

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

CRIMINAL WRIT PETITION NO.500 OF 2023

1. Bhimrao Madhav Devkamble (father-in-law)
 2. Sushila Bhimrao Devkamble (mother-in-law)
 3. Sharad Bhimrao Devkamble (brother-in-law)
 4. Vasant Bhimrao Devkamble (brother-in-law)
 5. Shamsundar Bhimrao Devkamble (brother-in-law)
- ...Petitioners

Versus

1. Pallavi Prakash Devkamble
- ...Respondent

...

Mr. V. V. Deshmukh, Advocate for the Petitioners.

Mr. M. M. Parghane, Advocate for Respondent.

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CORAM: R.M. JOSHI, J

RESERVED ON: AUGUST 23, 2023

PRONOUNCED ON: AUGUST 28, 2023

PER COURT :

1. This Petition is filed under Article 226 of the Constitution of India and Section 482 of Code of Criminal Procedure seeking quashment of PWDVA No. 28/2022 pending before learned JMFC, Kandhar filed under the provisions Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act').

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

Respondent was married to Prakash Devkamble on 02.05.2023 and out of the said wedlock two children are begotten. Since, the Respondent was subjected to domestic violence, she filed application being PWDVA No. 23/2021 before learned JMDC, Kandhar seeking various relief including protection order, maintenance, compensation etc. In the said proceeding settlement came to be arrived between the parties and as a result of which, joint application was filed whereby the Respondent has withdrawn the said application unconditionally. Learned JMFC passed order recording the said compromise and disposed of application.

3. The Respondent in pursuance to the said compromise, went to cohabit with her husband, however, again disputes arose between them and as a result of which, another application being PWDVA no. 28/2022 came to be filed with similar allegations against husband and in-laws. Present Petitioners are parents-in-law and brothers-in-law of Respondent. It is their contention that there are no allegations against Petitioners and causing any domestic violence against Respondent. It is also contended that the Petitioners are residing

separately from her and as such, they were never in domestic relationship with her and on that count, the application/complaint is not maintainable.

4. Learned Counsel for the Petitioners submitted that Petitioners Nos. 3 to 5 never stayed with Respondent and that they have different places of residence. It is his contention that in absence of any domestic relationship, the complaint filed by the Respondent against them under D.V. Act is not maintainable. As far Petitioner Nos. 1 and 2 are concerned, it is contended that the perusal of the complaint shows that there are no allegations against them about causing of domestic violence to the Respondent. Thus, it is his contention that it is a fit case for quashment of the proceeding filed by the Respondent against them under the D.V. Act. He also raised the issue that since the previous complaint under the D.V. Act on the basis of same allegations was withdrawn, it is not open for the Respondent to file fresh complaint for the same cause of action. Thus, it is his contention that on both counts, the present proceeding deserves to be quashed.

5. Learned Counsel for the Respondent opposed the said contentions by referring to the allegations/averments in the complaint. According to him, there are specific allegations against Petitioners that they are the members of the joint family of her husband. It is also submitted that the Respondent has made specific allegations against them which constitute domestic violence. Thus, it is his contention that at this stage this Court cannot go into the merits/demerits of the said allegations which is required to be decided after leading evidence.

6. As far as Petitioner Nos. 3 to 5 are concerned, perusal of the complaint made before learned JMFC though indicates that there is statement about there being joint family and these Petitioner and the husband of the Respondent, however, at the next breath it is stated that she used to stay with her husband. Perusal of the complaint clearly indicates that the Petitioner Nos. 3 to 5 did not share common household with Respondent.

7. At this stage, it would be necessary to consider relevant provisions of D.V. Act. Section 2(a)

of the D.V. Act defines 'aggrieved person' to state that, "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. Section 2(f) defines 'domestic relationship' which means "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. These definitions clearly indicate that in order to maintain a proceeding under D.V.Act, original applicant/Respondent who is aggrieved person must live or lived together, with Respondent at any point of time as member of joint family in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage. There are no specific allegations against Petitioner Nos.3 to 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 Petitioner Nos.3 to 5 are concerned. Domestic

relationship is *sine qua non* for maintaining proceedings under the D.V. Act. It is immaterial as to what relief is prayed by the Respondent. Since, the maintainability of the application depends on the domestic relationship between aggrieved person and Respondent, absence thereof does not entitle her to maintain the said proceedings against Petitioner Nos. 3 to 5.

8. As far as Petitioner No. 1 is concerned, though he is said to have resided with Respondent, perusal of the complaint does not show any allegation against him which will constitute domestic violence. Perusal of the complaint only indicates that essentially allegations are against husband and some allegations are made against Petitioner No. 2, who is mother-in-law of Respondent. As far as Petitioner No. 1 i.e., father-in-law of the Respondent is concerned, for want of specific allegation against him of subjecting Respondent with any domestic violence, the complaint is not maintainable against him. However, *prima facie* there are allegations against the Petitioner No. 2 i.e., mother-in-law, which may constitute the domestic

violence.

9. The law on the point of exercise of powers under Section 482 of Code of Criminal Procedure and Article 226 of the Constitution of India is settled by Hon'ble Apex Court in case of State of Haryana & Ors Vs. Ch. Bhajan Lal & Ors, AIR 1992 SCC 335 wherein among other following illustrations are given which guide as to the cases in which quashment of proceeding can be done. The relevant illustrations are reproduced thus:

(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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

10. *Prima facie* consideration of application filed by Respondent shows that for want of domestic relationship and in absence of specific averments showing custody of domestic violence to Respondent, the application filed before JMFC deserves to be quashed against Petitioner Nos. 1 & 3 to 5. However, having regard to the nature of allegations made against mother-in-law i.e., Petitioner No. 2, the correctness or otherwise thereof, can be decided only during trial. She is not entitled to seek relief of quashment of proceeding.

11. Petitioners have also raised an issue about maintainability of the subsequent complaint of the Respondent on the ground that the previous complaint was compromised and withdrawn. Perusal of the provisions of the D.V. Act indicates that the aggrieved person is entitled to approach to the Magistrate under the provision of the D.V. Act for protection order, residence order, monitory relief, custody orders and compensation. The object of enactment of the D.V. Act shows that the same is to provide more effective protection of right of women. It aims at prevention of

causing domestic violence and also to enable her to seek protective and monetary reliefs. The scheme of the Act clearly envisage that the entire intention of the legislature is to enable women to seek effective reliefs for protection, maintenance and compensation. Pertinently as held by the Hon'ble Apex Court in case of Kamatchi Vs. Laxmi Narayan, AIR 2022 Supreme Court 2983, the proceedings under the D.V. Act are essentially of civil nature but governed by the Code of Criminal Procedure. There is no specific bar created against preferring more than one applications for seeking appropriate orders from the competent Court under D.V. Act.

11. As far as facts of present case are concerned, record indicates that first application was not decided on merit nor there was withdrawal of the allegations by wife against Respondents. The application was withdrawn as the husband of the Respondent agreed to cohabit and treat her well. Having regard to the fact that parties are in matrimonial relationship and have minor children, the assurance given by husband was more than sufficient to withdraw application. In view of such

settlement between husband and wife, she can never be expected to pursue the complaint and withdrawal of the same on the basis of settlement, is absolutely natural. Unfortunately for her, later on disputes arose between them. Needless to say that once the Respondent is not taken care by the husband, she would left with no other alternative but to again invoke provisions of D.V. Act. In absence of any specific bar created by the D.V. Act for filing subsequent application and since first application was neither decided on merit nor allegations made therein were withdrawn, there is no impediment in maintaining present application being PWDVA No. 28/2022.

12. In view of the above discussion, the Petition is partly allowed. The PWDVA No. 28/2022 stands quashed *qua* Petitioner Nos. 1 & 3 to 5. Petition stand dismissed against Petitioner No. 2.

(R.M. JOSHI, J.)

Malani