

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

CRIMINAL WRIT PETITION NO.6 OF 2022

Petitioners : 1. Jayant s/o Shantaramji Kantode,
 Aged about 34 years, Occupation – Advocate.
 2. Shantaramji s/o Zadbaji Kantode,
 Aged about 67 years, Occupation – Agriculturist.
 Both R/o. Shivangaon, Post- Vimantal (Sonegaon),
 Tah. and District Nagpur.
 – Versus –
Respondent : Sau. Shubhangi w/o Jayant Kantode,
 Aged about 26 years, Occupation – Household Work,
 C/o. Vinod Shriramji Bahe,
 R/o. Bothali, Post – Sirsi,,
 Tah. Umrer, District – Nagpur.

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Mrs. M.N. Hiwase, Advocate for the Petitioners.

Mr. A.K. Neware, Advocate for the Respondent.

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CORAM : **VINAY JOSHI, J.**
RESERVED ON : **22nd JUNE, 2022.**
PRONOUNCED ON : **27th JUNE, 2022.**

J U D G M E N T :-

Rule. Rule made returnable forthwith. Heard finally by consent of both sides.

02] This petition raises a challenge to the very maintainability of the application filed by the respondent-wife under the provisions of the Protection

of Women from Domestic Violence Act, 2005 (hereinafter referred to as “D.V Act” for short). Precisely, the application filed under Section 12 of the D.V Act is sought to be quashed.

03] Brief facts which led to the filing of this petition are that, petitioner No.1 is husband, whilst petitioner No.2 is father-in-law of the respondent-wife. The marriage of respondent and petitioner No.1 was solemnized on 28/12/2014 as per the Hindu customary rites. After the marriage, the respondent-wife started to reside with the petitioners. After initial few days, both the petitioners started to harass the respondent-wife physically as well as mentally. In the month of July, 2020, the couple started to reside separately. However, the harassment continued, hence, the respondent-wife filed application to the Magistrate claiming multiple reliefs, as available under the provisions of the D.V. Act. The learned Magistrate has issued notices to the petitioners for their appearance.

04] Aggrieved by the issuance of summons, the petitioners have filed this petition under Section 482 of the Code of Criminal Procedure (“Code” for short) challenging the application on multiple grounds. It was the initial contention that application as regards to petitioner No.2 (father-in-law) is concerned, it is barred by law of limitation. It is submitted that as per the respondent’s own case, she started to reside separately from her father-in-law

from the month of July, 2020, whilst the application under the D.V. Act, was filed on 28/08/2021 i.e. after the period of one year. According to the petitioners, the Magistrate ought not to have entertained the application against petitioner No.2 (father-in-law) due to bar of limitation.

05] The learned Counsel appearing for the petitioners relied upon the provisions of the D.V. Act, particularly Sections 28 and 31 thereof read with Section 468 of the Code to contend that the application was barred by limitation. Relying on Section 468(2)(b) of the Code, it is submitted that the respondent-wife herself pleaded that she started to reside separately with her husband from the month of July, 2020, the application as regards to petitioner No.2 (father-in-law) is time barred. The learned Counsel for the petitioners heavily relied on the decision of the Supreme Court in the case of *Inderjit Singh Grewal vs. State of Punjab and another – (2011) 12 SCC 588* to contend that the provisions of Section 468 of the Code would apply to the application filed under Section 12 of the D.V. Act.

06] In response, the learned Counsel appearing for the respondent-wife would submit that the limitation period provided under Section 468 would not apply to the applications under Section 12 of the D.V. Act. To substantiate the said contention, he relied on the decision of the Supreme Court in the case

of Kamatchi vs. Lakshmi Narayanan – 2022(2) Crimes 154 and some other decisions of this Court. Notably, the Supreme Court in above referred case of *Kamatchi* considered its earlier decision in the case of *Inderjit Singh* and various other judgments. After considering the core issue of limitation, it has been ruled that there is no starting point of limitation for the applications under Section 12 of the DV. Act and, therefore, the period of limitation provided under Section 468 of the Code would not apply to the complaint filed under Section 12 of the D.V. Act. In view of the said pronouncement, the issue of limitation is no more *res integra* and, therefore, submission to that effect is untenable.

07] On facts, the learned Counsel for the petitioners would submit that the respondent-wife has not made out a case of domestic violence. The contents of the application show that the wife has not only stated the incident of physical and emotional abuse, but also economical abuse which she suffered. The respondent-wife made a detailed narration of facts regarding matrimonial harassment. It is argued that though there were allegations of physical abuse, no police report was lodged by the wife. I am not in agreement with said submission, simply because generally women are reluctant to stretch the matter to police as it would be at the stake of her matrimonial life. Moreover, the application discloses that once she has

approached to the police on which the matter was referred to the 'Bharosa Cell'.

08] The petitioners' learned Counsel has submitted that the application is vague as it does not specify particular instances. True, specific dates are not given, but the events of physical and mental abuse have been divulged in detail with specific occurrences. Perusal of application indicates that the wife has alleged that when she was one month's pregnant, at that time both the petitioners have abused and beaten her on flimsy reasons. She again narrated a specific incident of physical abuse when she was eight months' pregnant. Then, she narrated a specific incident of physical abuse after her delivery. The application bears a detailed account as to how time to time both have abused, beaten and harassed her. There is no substance in the contention that the application is bereft of the contents regarding domestic violence. Undoubtedly, bear reading of the application *prima facie* specifies that there has been instances of domestic violence.

09] Having regard to above facts, the petition carries no merit, hence, stands dismissed. Rule discharged with no order as to costs.

(VINAY JOSHI, J.)

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Signed by: SANDESH DAULATRAO
WAGHMARE
Private Secretary to the Hon'ble Judge
Signing Date: 27.06.2022 15:28