within such short period. The allegations levelled in the application are totally imaginary and vague. The proceeding under the D.V. Act has been filed as a counter blast to the N.C. report lodged by the husband dated 03.07.2020. The contents of the application nowhere discloses specific instances which can be termed as a ‘domestic violence’ within the meaning of Section 3 of the D.V. Act. The application being malafide, initiated with ulterior motive, requires to be quashed in view of the decision of the Supreme Court in case of **State of Haryana and others .vrs. Bhajanlal and others – 1992 Supp [1] SCC 335.**

4. Per contra, the learned Counsel appearing for the non-applicant wife supported the tenability of the application by contending that at this preliminary stage, worth of allegations cannot be determined. The application bears specific instances regarding the act and omissions on the part of applicants, which amounts to domestic violence. Moreover, it is contended that yet evidence is to be recorded, and therefore, without assessing the truthfulness of the allegations, the wife's claim cannot be throttled at initial stage.

5. Briefly stated, the non-applicant / wife has filed an application in the Court of Magistrate under Section 12 of the D.V. Act, against applicant nos. 1 to 5 [respondent nos. 1 to 5 in original application], seeking multiple reliefs as available under the D.V. Act. The marriage between the estranged couple took place on 26.02.2020. It is the case of non-applicant/ wife that soon after marriage she resumed cohabitation with her husband at her matrimonial house. She was living with her husband, mother-in-law and brother-in-law. Since inception, she was subjected to face

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several odds. There was monetary demand, non-performance of sexual obligation, starvation, humiliation. As per the case of the non-applicant, the marriage was short lived, as on 09.06.2020 she was deserted by her husband which compelled her to take shelter at her parents house.

6. It is first and foremost submission made on behalf of the husband that the non-applicant/wife hardly resided for 4 months in her matrimonial house, therefore, the story of harassment as projected, is unbelievable. Moreover, it is contended that the allegations are totally vague and thus, on that basis, the continuation of the proceedings amount to an abuse of the process of the Court.

7. I have carefully examined the application filed under Section 12 of the D.V. Act, as at this stage the averments made in the application is the sole criteria to decide the question involved. The wife has primely alleged that since the first day of the marriage the husband declined to maintain sexual relations and the said attitude lasted till the break down of marriage. She has alleged that the

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husband has insisted her to bring money for which she was pressurised and manhandled too. She has further stated some instances to convey that the behaviour of husband was totally rude, as well as he had an affair with some lady. She quoted the incident of her honeymoon, where also she has been mentally harassed and deprived from sexual pleasures.

8. Applicant no.2 is mother-in-law of the non-applicant/wife, against whom there appears to be several allegations. It is alleged that applicant no.2 always used to pressurise her and humiliate on account of household work. She has also caused physical injury by burns. She was not allowing the non-applicant to have sufficient food and mentally harassed her. Though it is submitted on behalf of the applicant/husband that the allegations are of vague nature, however, at this initial stage it cannot be said so. The application bears reference of various instances, may be without date, however, it specifies as to on what account her husband and mother-in-law misbehaved with her.

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9. Section 3 of the D.V. Act defines the term 'Domestic Violence', which is a comprehensive term. It includes any act, as well as, omission which would result into mental, physical and emotional harassment. The wife has throughout repeated that she was deprived from sexual relations. The term 'sexual abuse' has been explained in Clause [ii] of Section 3[d] of the D.V. Act. It merely conveys that the term 'sexual abuse' includes any conduct of sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a women. Obviously, the term is explained by stating that those acts also amounts to sexual abuse, meaning thereby, other related acts or omissions also amounts to sexual abuse. The term never restricts its scope, but, it encompass other acts too. The very foundation of marriage is sexual relations with spouse, however, the omission in that regard can be termed as a sexual abuse, if proved.

10. Yet the parties are to lead evidence and therefore, at this stage, though duration was short, it cannot be said that the allegations are baseless. From close examination of entire application and considering over all facts, it is evident that there

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exists prima facie material to proceed against the husband and his mother.

11. So far as rest of the applicants are concerned, besides the role of mediator, there is nothing against applicant no.4 – maternal uncle and applicant no.5 who is purely a mediator. It is alleged that they were aware about the cruel nature of the husband, still by suppressing said information they have convinced for marriage. By no stretch of imagination it can be said that alleged act of mediator amounts to domestic violence. Apparently they never shared the domestic relationship with the non-applicant wife, and thus, continuation of proceedings against them is wholly untenable.

As regards applicant no.3 – brother-in-law is concerned, I do find his reference in the application, but, it is in the sort of supportive nature. It is alleged that the applicant no.3 used to order the non-applicant to provide food and assist his brother and mother in the act of domestic violation. Nothing specific has been pleaded as regards to applicant no.3 to term it that his act amounts to domestic violence or he has abetted the said act. If manifestly

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circumstance indicates that substantial injustice would be caused, non-exercise of inherent power also amounts to causing injustice. This Court is mindful of the fact that mechanical issuance of notice to all the respondents /applicants may lead to causing unnecessary harassment. Entertainment of application under Section 12 of the D.V. Act on untenable material amounts to serious interference against the persons who are unconnected with the act. This Court exercises its power of superintendence under Article 227 of the Constitution of India, as well as inherent powers under Section 482 of the Code of Criminal Procedure, to prevent abuse of the process of the Court or when it prominently surfaces, then it is necessary to exercise those powers to secure the ends of justice.

12. Having regard to above facts, issuance of notice to applicant nos. 3 to 5, is unjustifiable, untenable, therefore, requires to be quashed and set aside. As regards applicant nos. 1 and 2, there exists sufficient material to proceed further, and therefore, Criminal Application deserves to be partly allowed. Misc Criminal Application No.2521/2021 is hereby quashed and set aside against applicant nos. 3 to 5 (original non-applicant nos. 3 to 5) only. It shall be proceeded

Rgd.

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against the rest.

13. Criminal Application is accordingly disposed of.

JUDGE