

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

**24 CRIMINAL APPLICATION NO.1348 OF 2022**

**DILIP RANGNATH BULHE AND OTHERS  
VERSUS  
KOMAL WD/O. VIKRAM BULHE @ KOMAL D/O VILAS PATIL**

Mr. Shantanu A. Deshpande, Advocate for the applicants  
Mr. K. J. Suryawanshi, Advocate for the respondent

**CORAM : KISHORE C. SANT, J.**

**DATE : 17<sup>th</sup> MARCH, 2023**

**P. C.**

1. Heard the learned advocate for the parties.
2. The matter is taken up for final disposal by consent of the parties.
3. This application is restricted only to the extent of applicant Nos. 3 and 4 who are sister-in-law and her husband. The application for quashing of the proceeding lodged by the respondent under Domestic Violence Act and presently pending in the court of learned CJM, Nandurbar bearing Criminal M. A.

No. 461/2021.

4. The respondent filed a proceeding praying for various reliefs under the D. V. Act. It is alleged that after her marriage on 15-10-2018 the couple resided for a short period with present applicants at Surat and thereafter, moved to other place in Surat only. The deceased husband was Aayurvedik Doctor and was earning good income. However, because of pandemic situation when the lockdown was imposed the respondent alongwith deceased husband came to their native place where the applicant Nos. 1 and 2 were residing and stayed there till June, 2020. In June, 2020 applicants again went back to Surat. However, unfortunately on 30-12-2020 the husband of the deceased met with an accident and succumbed to the injuries. Till then there are no allegations of any ill-treatment. The main allegations are that after death of the husband one activa scooter that was purchased by the deceased husband in the name of present applicant No.3 was retained by these applicants. It is only allegation that these applicants have taken

all utensils from the house of the deceased and taken the same to their house. There is further allegation that ATM card of the bank account of the deceased husband is used by present applicant No.3. There are other allegations that amount is transferred from bank account of the deceased in the name of mother-in-law etc.

5. Learned JMFC issued notice in the proceeding. The applicants therefore, approached this court for quashing of the said proceeding stating that no case is made out under domestic violence act against them.

6. Already present application came to be dismissed to the extent of applicant Nos. 1 and 2 by order dated 02-05-2022 of this court.

7. Learned advocate for the applicants submits that deceased husband had taken policy from Life Insurance Corporation for Rs.8,75,000/-. That policy amount also would

go to the respondent and same would be around Rs.18 lakhs. In fact, only because that she apprehends that the parents will claim share in the policy also, she has lodged the complaint.

8. It is argued by the learned advocate for the applicants that marriage of respondent No.3 and 4 took place much prior to the marriage of respondent. Their marriage took place in the year 2011 whereas the marriage of respondent took place on 15-10-2018. They were residing at Surat whereas parents of the deceased were staying at village Shirasgaon, Lauki, Tq. Yewala, Dist. Nashik. Even as per the allegations the deceased and the respondent stayed with applicant Nos. 3 and 4 only for initial period in 2018 after marriage and thereafter they also resided separately. So far as the other allegations are concerned it is submitted that none of the allegations can be said to be an allegations attracting the provisions of D. V. Act. It is further submitted that these applicants cannot be said to have shared house hold that the respondent or having domestic relationship with the respondent and on that count also they

cannot be prosecuted. So far as allegation of having activa scooter in the name of applicant No.3 it is submitted that vehicle stands in the name of applicant No.3 and therefore, it cannot be said that the vehicle is retained by her. About transfer of the amount from account of the deceased husband it seems that it is transferred in the name of his mother as she was shown nominee of the deceased husband in the bank account. That amount is not transferred to the present applicants. Allegation that she is using ATM card of the deceased husband, it is stated that there is nothing on record to show that she is using ATM card.

9. As against that the learned advocate for the respondent vehemently opposes the application. He submits that all the allegations clearly show that there is harassment at the hands of these applicants also as there are allegations that they have abused the respondent. After the death of the husband they have moved belongings of the deceased to their house and at the parents house. There is specific prayer made against these

applicants of compensation of Rs.20 lakhs etc.

10. Both the parties relied upon certain judgments. The learned advocate for the applicants relied upon the judgment reported in 2019 (1) ABR (Cri) 65 in the case of Prabhakar Mohite Vs State of Maharashtra and others. Second judgment reported in 2020 (5) Mh.L.J. Cri 499 in the case of Prakash Vinayak Gaikwad Vs State of Maharashtra, third judgment reported in 2021 ALL MR (Cri) 3694 in the case of Tulshiram and Ors Vs State of Maharashtra in his support.

11. Learned advocate for the respondent relied upon the full bench judgment of the Madras High Court reported in 2023 Cr. L. J. 339 in the case of Arul Daniel VS Suganya with connected matters wherein it is held that proceeding under Section 482 and Article 227 are not maintainable for quashing of the domestic violence act by holding that the proceeding under Domestic Violence Act does not fall under the definition of the complaint as defined under Cr. P. C. and therefore

issuance of notice cannot be said to be an issuance of process and remedy available is to file an application for re-call of the process.

12. By considering the judgments in the case of Adalat Prasad Vs Rooplal Jindal and others reported in 2004 7 SCC 338 it is held that the ratio in the case of Adalat Prasad would not be applicable in the cases under domestic violence act.

13. He further relied upon the judgment reported in 2019 (1) Mh.L.J. (Cri) 455 in the case of Baban Vs State of Maharashtra.

14. Considering the judgment this court in the case of Prabhakar Mohite (supra) has quashed the proceeding under the domestic violence act by considering full bench judgment delivered by this court in the case of Nandkishor Pralhad Vyawahare Vs Mangla w/o. Pratap Bansar reported in 2018(3) Mh. L. J. (Cri) (FB) 171 wherein it is held that the proceeding

under Section 482 are maintainable in respect of proceeding under domestic violence act considering sec. 28(1) of the Act.

15. This court finds in view this full bench judgment that this court need not consider the judgment of full bench of Madras High Court in the case of Arul Daniael Vs Suganya. In the case of Prakash Gaikwad (supra) and Tulshiram the proceeding under the domestic violence act were allowed. This court finds that it thus clear that it is the facts of the cases which need to be seen while considering the petition under Section 482 or Article 227 of the Constitution of India. From the facts of the case of this case it is clear that the allegations are made only after the death of the husband of the respondent. Prior to that allegations does not show any specific instance of domestic violence act as against these applicants. Other allegations are that the deceased husband of the respondent used to send the amount to his parents and from his money some construction is made in the agricultural land and out of that amount development of the land is done. These acts cannot be said to be

an act attracting the provision of domestic violence act.

16. Considering the above, this court finds that a case is made out to allow the application. Therefore, the application stands allowed in terms of prayer clause-B to the extent of applicant Nos. 3 & 4.

17. The present Criminal Application already dismissed against applicant Nos. 1 and 2 by order dated 02-05-2022.

**[KISHORE C. SANT, J.]**

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