

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

920 CRIMINAL WRIT PETITION NO.337 OF 2023

1. Sachin Hanumant Mali
Age: 31 years, Occu: Private Job,
R/o. Ramnagar, Kakade Plot,
In front of Tukaram Mandir,
D.I.C. Road, Osmanabad,
Dist. Osmanabad
At Present :-
Swaraj, Somnath Nagar,
Wadgaon Sheri, Pune, Dist. Pune
2. Hanumant Bhagwan Mali
Age: 62 years, Occu: Retired,
R/o. Ramnagar, Kakade Plot,
In front of Tukaram Mandir
D.I.C. Road, Osmanabad, Tq. &
Dist. Osmanabad
3. Anita Hanumant Mali
Age: 56 years, Occu: Household,
R/o. As above.
4. Sunil Hanumant Mali
Age: 32 years, Occu: Private Job,
R/o. As above
5. Sujata Mahesh Kore
Age: 32 years, Occu: Household,
R/o. Nanaj, Tq. & Dist. Solapur.
6. Mahesh Shankar Kore
Age: 36 years, Occu: Service,
R/o. Nanaj, Tq. & Dist. Solapur
7. Mahesh s/o. Baburao Mali
Age : 45 years, Occu : Teacher,

R/o. Mali Coaching Classes,
Near Shivaji Maharaj Statue,
New Jalna, Tq. & Dist. Jalna

8. Manohar Ramchandra Mali (deceased)

9. Amol Pandurang Mali
Age : 35 years, Occu : Agri,
R/o. Kakade Plot, Osmanabad,
Tq. & Dist. Osmanabad .. Petitioners

Versus

Sow. Manisha Sachin Mali
Age : 24 years, Occu : Engineer,
C/o. Bhagwat Baburao Kale,
R/o. Borda, Tq. Kallamb, Dist. Osmanabad
Under Guardianship of Father
Bhagwat Baburao Kale
R/o. Borda, Tq. Kallamb,
Dist. Osmanabad. .. Respondent

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Advocate for Petitioners : Mr. Kishor R. Doke
Advocate for Respondent : Mr. D. A. Madake

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CORAM : R. M. JOSHI, J.
DATE : OCTOBER 13, 2023

PER COURT :

. Considering the approach of respondent, mediation proceeding stands discontinued.

2. At the outset, learned counsel for the petitioners states that he does not wish to press petition in respect of petitioner no.1 / husband and seeks leave to withdraw petition to his extent.

3. Leave granted. Petition is dismissed as withdrawn to the extent of petitioner no.1.

4. Petitioners no.2 to 7 and 9 are parents-in-law and relatives of respondent. Marriage of respondent and petitioner no.1 was performed on 28.02.2016. It is the contention of the respondent that after the marriage she was harassed by the petitioners. Averments are made in the complaint before the Magistrate under the provisions of the Domestic Violence Act stating that at the instigation of petitioners no.2 to 7 and 9 respondent was harassed by her husband.

5. Learned counsel for the petitioners submits that there is no averment in the complaint that respondent shared domestic relationship with petitioners no.2 to 7 and 9. It is submitted that even if the allegations made in the complaint are accepted to be true, no case is made out against the petitioners causing any domestic violence to the respondent. In such circumstances, according to him, proceedings before the Judicial Magistrate First Class is not maintainable and deserve to be quashed and set aside.

6. Learned counsel for the respondent opposed the said

submissions by contending that the husband of the respondent and his relatives have made attempts to prove the respondent as mentally unfit and the said fact has been taken cognizance in the order passed by the Family Court dismissing petition of the divorce filed by the petitioner no.1. It is his further submission that petitioner no.1 has performed second marriage and thereby causing harassment to the respondent.

7. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***, reported in 1992 Supp. (1) SCC 335, in para 102, the Supreme Court has given the categories of cases by way of illustrations wherein such quashing power under Section 482 of Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of the categories mentioned by the Hon'ble Supreme Court in para no.102 of its judgment is as under:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused;”

8. Though it is sought to be argued on behalf of the

respondent that the divorce petition filed by petitioner no.1 was dismissed by the competent Court and that it is alleged that he performed second marriage, however in order to maintain the complaint under the Domestic Violence Act the complaint must disclose that the other petitioners were sharing domestic relationship with respondent and also that they have caused any domestic violence against her. Perusal of the complaint filed before the Magistrate does not show any averment to the extent that petitioners no. 2 to 7 and 9 have ever shared domestic relationship with respondent. Apart from this, even if the contentions of the respondent in the said complaint are accepted to be true, no domestic violence can be said to have been committed by these petitioners against respondent. Thus, on both counts basic ingredients required for filing a valid complaint under the Domestic Violence Act against those petitioners are absent in the present case. As a result of this, petitioners no.2 to 7 and 9 have made out the case for quashment of the proceedings. Hence the following order:

ORDER

- (i) Criminal Writ Petition is partly allowed.

- (ii) PWDVA No.14 of 2018 pending before the learned Judicial Magistrate First Class, Kalamb stands quashed qua petitioners no.2 to 7 and 9.

[R. M. JOSHI]
JUDGE

GGP