

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

CRIMINAL APPLICATION (APL) NO. 415 OF 2020
(Dhiraj Mahadeorao Bhivgade and ors ...Versus... Minal Dhiraj Bhivgade)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Raju Kadu, Advocate for the applicant.
Mr. Arjun Jain (Raoka) Advocate for the respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 21/02/2022

1] Heard Mr. Kadu, learned counsel for the applicant and Mr. Jain, learned counsel for the respondent.

2] This application under Section 482 of Cr.PC. challenges the institution of the proceedings under Section 12 r/w Sections 18, 19, 20(1)(d), 22 and 23 of the Protection of Women from Domestic Violence Act, filed by the respondent/ wife against her husband, brother-in-law and sister-in-law for allegedly having made a demand and physical & mental harassment and torture to the respondent.

3] Mr. Kadu, leaned counsel for the applicant submits that the complaint itself discloses that the respondent-wife was residing separately from the applicant No.1-husband since 20.5.2017, and therefore, the complaint filed on 4.1.2020 was beyond the period of one year and

therefore, was not maintainable under Section 468 of Cr.P.C., for which reliance is placed upon (i) **Inderjit Singh Grewal vrs. State of Punjab**, (2011) 12 SCC 588 (para 32, 33), (ii) **N. Prasad vrs. Harithalakshmi**, 2020 SCC Online Madras 1767 (para 6 and 7) (iii) **Preeti Gupta and anr vrs. State of Jharkhand and anr**, (2010) 7 SCC 667 (paras 30, 32, 33) and (iv) **Japani Sahoo vrs Chandra Sekhar Mohanty**, 2007 (7) SCC 394, which holds that the relevant date for the purpose of computing the period of limitation would be the date of filing of the complaint or initiating criminal proceedings and not the date of taking cognizance by the Magistrate or issuance of process.

4] That apart, on merits, learned counsel for the applicant submits that the complaint filed by the respondent-wife, dated 4.1.2020 is vague and does not disclose any specific allegations, considering which also, the initiation of the complaint was not correct and proper. He therefore, prayed that by invoking the powers under Section 482 of Cr.P.C., the complaint needs to be quashed, as it is an abuse of the process of law.

5] Mr. Jain, learned counsel for the respondent, vehemently opposes the application and submits that in so far as issue of limitation is concerned, the proceedings under Domestic Violence Act are quasi civil & the embargo of

Section 468 of Cr.PC would not be attracted, for which reliance is placed upon judgment of the Full Bench of this Court in **Nandkishor Pralhad Vyawhare vrs. Mangala Pratap Bansar**, 2018 (3) Mh.L.J. 913, relying upon **Kunapareddy alias Nookala Shanka Balaji vrs. Kunapareddy Swarna Kumari** 2016 11 SCC 774. Further relying upon **Athish Rakesh Agarwaal vrs. Pallavi Athish Agarwaal and anr**, decided by learned Single Judge of this Court on 18.2.2020 (Criminal Writ Petition No. 261/2020), it is contended that Section 468 of Cr.PC has no application so far as proceedings under Section 12 of the D.V. Act is concerned, as it is an enabling provision and there is no limitation prescribed in the D.V. Act, though reference is made to the applicability of some provisions of the Cr.PC. Further reliance is placed upon **Krishna Bhattacharjee vrs. Sarathi Choudhury and anr**, 2016 (2) SCC 705 (para 23 and 31), to hold that in case of continuing offence, the question of limitation does not arise. Reliance is also placed on **Juveria Abdul Majid Patni vrs. Atif Iqbal Mansoori**, 2014 (10) SCC 736 and **Ritesh Ratilala Jain & ors vrs. Sandhya Ritesh Jain & anr**, 2013 ALL MR (Cri) 3233, holding that no time limit is fixed for filing proceedings under the D.V. Act.

6] In so far as the issue about the limitation is concerned, though in the complaint it has been stated that the complainant/respondent-wife had separated from the

applicant no.1 on 20.5.2017 and had gone to her parental house, in so far as proceedings under the D.V. Act is concerned, considering that it has been held by the Full Bench in **Nandkishore Pralhad Vyawahare** (supra), to be a proceeding predominantly of a civil nature, the strict rigor of Section 468 of the Cr.P.C. would clearly not be applicable. Even **Inderjeet Grewal** (supra) does not in my considered opinion lay down that in all cases where the complaint has been filed beyond the period of one year, the same cannot be entertained by the Court, but ought to be rejected. In **Krishna Bhattacharjee** (supra), after considering **Inderjeet Grewal**, the Court has held that the concept of continuing offence is applicable to the proceedings and the wife can always put forth her claim under Section 12 of the D.V. Act. **N. Prasad** (supra) relied upon by Mr. Kadu, learned counsel for the applicant, which solely relies upon **Inderjeet Grewal**, to hold that the complaint beyond the period one year under the D.V. Act cannot be made applicable, as it is interdicted by the Full Bench of this Court, which holds the proceeding under the D.V. Act, as quasi civil, which was not the position under consideration in **Inderjee Singh Grewal** (supra).

7] Thus, considering the above position, in my considered opinion, the complaint as filed by the respondent-wife, cannot be thrown out on the sole ground that it is filed one year beyond the period of separation, which is so also for

the reason that the D.V. Act is a beneficial piece of litigation, enacted for protection of the rights of the women who have suffered at the hands of the other side and the concept of a continuing wrong would squarely be applicable.

8] That takes me to the second contention that the complaint does not disclose any offence. Perusal of the complaint dated 4.1.2020, would demonstrate that though allegations have been made in the complaint against all the applicants, the allegations against the applicant Nos. 3 and 4 are absolutely vague, bereft of any details and are merely generalized. The complaint does not disclose a single specific allegation against the applicant Nos. 3 and 4, both of whom were not resident of Nagpur at the time when the marriage was taken place, nor thereafter. Even the complaint indicates that applicant Nos. 3 and 4 were not resident of Nagpur, even at the time of filing of the complaint also. The contention of Mr. Jain, learned counsel for the respondent-wife that in para 3, a specific demand has been made by the applicant No. 3 of Rs. 10 lakh, in my considered opinion is not spelt out from what is quoted there, rather it is merely a statement which does not spell out any demand. The averments in paras 4, 5, 11 also do not spell out any specific allegations as against applicant Nos. 3 and 4, considering which a case is made out by the applicant Nos. 3 and 4 for interference under Section 482 of Cr.P.C. In so far as applicant Nos 1 and 2

are concerned, the complaint spells out some allegations against them and the truthfulness of the same will have to be tested on the basis of evidence to be laid, considering which in so far as they are concerned, I am not inclined to interfere.

9] In light the above discussion, the application is partly allowed. The proceedings in so far as applicant Nos. 3 and 4 is concerned, are hereby quashed and set aside. In so far as the applicant Nos. 1 and 2 are concerned, the proceedings shall go on against them.

JUDGE

Rvjalit