

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

CRIMINAL APPLICATION [APL] NO.773 OF 2022

Applicants

- :**
- 1. Majidkhan Nisarkhan,**
Aged about 40, Occ. Business.
 - 2. Nisarkhan Amanullah Khan,**
Aged about 70 Yrs., Occ. Business.
 - 3. Sherbano Nisar Khan,**
Aged about 65 Yrs., Occ. Household.
 - 4. Sajidkhan Nisarkhan,**
Aged about 42 Yrs., Occ. Business.

Applicant Nos.1 to 4 r/o Kinwat, Nanded,
District Nanded.
 - 5. Nahid Nisar Khan,**
Aged about 39 Yrs., Occ. Household,
R/o Republic of kenya,
Indian Address – Malwani Paras CHS Ltd.,
Malad West, Mumbai.
 - 6. Nikhat w/o Moin Sajjad Khan,**
Aged about 38 Yrs., Occ. Household,
R/o Riyadh, Saudi Arabia.
Indian Address – Flat No.401, 4th Floor, Achraj
Reviera, Zingabai Takli, Nagpur.
 - 7. Hina Parveen Syed Shoeb Ali,**
Aged about 40 Yrs., Occ. Household,
R/o Saudi Arabia.
Indian Address – Villa No.1, Paramount Gate No.2,
Hyderabad.

– Versus –

Non-Applicant : **Benazir Majid Khan,**
Aged 29 Years,
R/o C/o Sayrabi Abdul Zaher Khan, Sawna, Tah.
Mahgaon, Dist. Yavatmal.

Mr. M.N. Ali, Advocate for the Applicants.
Mr. S.G. Varshani, Advocate for the Non-Applicant.

CORAM : **VINAY JOSHI, J.**
DATE : **29th SEPTEMBER, 2022.**

ORAL JUDGMENT :-

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

02] This is an application for quashing and setting aside the domestic violence application (complaint) filed by the wife under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter shall be referred to as 'Act' for short). Applicant Nos.1 to 7 are respondent Nos.1 to 7 in the original complaint. Applicant No.1 is husband, applicant Nos.2 and 3 are parents-in-law, whilst applicant Nos.4 to 7 are the married sisters of the husband. The complaint is sought to be quashed on the ground of non-maintainability by stating that the non-applicant/wife cannot be termed as "aggrieved person" within the meaning of Section 2(a) of the Act, since she never lived in domestic relationship. According to applicants, unless the wife

lived with the respondents in a shared household, it cannot be termed that they lived in domestic relationship, which is the essential ingredient to maintain the complaint. In this regard, the applicants' learned Counsel took me through the complaint filed by the non-applicant/wife.

03] It is the complainant's case that on 17/05/2021, she got married with applicant No.1/husband at Village Hadgaon, District Nanded. The husband and his family are resident of Tahsil Kinwat, District Yavatmal. On the day of marriage, she was taken by her husband to Nagpur, where the couple stayed for few days. Therefrom, she was directly taken to her maternal house i.e at Village Sawna, Tahsil Mahagaon, District Yavatmal and left. It is the complainant's case that thereafter she visited Kinwat with intent to live with her husband, however, she was manhandled and driven away from the house. As a consequence, she is living at her maternal house. On the basis of such facts, the complainant, by claiming the domestic violence within the meaning of Section 3 of the Act, has applied to the learned Magistrate in terms of Section 12 of the Act claiming multiple reliefs.

04] The learned Counsel appearing for the applicants also took me through a police report dated 25/10/2021 lodged by the wife for the offence

punishable under Section 498-A of the Indian Penal Code. In the said report, the complainant/wife has specifically stated that on the day of marriage itself, she was taken to the Nagpur and on the following date, she was left at her maternal house at Village Sawana. She also quoted one another incident, where she went to her matrimonial house but she was not allowed by raising monetary demand. The learned Counsel appearing for the complainant/wife has produced a copy of investigation papers relating to the report under Section 498-A of the Indian Penal Code. The fact remains that on the date of marriage, the complainant/wife was not taken to the house of her husband nor on the subsequent occasion i.e. on 24/07/2021 she was allowed to reside with her husband and parents-in-law. The core question is whether the isolated incident dated 24/07/2021 can be construed to state that the wife was in 'domestic relationship' with her husband and in-laws. The learned Counsel appearing for the non-applicant would submit that even a stay of a wife for an hour amounts to domestic relationship and to be held that they lived in a shared household.

05] There is no quarrel on the point that in order to term a lady as "aggrieved person", she must live in domestic relationship with the respondent. The term domestic relationship has been defined under Section

2(f) of the Act, which means a relationship between two persons, who live or have, at any point of time, lived together in a shared household. Contextually, the term a 'shared household' as defined under Section 2(s) of the Act has been gone into. It means that a household where the person aggrieved (complainant) lives or at any stage has lived in a domestic relationship either singly or with others. Thus, the basic requirement is that they should live in a shared household, so as to term that there was a domestic relationship in between the parties. By no stretch of imagination, occasional visit of the wife on 24/07/2021 at her husband's house can be termed that she lived in a shared household amounting to domestic relationship.

06] The applicants' learned Counsel by placing reliance on the decision of this Court in the case of Madhusudan Murarilal Sharma vs. Jyotsna Nilesh Sharma & Anr. - 2019 ALL MR (Cri)5054, would submit that the establishment of domestic relations is a very core foundation of maintainability of the proceedings under Section 12 of the Act. In this regard, he took me through the observations made by this Court in paragraph 8, which are reproduced herein below.

"8. The DV Act intends to cover those women who are or have been relationship with the abuser where both

parties have lived together in a shared household and are related by consanguinity marriage or through a relationship in the nature of marriage or adoption. The relationship with family members who live together as a joint family are also included. The intention of the Legislature was certainly not to provide a forum and remedy to every aggrieved woman irrespective of the circumstances, irrespective of the relationship with the offender or the nature of grievance. The statutory scheme reveals that the provisions of the DV Act can be invoked only by an aggrieved person who is defined to mean any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The jurisdictional facts which are precondition to taking cognizance are (a) the woman must be, or must have been in a domestic relationship with the respondent and (b) she must have been subjected to any act of domestic violence by the respondent. Domestic relationship as statutorily defined presupposes that the respondent and the complainant lived or have lived together in a shared householder which is defined to mean a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent. The household could be owned or tenanted either jointly by the aggrieved person or the respondent or owned or tenanted by either or them and could belong to the joint family of which the respondent is a member. Whether the aggrieved person or respondent has any right, title or interest in the shared household is immaterial.”

07] There is no reason to deviate from the proposition which has been laid down by this Court since it is nothing but reiteration of the provisions contained under Section 2 of the Act.

08] The complainant nowhere states that she resided with the applicants at her matrimonial house at village Kinwat at any point of time. Admittedly, on the date of marriage, she has not visited at her matrimonial house, but on 24/07/2021, she tried to go there, but she was driven away. Thus, the essential ingredient to term the complainant as “aggrieved person” has not been fulfilled since there was no domestic relationship. Though the applicants have relied on some other decisions to reinforce the said point, but I do not find it necessary to multiply the decisions in view of *Madhusudan’s* case, which has already quoted above.

09] In view of above, the wife’s complaint under Section 12 of the Act is not maintainable and required to be quashed as regards the present applicants. At this juncture, the non-applicant’s learned Counsel would submit that the complaint may be allowed to proceed against the husband as multiple reliefs including monetary relief has been claimed. Unless there has been domestic violence within the meaning of Section 3 of the Act, no reliefs could

be granted under the special statute and, therefore, the submission cannot be upheld. Obviously, the complainant is at liberty to resort other remedies as available under the law to enforce her rights.

10] In view of the above, the following order is passed :

- i. The application is allowed.
- ii. Complaint under Section 12 of the Act bearing PWDVA Application No.18/2021 filed by the non-applicant/wife is hereby quashed and set aside as regards to the present applicants i.e. non-applicant Nos.1 to 7 of the main application.
- iii. The application is disposed of in the above terms.

(VINAY JOSHI, J.)

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