

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1223 OF 2022

**PANKAJKUMAR S/O ASHOK WAGHMARE AND OTHERS
VERSUS
SOW PRANALI W/O PANKAJKUMAR WAGHMARE**

Mr. V. V. Deshmukh, Advocate for the petitioners

Mr. G. R. Syed, Advocate for the respondents

CORAM : R. M. JOSHI, J.

DATE : 20/06/2023

PER COURT :-

1. At the outset learned counsel for the petitioners states that an application is filed before the Trial Court raising objection with regard to the maintainability of Criminal Misc. Application No. 609 of 2021 on the ground of jurisdiction. He however states that since the said issue is also raised in the present petition, on instructions, he makes further statement to withdraw the application filed before the Trial Court and undertakes to withdraw such application on the first day of hearing before the said Court.

2. By consent of both sides, petition is heard and decided at the stage of admission.

3. The petitioners have filed this petition under Article 226 of

Constitution of India. The petitioners are seeking quashment of complaint/proceedings of Criminal M.A. No. 609/2021 pending before the JMFC, Dhule under Sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act').

4. According to the petitioners the said complaint is filed with the contention that complainant (respondent) was married with Pankajkumar (petitioner No.1) on 29/07/2018 and that the entire expenses of the marriage were borne by complainant and her family. She alleged of being harassed and tortured by husband and family members for demand of money. She has also narrated incidents which according to her constitute domestic violence.

5. According to the petitioners no cause of action has arisen for filing the proceeding at Dhule and proceedings are filed only with a view to cause harassment to the petitioners. It is also claimed that divorce proceedings are initiated by the husband of the complainant and therefore in order to counter the same the said complaint is filed not only against husband but even other family members are roped therein. It is claimed that for want of domestic relationship, the complaint would not be maintainable against those persons. In respect of husband and

close-in-laws it is contended that there is no case of domestic violence is made out in the complainant and hence the entire proceedings deserves to be quashed.

6. Learned counsel for the petitioners states that in view of Section 27 of DV Act, the proceeding could be filed by the aggrieved person where she permanently or temporarily resides or carried on business or is employed or where the respondent resides or carries on business or is employed and thirdly where cause of action has arisen. He submits that neither parties resided at Dhule therefore there is no cause of action to lodge complaint there. In the absence of place of residence of complainant as well as respondent, even otherwise the said proceedings could not be maintained at Dhule. He further argued that as far as respondent Nos. 6 to 8 are concerned they are distant relatives and even as per the statements made in the complaint they never shared household with complainant in order to attract the provision of DV Act. With regard to respondent Nos. 4 and 5 it is stated that even if accepted that only very short period they resided together but considering the fact they were students and thereafter reside at different place cannot make them liable for any alleged domestic violence. It is submitted that only to pressurize husband complaint has been lodged against these relatives. As far as applicant Nos.1 to 3 is

concerned it is stated that there are no specific allegations against them and in view of the fact the complaint has been lodged only after filing of proceeding for divorce by husband of the complainant, it can be construed that the complaint is by way of counter blast.

7. Learned counsel for respondent/original complainant vehemently opposed the said submissions by stating that complainant is an Advocate and she also practices in Dule Court and therefore in view of clause (a) of Section 27(1) of DV Act, she could be said to carry out business even at Dhule and therefore the complaint is tenable. As far as the merits of the petition is concerned he submitted that there are specific allegations in the complaint against all petitioners as to how they caused domestic violence to the complainant. It is submitted that at this stage no finding can be recorded about correctness or otherwise of the statements made in the complaint and hence the petition deserves to be dismissed.

8. Hon'ble Apex Court from time and again, has referred to misuse of provision of Section 498A of IPC by wives not only lodging report against husbands but even distant relatives in order to cause harassment or to create pressure for succumbing to her demands. With passing of various verdicts and laying down procedure false cases are

sought to be curbed. Now, same trend appears to be followed in filing the complaint under DV Act. In some cases it is found that not only husband but also his distant relatives are roped in and such proceeding is filed at far away place, to cause harassment to them.

9. In the instant case applicant Nos. 6 to 8 are admittedly distant relatives of the husband of complainant. Perusal of the complaint itself demonstrates that they were not residing with complainant and other family members and they used to visit the house occasionally. The domestic relationship as defined by Section 2(f) of DV Act means a relationship between two person live or have at any point of time lived together in shared household when they are related by consanguinity marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. It is therefore necessary that in order to maintain a proceeding under DV Act these family members must live together as a joint family. From the averments made in the complaint it cannot be said that the petitioner Nos. 6 to 8 were living as a members of joint family. Thus, this Court is of the view that the complaint against these respondents would not be maintainable for want of domestic relationship between parties.

10. As far as petitioner Nos. 4 and 5 are concerned admittedly

they were students and in a short period they started staying separately. Even perusal of the complaint shows that predominantly there are allegations made against husband and parents-in-law. The allegations made against these petitioners are vague in nature. The case of petitioner Nos. 4 to 8 therefore is squarely covered by illustration (1) & (3) of judgment in case ***State of Harayana and others Vs. Ch. Bhajan Lal and others, 1992 AIR 604***. In such circumstances, continuation of criminal proceeding would be sheer of abuse of the process of law.

11. As far as the petitioner Nos. 1 to 3 are concerned there are specific allegations in the complaint about complainant staying with them as joint family and they causing domestic violence to her. These petitioners therefore have failed to make out any case for quashment of the proceeding against them.

12. With regard to the issue raised by the petitioners about tenability of the complaint before the JMFC, Dhule is concerned, perusal of the complaint does not show that the complainant or petitioner Nos. 1 to 3 have ever stayed or carried out business or profession at Dhule and no cause of action has arisen at Dhule to maintain this complaint in the Court at Dhule. Hence order.

ORDER

- (i) Criminal Petition No. 1223/2022 is partly allowed.
- (ii) Criminal M.A. No. 609/2021 is quashed qua petitioner Nos. 4 to 8 and to continue against petitioner Nos. 1 to 3.
- (iii) Criminal M.A. No. 609/2021 is hereby transferred from JMFC, Dhule to JMFC, Sindkheda, Dist. Dhule for its decision as per law.

(R. M. JOSHI, J.)

ssp