

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

CRIMINAL APPLICATION (APL) NO. 1078/2021

(Jaharunisabi w/o Gul Mohammad Khan & ors. Vs. Nazia Siddika w/o Majhar Khan)

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

Court's or Judge's orders

Ms. Aastha Sharma, Advocate h/f Shri P. R. Agrawal, Advocate
for applicants.

Ms. Shiba Thakur, Advocate for non-applicant.

CORAM : VINAY JOSHI, J.

DATED : 28/06/2022.

Heard.

2. This application is for quashing of the proceeding filed by non-applicant/wife in terms of Section 12 of the Protection of Women from Domestic Violence Act ('D.V. Act'). At the time of hearing, learned counsel appearing for non-applicant/wife has attracted my attention that the non-applicant/wife has not only led her evidence but also evidence of two more witnesses and all of them were cross-examined on behalf of the present applicants. After evidence of non-applicant/wife, the present applicants have also examined one witness on their behalf on 05.04.2021. Thus, it is primary submission that though the application under the D. V. Act was filed in 2015, no grievance was sought for next six years as well as the parties have led evidence and there was considerable progress in the proceeding.

3. It is apparent that for six years, the applicants have not put any grievance, but chosen to go on with the matter. Though earlier order of issuance summons was challenged, however this Court has directed to consider the matter afresh and thereafter, there is no challenge. Particularly, it is evident that now the proceeding under D. V. Act is at the fag end as the evidence of non-applicant/wife and her witnesses is complete.

4. Pertinent to note that non-applicant/wife has also filed Police report for offence punishable under Section 498-A of the Indian Penal Code. This Court has quashed the said proceeding on 04.03.2021 and thereafter, this application has come up. Undoubtedly, the onus and standard of proof in criminal case is different from the nature of proof required under the D. V. proceeding. Therefore, quashing of FIR in the case of 498-A of Indian Penal Code has no bearing on the maintainability of the D. V. proceeding which has different periphery. Since the D.V. proceeding is at its fag end without going to the merits. I have expressed my non-inclination to entertain the application. At this stage, learned counsel for the applicants seeks to withdraw the application as regards to applicant Nos. 1 to 5, but urged to invoke extraordinary power to quash the proceeding as against the applicant No. 6 who has no concern at all.

5. Perusal of the application filed under Section 12 of the D. V. Act itself indicate that the applicant No. 6 Nasreen Begum w/o Alam Khan is a married sister of husband, apparently staying elsewhere with her husband. Moreover, there are no specific allegations against her, therefore continuation of such a proceeding against her amounts to abuse of the process of Court. Considering said special feature, this application stands disposed of as withdrawn against applicant Nos. 1 to 5. The D. V. application bearing PWDV Case No. 59/2015 is quashed and set aside against applicant No. 6 - Nasreen Begum w/o Alam Khan.

6. Application stands disposed of in above terms.

(VINAY JOSHI, J.)

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