

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

CRIMINAL APPLICATION (APL) NO. 1246 OF 2022

1. Vineeth Bajaj S/o Dr. Anand Bajaj
Aged about 35 Years,
Occupation : Service
2. Girija Anand Bajaj
Age about 54 years, Occ. Service,
Both are R/o B-Block, Renuka
Shakthi Apartment, 214,
Opp. Bharatiya Vidya Bhavan
King Kothi Road, Basheerbagh,
Hyderabad, Telangana

... **Applicants**

// VERSUS //

Smt. Pragna W/o Vineeth Bajaj
D/o Ganesh Agarwal,
Aged about 31 years,
R/o Dwara Ganesh Agarwal,
Vidyanagar, Bhandara

... **Non-applicant**

Shri P.N.Sanghi, Sr. Advocate a/b Shri N.R.Kanungo, Adv. for Applicants.
Shri I.S.Charlewar, Advocate for Non-applicant.

CORAM : ANIL S. KILOR, J.

DATED : 21ST OCTOBER, 2022.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. By the present proceedings filed under Section 482 of the Code of Criminal Procedure, the applicants are praying for quashing and setting aside the proceedings namely P.W.D.V.C Case No.63 of 2019 pending before the Judicial Magistrate First Class, Bhandara filed by the non-applicant, wife of the applicant No.1.
4. The brief facts of the present case are that the applicant No.1 is the husband and applicant No.2 is the mother-in-law of the non-applicant. The marriage between the applicant no.1 and non-applicant was solemnized at Bhandara on 10th December, 2018.
5. The non-applicant, thereafter, on the ground that proper status or treatment was not given to her at her matrimonial house, left the house of the applicants and started residing with her parents at Bhandara.
6. Then, she filed the proceedings under the provisions of the Domestic Violence Act, 2005 (for short “the Act of 2005”) more

particularly under Sections 18, 19 and 22, alleging the mental as well as physical torture meted out to her at the hands of applicants.

7. The said proceedings are sought to be quashed and set aside by the present application filed under Section 482 of the Code of Criminal Procedure.

8. Shri Sanghi, learned Senior Advocate makes following submissions:

a) The averments and pleadings made in the application do not constitute any offence under the provisions of the Act of 2005.

b) Even if the facts are taken on its face value it can be seen that the prerequisites of Section 3 and explanations (i) and (ii) are absent, thus, there is no point in asking the applicants to face the trial as no purpose would be served.

c) Though decree of divorce was passed at the instance of the applicant no.1, the said fact was never brought to the notice of the learned trial Court.

d) The allegations which were not made or absent in the legal notice, were incorporated in the application under the Act of 2005.

Attention of this Court is drawn to the contradictions in the notice and complaint under the Act of 2005, of the non-applicant.

9. On the other hand, Shri Charlewar, learned counsel for the non-applicant submits as under:

a) Filing of the present application is nothing but to delay the proceeding as the matter is now fixed for evidence of the applicants.

b) Necessary pleadings and averments are made in the application to satisfy the requirement of Section 3 of the Act of 2005.

c) All sorts of disputed question of facts are involved and hence, it is a matter of evidence.

10. In reply, Shri Sanghi, learned Senior Advocate for the applicants submits that there is no delay in filing the present proceedings, as it can be filed at any stage. The only requirement is that to make out the case for quashment. For this purpose, he has placed reliance on the judgment of Hon'ble Supreme Court of India in the case of *Kartik Chandra Majee*

*alias Kartik Chand Majee Vs. State of Jharkhand*¹ and *Ashok Chaturvedi and others Vs. Shitul H. Chanchani and another*².

11. In the light of the submissions made by the respective parties, I have perused the application and the documents filed along with it with the assistance of the respective parties.

12. I will examine first the submission of the learned counsel for the non-applicant as regards delay on the part of the applicants in approaching this Court by way of present application.

13. The Hon'ble Supreme Court of India in the case of *Kartik Chandra Majee (supra)* has held that judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with *mala fide* and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 of the Cr.P.C. to

1 AIR 2017 SC 3096

2 AIR 1998 SC 2796

quash the proceeding under Category 7 as enumerated in State of *Haryana V. Bhajan Lal* (AIR 1992 SC 604).

14. Thus, to examine whether judicial process is being used as an instrument of operation or harassment, I will examine the relevant material and if the conclusion would be affirmative, in view of the inherent powers of the High Court and a salutary public purpose that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution, for the ends of justice, the present application simply cannot be thrown away on the ground that the applicants approached to this Court belatedly.

15. After going through the legal notice dated 01.08.2019 issued by the non-applicant, rejoinder to the reply given by the applicants to her legal notice and proceedings filed under the provision of the Act of 2005, it can be seen that there are some discrepancies in the allegations made against the applicants. However, same is the position in respect of the applicants, if their reply to the legal notice dated 01.08.2019 of the non-applicant is compared with the petition filed by the applicant No.1 under

Section 13(1)(i-a)(iii) of the Hindu Marriage Act for decree of divorce. In the circumstances, I have examined the relevant documents carefully.

16. The allegations made against the applicant No.2 mother-in-law of the non-applicant in the legal notice or in the rejoinder to the reply given by the applicants to the legal notice of the non-applicant or in the proceedings filed under the Act of 2005, it can be seen that the allegations against the applicant No.2, are vague and general in nature. Whereas, the allegations against the applicant No.1 husband of the non-applicant, are specific in nature.

17. As far as the allegations against the applicant No.2, are concerned, a reference is made to the incidence referred in paragraph No.7 of the complaint filed under the Act of 2005. It is alleged that when the non-applicant informed to the applicant No.2 about her mental stress and pressure because of indifferent treatment given to her by the applicant No.1, the applicant No.2 without understanding her side asked her that if non-applicant did not want to stay with the applicants, she may leave their house by calling her parents.

18. According to me, this isolated incident would not fall within the definition of 'domestic violence'.

19. It is further alleged that the applicants used to say that the marriage was not performed as per the status of the applicants. However, while making these allegations, no details about the same are given. Further, the other allegations are general in nature, without providing details of the same including date, month or other necessary details. In the circumstances, it appears that the applicant No.2 has been unnecessarily roped into the matter only because she is a mother-in-law and thus it can be said that the complaint against the applicant No.2 is maliciously instituted with an ulterior motive.

20. Moving further to examine whether any case of domestic violence under Section 3 of the Act of 2005, is made out against the applicant No.1, it can be seen that though there are discrepancies, as observed above in the legal notice, rejoinder to the reply of the applicants and complaint filed under the provisions of the Act of 2005, however, as far as allegations herein below mentioned, there is consistency.

21. There are specific allegations made by the non-applicant against the applicant No.1 that he did not establish physical relation with the non-applicant by saying that he does not like the non-applicant. Further there are allegations that the applicant No.1 did not give treatment to non-applicant as his wife and utters words like he performed marriage against his wish, with the non-applicant and therefore, he cannot accept her as his wife.

22. The above-referred allegations *prima facie* would certainly fall within the purview of verbal and emotional abuse, as defined under Section 3 of the Act of 2005.

23. Whereas, if the stand taken by the applicant No.1 in his reply to the legal notice of the non-applicant and the allegations made in the proceedings filed under Section 13 of the Act of the Hindu Marriage Act, it can be seen that the allegations made by the applicant No.1 in his divorce petition that the non-applicant is suffering from an ailment namely 'Autism' which is a mental disorder, was not raised in the reply given by him to the legal notice.

24. Thus, I am of the opinion that it is a matter of evidence. At this stage it can safely be said that there are *prima facie* allegations against the applicant No.1 which would fall within a purview of verbal and emotional abuse as defined under Section 3 of the Act of 2005.

25. Hence, the submission of the learned counsel for the applicant No.1 that no allegations are made in the proceeding filed under the provisions of the Act of 2005, which satisfy the prerequisites of domestic violence.

26. In the circumstances, the decree of divorced passed in favour of the applicant No.1 will not help the applicant No.1 to get the proceedings filed by the non-applicant under the provisions of Act of 2005 quashed. Moreover, the said decree was passed in absence of the non-applicant.

27. Furthermore, it is a matter of evidence, whether the allegations of verbal or emotional abuse, made by the non-applicant are false or true.

28. Thus, at this stage, since the allegations made by the non-applicant against the applicant No.1 *prima facie* comply the requirements of Section 3 of the Act of 2005, I am of the opinion that this is not a fit case for quashing the proceedings filed by the non-applicant under the provision

of the Act of 2005, *qua* the applicant No.1. In the circumstances, I pass the following order:

- i) The application is **partly allowed**.
- ii) The proceeding PWDV Case No.63 of 2019 pending before the Judicial Magistrate First Class, Bhandara, is hereby quashed and set aside, *qua* the applicant No.2 Girija Anand Bajaj.
- iii) The Application is dismissed *qua* the applicant No.1 Vineeth Bajaj S/o Dr. Anand Bajaj.

The Criminal Application is **disposed of** accordingly.

[ANIL S. KILOR, J.]