

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

914 CRIMINAL APPLICATION NO.694 OF 2023

1. Salim Gafoor Sheikh
2. Gafoor Sheikh Kadar Sheikh
3. Fatema Bi Gafoor Sheikh
4. Najma Gafoor Sheikh
5. Tabrej Jabbar Sheikh
6. Jawed Gafoor Sheikh .. Applicants

Versus

Sharin Bano Salim Sheikh D/O. Jawed Khatik .. Respondent

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Advocate for Applicants : Mr. Niranjan Milind Deshpande
APP for Respondent – State : Mr. S.N. Morampalle
Advocate for Respondent : Mr. Shaikh Mohd. Ibrahim Ismail

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WITH

APPLN/1553/2023 IN APPLN/694/2023

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CORAM : R. M. JOSHI, J.
DATE : AUGUST 11, 2023

PER COURT :

. At the outset, learned counsel for the applicants states that he is only pressing for relief of the quashment of Criminal Misc. Application No.967 of 2019 filed before learned Judicial Magistrate First Class, Dhule under the provisions of the Protection of Women from Domestic Violence Act (hereinafter referred to as the ‘D.V. Act’)

and rest of the prayers are not pressed.

2. This application has been filed under Section 482 of the Code of Criminal Procedure seeking quashment of Criminal Misc. Application No.967 of 2019 filed under the D.V. Act by the respondent.

3. It is the contention of the applicants that without there being any specific incidences of domestic violence referred in the application, such application cannot be permitted to be prosecuted before the learned JMFC. It is also contention of applicants no. 4 and 5 that they were residing separately and that they never shared a common household with the respondent in order to attract provisions of the D.V. Act.

4. Learned counsel for the applicants has drawn attention of the Court to the order passed in Criminal Application No.2168 of 2022 wherein there is a specific finding recorded by the Division Bench of this Court that applicants no.4 and 5 were residing separately. There is no dispute about the fact that this order has not been challenged by the respondent herein. Finding recorded by this

Court to that extent therefore has attained finality.

5. Perusal of the application filed before the learned Magistrate also does not specifically states that applicant nos. 4 and 5 were sharing common household. Even otherwise, in view of the specific finding recorded by the Division Bench of this Court in the aforesaid application, now it is not open for the respondent to claim that applicants no. 4 and 5 were staying in a joint family. Section 2 (a) of the D.V. Act defines 'aggrieved person'. Section 2 (f) defines 'domestic relationship' which means a relationship between two persons who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage, or through a relationship in the nature of marriage or living together as a joint family. There are no specific allegations against applicants no.4 and 5 as they were residing together as a joint family. Thus, application filed under the provisions of D.V. Act is not maintainable as far as applicants no.4 and 5 are concerned.

6. As far as applicants no.1, 2, 3 & 6 are concerned, there is no dispute about the fact that they were residing in the joint family

with respondent may be for a short period of three months as claimed by them. The period is immaterial as the provisions of D.V. Act does not contemplate any specific period to have been spent by the persons in order to constitute it to be domestic relationship. In view of this, there is no substance in the contention of learned counsel for the applicants no.1, 2, 3 and 6 that the proceedings are not tenable against them.

7. As far as the other contentions with regard to there being no specific allegations made against applicants no.1, 2, 3 and 6 constituting domestic violence are concerned, prima facie perusal of the application made before the learned Magistrate indicates that there are allegations against these applicants about abusing respondent. It is sought to be argued by the learned counsel for the applicant no.3 mother-in-law that she is physically disabled person and therefore she cannot be said to have committed any domestic violence against the respondent. The allegation against applicant no.3 is that she used to abuse and threaten the respondent. Needless to state that physically handicapped person in all cases need not be said to be incapable to give such threats. It would be the matter of evidence during trial before the learned Magistrate to ascertain as to

whether any domestic violence was caused to respondent by these applicants. Suffice it to say that *prima facie* perusal of the application indicates that respondent was subjected to domestic violence. Having regard to these facts, the application is dismissed as against applicants no.1, 2, 3 and 6.

8. Since applicants no.4 and 5 did not share domestic relationship with respondent / aggrieved person, the proceeding against them under the D.V. Act cannot be sustained and hence the D.V. proceedings being Criminal Misc. Application No.967 of 2019 stands quashed qua applicants no.4 and 5.

9. Criminal Application stands disposed of in above terms.

10. In view of disposal of criminal application, nothing survives for consideration in the pending application No.1553 of 2023 and the same stands disposed of.

[R. M. JOSHI]
JUDGE

GGP