

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

CRIMINAL APPLICATION [APL] No. 270/2018.

Ambadas s/o Mahadeo Pawade,
Aged about 67 years, Occupation
Pensioner, resident of Tukum, Tadoba Road,
Chandrapur, Tahsil and
District Chandrapur. ... **APPLICANT.**

VERSUS

Sau. Kusum w/o Ambadas Pawade,
Aged Major, Occupation -
Household, resident of Nehru Nagar,
Mul Road, Chandrapur,
Tahsil and District Chandrapur. ... **NON-APPLICANT.**

Mr. A.S. Shukla, Advocate h/f. Shri R.L.Khapre, Senior Advocate for
the Applicant
None for the Non-applicant – Served.

CORAM : VINAY JOSHI, J.

DATE : JULY 01, 2022.

ORAL JUDGMENT :

Heard Shri Shukla, learned Counsel appearing on behalf

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of the applicant. The non-applicant though served has chosen not to appear in the matter.

2. The applicant – husband is assailing the order dated 31.01.2015 passed by the Judicial Magistrate First Class, Chandrapur in Misc. Criminal Application No.103/2014, which came to be confirmed by the Appellate Court i.e. the Sessions Judge, Chandrapur in Criminal Appeal No.26/2015 vide order dated 31.01.2018.

3. The applicant has challenged the very maintainability of the proceedings filed by the non-applicant / wife 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). The applicants’ urge for dismissal of the application filed by the non-applicant/ wife was turned down by the Magistrate, as well as the Appellate Court, and therefore, this Application.

4. The non-applicant/wife has preferred an application under Section 12 of the D.V. Act claiming following reliefs :

“a] That, the non-applicant no.1 may

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kindly be directed to pay the half of amount after retiring to the applicant by way of lump-sum maintenance amount.

b] That, the non-applicant no.2 may kindly be directed to deposit the whole amount as shown above in this case and not to disburse to the non-applicant no.1.

To this effect interim exparte order may kindly be passed.

c] Compensation as claim of Rs.1,00,000/- may kindly be given to the applicant, And

d] such other suitable direction may kindly be given if this Hon'ble Court deems fit."

5. The applicant has challenged the maintainability of the said proceeding on two counts namely – the application does not disclose the act of domestic violence and secondly, the application is not maintainable for inordinate delay. Besides that it is canvassed that the relief which is sought is not tenable under the D.V.Act.

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6. Bare perusal of the application [Criminal Case No.103/2014], discloses that the couple married prior to 45 years from the date of filing of the said application. After few years, there was matrimonial discord and some where in the year 2004, the couple separated. The non-applicant / wife has approached to the Magistrate for grant of maintenance in terms of Section 125 of the Code of Criminal Procedure vide Criminal Application No.82/2005, which was allowed in the year 2012. Revision against the said order was dismissed. It is averred by the non-applicant that the applicant – husband is serving as a loader with the Western Coalfields Limited. He is about to retire in the month of December, 2014 and would get retiral benefits soon. The non-applicant/wife alleged that since the applicant has not made suitable arrangement for her residence and not provided the amount for her survival, she is entitled for 50% of the retiral benefits. The entire tenor of the application in unequivocal terms speaks that the very purport of the application is a simplicitor claim for retiral benefits. It is to be remembered that the non-applicant/wife had claimed said relief under the provisions of Domestic Violence Act. Even if the relief claim is termed as

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monetary one, in view of Section 20 of the D.V. Act, monetary reliefs can be granted to the aggrieved person on the premise of domestic violence. Perusal of the original application no where specifies the instances of harassment, barring general and vague allegations. There are no specific statements to suggest that she was subjected to domestic violence at any point of time or during a particular period.

7. Notably the couple separated some where in the year 2004, whilst the non-applicant/wife had applied to the Magistrate in the year 2014 i.e. after a period of 10 years. Though the period of limitation in terms of Section 468 of the Code would not apply, however, the application should be filed within a reasonable period. What amounts to 'reasonable period' is a matter of fact. It reveals that though the wife has applied for maintenance in the year 2005, for next 9 years, she has not invoked the provisions of the D.V. Act.

8. The learned Counsel for the applicant would submit that filing of the application after several years would amount to gross abuse of the process of Court. He relied on the decisions of this Court in cases of – [1]**Anita Anand Tambe .vrs. Anand Eknath Tambe**

– 2018 SCC Online Bom 298; [2] Rekha Balasaheb Patil .vrs. Smt.Durgawati Shridhar Patil and others – 2018 SCC Online Bom 2740; [3] Y.Kunjanppan and another .vrs. Chitralekha Tarachand Anandi and others – 2011 All MR (Cri) 3212 and [4] Kishor Shrirampant Kale .vrs. Sou. Shalini Kishor Kale and others – 2010 All MR (Cri) 1386, to contend that this Court in similar circumstances by taking note that the grievance was put after several years, held that such belated action under the D.V. Act is not maintainable.

9. Perusal of the entire application loudly conveys that only because the applicant – husband was to get some retiral benefits, the application was moved. The non-applicant/lady has not claimed any other reliefs which are available under the D.V. Act, but, concentrated for claiming the retiral benefits. Certainly invocation of provisions of D.V.Act is not the forum where she can lay her claim for retiral benefits of her husband. There is no justification for a long gap of 10 years for raising the grievance about domestic violence. Apart from that, the contents of the application are quite vague and does not specify any instances which can be termed as an act of domestic violence.

10. It is brought to the notice of the Court that the non-applicant/wife has also filed one Regular Civil Suit No.224/2014 claiming the relief of injunction from disbursement of the retiral benefits. It is informed that the said suit was dismissed in default on 11.03.2016. Suffice to say that the entitlement of wife for retiral benefits during life time of the husband is a matter of concern, which has to be adjudicated in appropriate proceedings before proper forum, but, certainly not under the provisions of the D.V. Act.

11. Admittedly the Magistrate has awarded maintenance in terms of Section 125 of the Code @ Rs.2000/- per month, which was confirmed by the Revisional Court. The applicant / husband has challenged the order passed in revision by filing Criminal Application (APL) No.271/2018, in which the learned Counsel for the applicant today sought withdrawal and accordingly the said Criminal Application was disposed of. As a result, the order of maintenance awarded in terms of Section 125 of the Code has attained finality. It is always open for a lady to seek for alteration, if the circumstances warrants so.

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12. Having regard to the fact that the original application is vague, aimed with the relief which is not contemplated under the D.V. Act and as there was inordinate, unexplained delay, its continuation would amount to abuse of the process of Court. In view of that the Criminal Application deserves to be allowed, and is accordingly allowed.

The impugned order dated 31.01.2018 passed in Criminal Appeal No.26/2015 by the Additional Sessions Judge, Chandrapur is hereby quashed and set aside. The D.V. proceedings namely Criminal Case No.103/2014 pending before the trial Court stands dismissed.

JUDGE