

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.496 OF 2021

1. VENKATESH @ VYANKATESH S/O DEVIDAS KSHIRSAGAR
(Application of Applicant No. 1 is disposed
of as withdrawn)

2. YASHWANT DEVIDAS KSHIRSAGAR

3. NARAYAN DEVIDAS KSHIRSAGAR

4. SUDHIR DEVIDAS KSHIRSAGAR

5. LATA VENKAT DHAGE

VERSUS

1. SANGEETA VENKATESH @ VYANKATESH KSHIRSAGAR

2. PREETI VENKATESH @ VYANKATESH KSHIRSAGAR

3. ANUSAYA @ ANURADHA GULAB SHINDE

4. JAYESH GULAB SHINDE

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Mr. G. L. Deshpande, Advocate for Applicants.

Mr. R. L. Chhabd, Advocate for Respondent Nos. 1 and 2.

Mr. K. D. Khade, Advocate for Respondent Nos. 3 and 4.

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CORAM : R.M. JOSHI, J

DATE : AUGUST 22, 2023

ORDER :

1. **Rule.** Rule made returnable forthwith. With consent of learned Counsels appearing for the respective parties, heard finally.

2. This Application is filed under Section 482 of Code of Criminal Procedure for quashment of Criminal M.A./P.W.D.V.A. No. 135/2020 filed by Respondent No. 1 against the Applicants pending before learned JMFC,

Nanded.

3. By order dated 02.03.2021 Application is not pressed in respect of Applicant No. 1 – Husband and the same is dismissed.

4. Applicant Nos. 2 to 4 are brother-in-laws of Respondent No. 1 and Applicant No. 5 is her sister-in-law. These Applicants are aged between 61 to 67 years.

5. Learned Counsel for the Applicants submitted that the Applicants never shared common household with Respondent No. 1 and that in absence of any domestic relationship between them, the proceedings under the D.V. Act is not maintainable. By referring to the allegations in the application filed before JMFC it is contended that essentially allegations are against husband.

6. Learned Counsel for the Respondents opposed the said contention by stating that the Applicants are close relatives and there are specific allegations against them of causing domestic violence to the Respondent and hence, it is not a fit case for quashment of the proceedings.

7. Perusal of the application before JMFC indicates that the marriage of Respondent No. 1 with Applicant No. 1 – Vyankatesh was solemnized on 05.02.1995 and out of the said wedlock, a son and daughter were begotten. There is no denial of the fact that since 15.02.2016 Respondent No. 1 and her husband are not staying together. The husband filed Hindu Marriage Petition for the restitution of conjugal rights being HMP No. 233/2016. which came to be allowed on 02.01.2017. The said order was challenged by Respondent No. 1 by filing RCA No. 14/2017. It further seems that Respondent No. 1 filed proceedings for judicial separation by filing Petition being A2743/2017. On 12.11.2020 the Application in question came to be filed under D.V. Act before CJM, Nanded. Notices came to be issued to the Applicants herein.

8. Provisions of the D.V. Act defines aggrieved person. Section 2(a) reads thus:

“aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

It further defined domestic relationship under

Section 2(f), which reads thus:

"domestic relationship" 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, adoption or are family members living together as a joint family.

It is thus, clear that in view of these definitions that the domestic relationship would be relationship wherein aggrieved person and Respondents live together or lived together at any point of time as joint family. Admittedly, Applicant Nos. 2 to 5 have never resided together as members of the joint family of Respondent No. 1 and her husband. Thus, these Applicants are not covered by the definition of the domestic relationship as contemplated by Section 2(f) of the D.V. Act. Thus, the basic requirement for maintaining the complaint/application under Sections 18, 19, 20, 21 and 22 of the D. V. Act is not fulfilled. As a result of this, application would not be tenable against these Applicants.

9. The Hon'ble the Apex Court in case of Kahkashan Kausar v. State of Bihar, 2022 SCC OnLine SC 162 has observed that there is a tendency of roping the

relatives of the husband for the offence punishable under Section 498-A of IPC. Similar trend is now seen while filing applications/proceedings under D.V. Act. Any such filing of the proceeding under D. V. Act by way of false implication/harassment needs to be dealt with iron hand. In the instant case, the intention of the Respondent No. 1 to rope Applicants in the present proceeding is nothing but for their harassment.

10. Though in this case there is no prayer made in respect of Respondent Nos. 3 and 4, however, perusal of the application filed before JMFC indicates that there is specific pleading to the effect that the Respondent Nos. 6 and 7 therein i.e., Respondent Nos. 3 and 4 in this application are not part of the family of husband of Respondent No. 1, but they have active participation in the incident in question. The said admission in the application clearly shows that these Respondents did not share domestic relation with Respondent No. 1 herein.

11. Though there is no prayer made in respect of these Respondents, once the said fact comes to the notice of this Court that the application against them

would not be tenable, it is open for this Court to exercise powers under Section 482 Cr.P.C. The said powers are wide enough to be exercised to prevent any abuse of process of Court. When it is found that process of Court is being abused against Respondent Nos. 3 and 4, the said proceedings cannot be allowed to be continued against them.

12. In view of above, the application being Criminal M.A./P.W.D.V.A. No. 135/2020 filed by Respondent No. 1 against Applicants stands quashed not only against Applicant Nos. 2 to 5 but also against Respondent Nos. 3 to 4.

13. Rule made absolute in above terms. Application stands disposed of.

(R.M. JOSHI, J.)

Malani