

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.909 OF 2023

1. DEEPALI W/O. ANIL CHAVAN

2. ANIL S/O. MALHARI CHAVAN

VERSUS

SHILPA W/O. AJAY BORSE AND ANOTHER

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Advocate for Applicants : Ms. H. M. Manglani

Advocate for Respondents : Mr. J. M. Murkute

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CORAM : R.M. JOSHI, J

DATE : AUGUST 23, 2023

PER COURT :

1. With consent of learned Counsels appearing for the respective parties, heard finally.

2. It is not secret that the provisions of Section 498-A of Indian Penal Code are misused than invoked for genuine cause. Often it is considered as tool to cause harassment to the husband and his relatives. Instances are not uncommon that the provisions of Protection of Women From Domestic Violence Act, 2005 (for short 'D.V. Act') are being abused in similar manner. A new trend is in the process is set to rope relatives of husband to cause harassment to them. The harassment herein is more as the woman is

entitled to file the proceeding at any place, where she resides even temporarily, though no cause of action has arisen at such place. Disadvantage is taken of this provision to rope distant relatives, who has not shared household and to make him to attend the proceeding at far a place than his residence or workplace. Present case is an ideal example as to how relatives of husband could be harassed by abusing process of Court.

3. Applicants are seeking quashment of PWDVA No. 18/2019 filed before learned JMFC, Selu, Dist. Parbhani under the provisions of D. V. Act.

4. The facts which have led to filing of the present Petition can be narrated, in brief, as under:

Applicant No. 1 is the sister-in-law of Respondent No. 1 and Applicant No. 2 is her husband. They married in 1997. It is their contention that there is no domestic relationship between Respondent No. 1 and them. It is specifically contended that they never stayed/resided together. Application filed before the learned JMFC under Sections 18, 19, 20, 21 and 22 of the D.V. Act shows that Respondent No. 1 was married to Ajay Kumar Borse, who is brother of Applicant No. 1.

The said marriage was performed on 01.11.2011. Out of the said wedlock, son was begotten in the year 2012. She has made allegations against husband. According to her, husband and other in-laws demanded a sum of Rs. 10 lacs for the purpose of construction of house and as she did not bring the said money, she was driven out of the house. Thereafter settlement took place between couple and they started cohabitation. It is alleged that thereafter her husband went to Dubai but he used to instigate other in-laws to cause harassment to Respondent No. 1 herein.

5. It is the contention of learned Counsel for the Applicants that Applicant No. 1 is the sister-in-law of the Respondent No. 1 and Applicant No. 2 is her husband. It is her contention that these Applicants are residing separately and never shared household with Respondents. Learned Counsel for the Applicants by relying upon the provisions of the D.V. Act submits that unless there is domestic relationship between Applicants and Respondents, the complaint/application filed under the D.V. Act against them is not tenable. It is her contention that they are joined as

Respondents to the said proceedings only with a view to cause harassment to them.

6. Learned Counsel for the Respondents opposed the said contentions by submitting that at this stage this Court cannot go into the correctness of the allegations made in the complaint. He drew attention of the Court to the averments made in the complaint to the effect that emotional abuse was caused by the present Applicants to the Respondent No. 1. By placing reliance on the judgment of this Court in Writ Petition No. 647 of 2016, learned Counsel for the Respondents submits that it is not open for this Court to quash the proceedings under the D.V. Act as the matter of allegation are subject to the proof during the trial.

7. During the course of arguments it is not disputed by the Counsel for the Respondents that Applicants are residing separately and that they never shared common household with Respondent No. 1. However, it is his contention that the Applicants used to visit matrimonial home of the Respondent No. 1 and they used to cause domestic violence to her.

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, Applicants were not members of the joint family of Respondent No. 1 and her husband. Thus, 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. Perusal of the judgment of this Court cited supra does not deal with the issue about maintainability of the application under D.V. Act on the ground of domestic relationship between aggrieved person and Respondent. In view of this Court the said judgment would not help the Respondent No. 1 in any manner whatsoever.

10. Resultantly, Petition is allowed in terms of prayer clause 'B'. Proceeding P.W.D.V.A. No. 18/2019 filed before JMFC, Selu stands quashed qua Applicants.

(R.M. JOSHI, J.)

Malani