

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

926 CRIMINAL WRIT PETITION NO. 654 OF 2023

1] NITIN S/O MOHAN KAMBLE
2] TARABAI W/O MOHAN KAMBLE **...PETITIONERS**

VERSUS

STATE OF MAHARASHTRA AND OTHERS **...RESPONDENTS**

....
Shri. Rahul Shinde Patil – Advocate for the petitioners
Smt. Geeta L. Deshpande – APP for respondent/State
...

CORAM : R. M. JOSHI, J.
DATE : SEPTEMBER 14, 2023

PER COURT :

. At the outset, the learned counsel for petitioners seeks, on instructions, leave to withdraw the petition *qua* petitioner no.1 - Nitin Mohan Kamble.

2. Leave granted. Petition is dismissed as withdrawn to the extent of petitioner no. 1 - Nitin Mohan Kamble.

3. This petition is filed under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing the proceedings filed under the provisions of

Domestic Violence Act being P.W.D.V.A. No. 816/2022 pending before the Judicial Magistrate First Class, Aurangabad. The order of issuance of process dated 09.01.2023 is also sought to be challenged in this petition.

4. Learned counsel for the petitioner no. 2 submits that petitioner no. 1 and respondent no. 2 performed love marriage. It is submitted that since the year 2013, admittedly, husband and wife are staying separately. It is his further contention that as far as this petition is concerned, the averments in the complaint do not constitute domestic violence. It is submitted by referring to the complaint that the basic allegations are against the husband that he is drunkard, involved in gambling and extra marital affair and so on. It is his contention that though petitioner no. 2 has lost her husband in the year 2013 itself, still allegations are made against him in the complaint filed by the respondent no. 2. Since respondent no. 2 has failed to appear before the Court in spite of service of notice, the proceedings are perused with the assistance of learned APP.

5. In order to maintain the complaint against any person,

there has to be *prima facie* case made out against him/her of committing domestic violence against the complainant. *Prima facie* perusal of the complaint coupled with the notices exchanged between husband and wife show that the grievance of respondent no. 2 is mainly against husband. Though there is one reference in the complaint about alleged act of present petitioner no.2, however, the said allegations on the face of it only shows to day-to-day wear and tear of the life. There is substance in the contention of the counsel for the petitioner no. 2 that this does not amount to domestic violence. Failure on the part of respondent no. 2 in appearing before this court and oppose the application shows that he is not interested in opposing prayer for quashing of the proceedings.

6. In view of the above, the proceedings filed under the provisions of Domestic Violence Act being P.W.D.VA. No. 816/2022 pending before the Judicial Magistrate First Class, Aurangabad stands quashed to the extent of petitioner no.2.

7. Petition stands disposed of accordingly.

[R. M. JOSHI]

JUDGE