

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

CRIMINAL WRIT PETITION NO. 257 OF 2020

**SHIVAJI S/O SAMBHAJI @ SAMBHU SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. J. M. Murkute, Advocate for the petitioner
Mr. S. N. Morampalle, APP for respondent/State
Mr. N. G. Garud, Advocate for respondent No.2

CORAM : R. M. JOSHI, J.

DATE : 26/06/2023

PER COURT :-

1. This petition is filed under Article 226 and 227 of the Constitution of India for quashment of Criminal M.A. No. 308/2019 under Section 12 of the Protection of the Women from Domestic Violence Act, 2005 (for short 'DV Act'). It is the contention of the petitioner that petitioner was married to respondent No.2 on 31/05/1996 and that on 04/02/1998 she went to her parental home and did not join cohabitation thereafter. Petitioner therefore filed petition under the Hindu Marriage Act being Hindu Marriage Petition No. 12/2004 before the CJSD, Shrigonda, Dist. Ahmednagar for seeking decree of divorce. After due contest, the marriage between them was dissolved by judgment and decree dated 22/12/2005. The said judgment was carried in R.C.A. No. 63/2006 which came to be

dismissed by order dated 31/10/2014. It is also stated that respondent No.2 had lodged the report with Karjat Police Station being Crime No. 46/2000 for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of IPC and the said criminal proceeding has resulted in the acquittal of the petitioner and other family members.

2. It is a contention of the petitioner that the Cri. M.A. 308/2009 came to be filed under Section 12 of the DV Act wherein the last alleged incident of domestic violence was narrated of the date 25/05/1999. It is contended that the incident allegedly occurred is prior to the enactment of the DV Act and on that ground itself the complaint deserves to be quashed. After a period of more than 12 years misuse of the law cannot be permitted and hence for want of any material about the causing of domestic violence the said proceeding cannot be allowed to continued.

3. Learned counsel for the petitioner states that on false statement that their subsists matrimonial relationship between petitioner and respondent No.2 complaint is lodged. It is stated that there is suppression of fact about decree of divorce granted by the Competent Court and hence for on this ground itself the complaint deserves to be set aside and quashed. It is submitted that the

respondent No.2 only with a view to harass petitioner has lodged complaint after 20 years of the alleged incident and hence petition be allowed.

4. Learned counsel for respondent No.2 opposed said contention by stating that application under Section 12 of Act, is maintainable even in respect of incidents occurred prior to the enactment. It is argued that since admittedly she was residing with petitioner as wife, there is no impediment in maintaining the proceeding under Act. It is further argued that maintenance proceeding filed against petitioner is pending.

5. Perusal of the complaint before JMFC shows that according to respondent No.2 she was married to the petitioner on 31/05/1996. It is further claimed that she is wife of the petitioner and that there is no lawfull divorce between them and they are sharing matrimonial relationship. This statement however is falsified from the documents on record i.e. copy of judgment dated 02/12/2005 in HMP No. 12/2004. The said judgment shows that on merit the said petition was allowed and the marriage of the petitioner with respondent No.2 was dissolved. The respondent No.2 seems to have challenged the said decree before the District Judge by filing RCA No. 63/2006 and the said appeal also

came to be dismissed on 31/10/2014. It is thus clear that the judgment and decree of dissolution of marriage between them has attained finality. *Prima facie* therefore this Court finds that there is substance in the contention of the counsel for the petitioner that on false averments said complaint has been filed.

6. The law on the point of effect of suppression of material facts is well settled. In case of ***M/S S.J.S. Business Enterprises ... vs State Of Bihar And Ors, AIR 2004 SC 2421***. Hon'ble Apex Court has held that as a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. Though on this ground, complaint deserves to be quashed but in order to ascertain whether otherwise case is made out for quashment thereof, the factual matrix of case is considered.

7. At the out set it needs to be recorded that the proceeding under DV Act has been filed only with a prayer to share household with petitioner herein. In view of the fact that matrimonial ties between them are severed with decree of divorce by competent Court of law, respondent would not be entitled to seek such relief. Therefore, this ground alone would be more than sufficient to quash the proceeding.

8. Apart from this, perusal of the complaint indicates that the averments/ allegations made therein are identical to the one made while registering crime against petitioner and his relatives under Section 498-A of IPC. There is no denial of the fact that in RTC No. 53/2000, petitioner and co-accused were acquitted of the said charge. In respect of the same allegations now made in DV proceeding, a trial has already been conducted with finding that acts so alleged being not proved, which ultimately has resulted in the acquittal of the petitioner. It is therefore, now not permissible for the respondent No.2 to lodge proceeding by taking aid of Section 12 of DV Act and call upon different Court to decide same allegations afresh.

9. It is clear from the material placed on record that complaint is lodged false averment and the allegations made therein are already dealt with and rejected by the competent criminal Court. The present case is therefore squarely covered by illustration (1) & (7) of judgment in case ***State of Harayana and others Vs. Ch. Bhajan Lal and others, 1992 AIR 604***. In such circumstances continuation of the proceeding which are initiated after 20 years of the separation between the parties is nothing but sheer abuse of proceeds of law. Hence petition is allowed.

10. Learned counsel for the respondents prays that observations made in this order may affect the hearing of application for maintenance. Hence, it is clarified that observations made herein above are made for decision of present petition only and that the Court entertaining maintenance proceeding, shall not get influenced by them and to decide the same in accordance with law.

(R. M. JOSHI, J.)

ssp