

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

CRIMINAL APPLICATION (APL) NO. 961/2022

1. Shri Chandrakant S/o Raghavrao Patil,
aged about 36 years Occ. Service,
2. Shri Raghavrao s/o. Shivaji Patil,
aged about 73 years, Occ. Retired.
3. Sau. Sunita w/o Raghavrao Patil,
aged about 57 years, Occ. Housewife,

All resident of Plot Nos. 51, F.C.I.Co-
Operative Housing Society, Plot No.,
near Dhok Hospital, Narendra Nagar
Extension, Nagpur.

..... **APPLICANTS/**
(ORI.NON-APPLICANT NOS. 1 TO 3)

VERSUS

Sau. Prachi w/o. Chandrakant
Patil, aged about 31 years, Occ.
Housewife, R/o. C/o.
Shri Bhimrao Kamble House,
Nagari Bank Colony, near
Rambabai School, Wardha,
Dist. Wardha.

.....**NON-APPLICANT/**
(ORI. COMPLAINANT)

Mr. Y. Sonkusare, Advocate for applicants.
Mr. D. U. Thakre, Advocate for non-applicant.

CORAM : VINAY JOSHI, J.
DATE OF JUDGMENT : 06.10.2022.

ORAL JUDGMENT :

Heard.

2. **Admit.**

3. This is an application in terms of Section 482 of the Code of Criminal Procedure ('Code') filed by the husband and in-laws of non-applicant (wife) raising a challenge to the maintainability of the proceeding filed by the wife in terms of section 12 of the Protection of Women from Domestic Violence Act ('D.V. Act'). Besides technical objections, the challenge is on the ground that the contents of D. V. application are totally false. The non-applicant/wife (complainant) never lived in the shared household for considerable period. The applicant took me through several annexures in a bid to falsify the allegations leveled by non-applicant (complainant).

4. The non-applicant (wife) resisted the application by contending that, at this initial stage, the Magistrate has to *prima facie* examine the contents of application and not to see its truthfulness or falsehood. Yet the evidence is to be led and parties are to be cross-examined, therefore, it is a matter of trial to find out the worth of allegations levelled in the application.

5. The learned counsel appearing for applicant raises a preliminary objection to the maintainability on the ground that application filed under Section 12 of the D.V. Act is not in prescribed Form II in terms of Rule 6 of the Protection of Women's from Domestic Violence Rules, 2006 ('D. V. Rules, 2006'). Rule 6 provides that aggrieved persons shall file application under Section 12 of the D. V. Act in Form II as nearly as possible thereto. It means that if the necessary requirements have been incorporated in the application, it amounts to compliance. The application *prima facie* discloses essential ingredients as well as no specific deficiency has been pointed and therefore, the objection is not tenable. Secondly, it is contended that there is non-compliance of Sub-rule 4 to Rule 6 of D. V. Rules 2006 which requires an affidavit in Form No. III. The other side has pointed that said requirement is for claiming interim relief, and thus, the said objection equally cannot be entertained for quashing entire proceeding.

6. With the assistance of both sides, I have gone through the contains of application filed under Section 12 of the D. V. Act. The couple got married on 30.08.2021. The husband is serving as a Branch Manager in Nationalize Bank at Nashik. It is the wife's case that soon-after the marriage, she lived at her matrimonial house at Nagpur for 4 to 5 days and then the couple went for honeymoon on 05.09.2021. It

is her case that on third day of the marriage, the husband said that he dislikes her and asked for divorce. There are allegations that the husband has physically as well as mentally harassed her. It is stated that she was also harassed on their visit to Leh Ladakh where the husband has also tried to push her from mountain and thus, she was very much scared. The wife has stated several unpleasant instances which occurred during honeymoon. She has also narrated other instances as to how the husband used to taunt and humiliate her. She stated about the monetary demand raised by husband.

7. The learned counsel appearing for the applicant would submit that the wife's contention regarding his dislike and demand of divorce is false. In this regard, he has attracted my attention to WhatsApp chat dated 21.07.2021 (page 73) to indicate that prior to the marriage, husband has taken her approval while choosing wardrobe. In this regard, it is submitted that it is hardly possible to express dislike within three days. On that count, it is submitted that the relations were smooth, therefore subsequent allegations about harassment within three days are not probable.

8. The wife alleges that only due to persuasion by relatives, both went on honeymoon on 05.09.2021. In order to impeach said allegation, my attention has been invited to WhatsApp Chat (Page Nos.

41 to 42) to impress that since prior to the marriage, husband has planned for honeymoon, therefore it is false that only due to persuasion of relatives, they went on honeymoon. The applicant also took me through some photographs (page Nos. 60, 61, 62) to state that the couple was very much happy and enjoying the trip, therefore, the allegations made during honeymoon period are false. While denying the allegation of demand for motorcycle and cash amount, it has been submitted that the husband was already having bike (receipt Page No. 81) and therefore, the said allegation is false.

9. The entire endeavour of applicant was to show from WhatsApp communication, photographs and receipt is to falsify the allegations about harassment. There are variety of angles to look into the matter. There may be prior communication between the couple, however it does mean that whatever the wife alleges is totally false. It is matter of evidence rather a defence to find out the worth of the allegations levelled in the application. The wife has detailed in her application several instances of which some have been disputed by showing the communication. It is not a case that the application is bereft of allegations against husband. Therefore, no case is made out against husband to quash the proceeding at initial stage.

10. So far as the allegations against parents-in-law are concerned, one has to see sequence of events. The marriage took place on 30.08.2021. After marriage, the couple lived at matrimonial house at Nagpur barely for 4 to 5 days and went for honeymoon on 05.09.2021. The couple returned from honeymoon on 10.09.2021 and within two days, the wife returned to her parents at Wardha. As per non-applicant's case, for initial four days and then for next two days, only she lived with her parents-in-law at Nagpur. In that context, the application is examined to see the allegations levelled against parents-in-law.

11. It is alleged that during initial four days when her husband used to abuse and humiliate her, the parents-in-law remained silent and used to laugh. The second incident is dated 13.09.2021, when the wife left her husband's house due to alleged harassment. She stated that on that day, husband has forcefully asked her to leave their house. It was happened in presence of her parents-in-law who instigated their son to drive her and thrown her bag. The third incident pertains to telephonic talk while the wife was living at her maternal house. It is stated that when the wife has telephoned to her parents-in-law, by suspecting her character they abused.

12. It reveals that that the total stay of wife in shared household was for initial four days and then two days only. There are no specific allegations that during said period either parents-in-law have directly humiliated, abused or caused physical hurt. What the non-applicant conveyed is that, when the husband harassed her, they remained as a silent spectator. So far as the third instance is concerned, notably, they did not call her but in response to her phone call, they made certain allegations. These isolated references are not sufficient to haul them in the proceeding under the D. V. Act.

13. Essentially, the entire application specifies a long story of domestic violence committed by her husband only. *Prima facie*, there are allegations against husband making out a case to proceed further. Truthfulness of the allegations is a matter of trial. On the basis of some material brought in defence, at this stage one cannot prejudge that the allegations are false since it is for the Magistrate to decide the same during trial. However, the entire application nowhere makes out sufficient material to construe a case for proceeding against parents-in-law. In view of that, application is partly allowed. The application filed by wife under Section 12 of the D. V. Act is quashed and set aside as regards to applicant Nos. 2 and 3 i.e. parents-in-law only. Proceeding shall continue against applicant No. 1 i.e. husband.

14. Application stands disposed of in above terms.

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
BHARAT
GOHANE
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2022.10.10
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