

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

CRIMINAL WRIT PETITION NO. 827 OF 2018

Pratap Mamtaji Pachange & Ors. .. Petitioners

Versus

Rameshwari Balasaheb Pachange .. Respondents

Mr.Z.H. Farooqui h/f. Mr.N.V. Gaware, Advocate for the petitioners.
Mr.S.V. Suryawanshi h/f. Mr.C.V. Bhadane, Advocate for the respondents.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	19.12.2022
PRONOUNCED ON	:	14.02.2023

ORDER :-

01. The petitioners are original non-applicants. Petitioner No.1 is brother-in-law, petitioner No.2 is father-in-law, petitioner No.3 is sister-in-law and petitioner No.4 is husband of sister-in-law of respondent No.1. Respondent Nos.2 and 3 are daughter and son of respondent No.1. Husband of respondent No.1 is died in 2009. This petition is filed by the in-laws of respondent No.1. challenging the order dated 31.03.2018, below Exh.20 in Criminal M.A. No.189 of 2018, passed by the learned JMFC, Court No.8,

Ahmednagar, thereby rejecting an application filed by the petitioners for dropping the proceedings against them.

02. Facts in short are that respondent No.1 married with late Balasaheb Mamtaji Pachange, who happened to be brother of petitioner Nos.1 and 3 and son of petitioner No.2. The marriage was performed on 18.04.2002. After marriage, the petitioners started harassment of the respondents saying that the marriage was not properly performed, no dowry was paid etc. They used to instigate the husband of respondent No.1. The petitioners also used to assault the husband of respondent No.1. The husband died under the pressure of the petitioners on 11.05.2009. Respondent No.1 has also filed a criminal complaint against the petitioners on that count. Even after death, the respondents stayed with the petitioners. The petitioners sold the land standing to the share of the respondents without informing late husband of the respondent No.1. After that on 21.05.2009 the respondents came to be driven out of the house. On these allegations the respondents filed Criminal M.A. No.189 of 2015.

03. In the application, respondent No.1 prayed for Rs.10000/- per

month towards maintenance. She further prayed that they should be provided shelter in the house that was constructed by her husband and further they prayed for protection order. The respondents also filed an application for interim maintenance at the rate of Rs.5000/- per month from 21.05.2009.

04. The petitioners appeared and filed their say. It is alleged that the application is filed by the respondents itself is not maintainable. The respondents have already filed a civil suit bearing RCS No.414 of 2015 for civil maintenance and the same is pending. She has filed a suit for partition bearing SCS No.247 of 2009. The respondents do not have right in the property as entire property is self-acquired property of petitioner No.2. Petitioner No.1 runs a business of giving vehicles on rent and he himself also drives vehicle. He has purchased the vehicles from his own income by raising loans. It is further alleged that respondent No.1 was staying separately with her husband since 2002. Their ration cards are separate. Respondent No.1 was not treating her husband properly and it is for that reason, her husband died. The land of the deceased husband was sold by himself during his lifetime in favour of petitioner No.1.

05. The petitioners, thereafter, filed an application below Exh.20 for dropping of the proceedings. The learned JMFC by order dated 31.03.2018 rejected the application on the count that the respondent is in domestic relationship and she also comes under the definition of aggrieved person and thus the proceeding is perfectly maintainable.

06. It is against this order, the petitioners have approached this Court. The respondents have filed an affidavit-in-reply opposing the petition. It is stated that respondent No.1 is unable to maintain herself. Respondent Nos. 2 and 3 are minor children.

07. Heard learned Advocates for the parties. The learned Advocate Mr.Farooqui argued that the impugned order is against the material on record. The petitioners have sufficiently shown that the respondents are not residing with the petitioners. There is no sharing household. The respondents are not the persons who can be said to be coming under the definition of aggrieved persons. He relies upon judgment delivered by the Madhya Pradesh High Court, Bench at Indore in the case of Preeti w/o. Manoj Badoniya Vs. Neha w/o. Rohit Ujjaini in M.Cr.C. No.78 of 2015, wherein it is held that section 2 of

the Protection of Women from Domestic Violence Act mandates that the parties must have lived together and had quashed the proceedings and the petition was allowed to the extent of married sister, as she was staying away with her husband. Therefore, it was held that she does not fall under the definition of domestic relationship.

. This Court has no difficulty in accepting this proposition to the extent of petitioner Nos.3 and 4.

08. The learned Advocate for the petitioners further relied upon judgment of the Supreme Court in the case of **Inderjit Singh Grewal Vs. State of Punjab & Anr., 2011 AIR (SCW) 6259**, wherein the Hon'ble Apex Court has considered the provisions of the DV Act. Further the Hon'ble Apex Court held that in view of section 468 of Cr.P.C. the complaint would be filed only within a period of one year from the date of the incident. In that case the proceedings before the Magistrate was held to be not compatible and in consonance with the decree of divorce passed against wife and therefore the complaint could be an abuse of process of law. In the facts of that case the Hon'ble Apex Court quashed the proceedings. In that case the Hon'ble Apex Court clearly stated that in the facts of that case the judgment is passed. It

was a case that the husband had obtained decree of divorce. It was alleged by the wife that the said decree is obtained by playing fraud upon the Court. There the question was that whether the decree of competent Civil Court can be declared null and void in collateral proceedings and that too in a criminal proceeding. It is in that view the said judgment was passed.

. This judgment, therefore, is of no help to the petitioners.

09. The learned Advocate for the respondents vehemently opposed the petition. He submits that at this stage it needs to be seen that the husband of respondent No.1 died long back in 2009. As on today, there is no property standing in his name. The property that was standing in the name of Balasaheb is purchased by petitioner No.1 long back. In-fact, said sale-deed itself is sham and bogus. It is only executed fraudulently to deprive the respondents from the property. Said property was a joint family property standing in the name of late Balasaheb of his share.

10. It is further submission of the respondents that the entire property is joint family property and therefore the respondents have every right in the property and therefore even a suit for partition is filed. Since all

the properties are joint family property, it is responsibility of the petitioners to provide for maintenance to the respondents and pray for rejection of the petition. The learned Advocate for the respondents relies upon a judgment reported in **AIROnline 2022 SC 514 in the case of Kamatchi Vs. Lakshmi Narayanan**, wherein the Hon'ble Apex Court has held that there is no limitation for filing application under section 12 of the DV Act. The Hon'ble Apex Court has considered the provisions of the DV Act viz-a-viz section 458 of the Cr.P.C. It is specifically held that there is no starting point or limitation so far as proceedings under section 12 of the DV Act are concerned. The limitation would arise only when there is case of breach of order passed under Section 12 of the DV Act. In para 15 the Hon'ble Court has observed as below :-

“15. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the concerned Magistrate. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.”

. In para 20 the Hon'ble Apex Court has considered that the application under section 12 of the Act is not a complaint as defined under section 2(d) of the Cr.P.C. Para 20 is as below :-

“It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence. ”

11. In para 22 the Hon'ble Apex Court has held that the High Court cannot invoke powers under section 482 of the Cr.P.C. for quashing complaint under the DV Act by invoking the judgment of Adalat Prasad. In that case the respondents in the application under the DV Act had approached the High Court for quashing of the proceedings where the facts are some what similar to this case. The High Court by applying the limitation had quashed quashed the proceedings holding that the limitation is applicable. Paragraph No.22 of the said judgment is as under :-

“Lastly, we deal with the submission based on the decision in Adalat Prasad⁴. The ratio in that case applies when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in Adalat Prasad would not get attracted at a stage when a notice is issued under Section 12 of the Act.”

12. Thus, in this case though question of limitation is not considered, this Court finds that the judgment in the case of **Kamatchi (supra)** is quite helpful to the respondents. In the said case the judgment in the case of **Inderjit Singh Grewal (supra)**, which is relied upon by the petitioners is also considered. In the case in hand it is only stage where the proceeding is filed against the petitioners. It is sufficiently shown that the proceedings under the DV Act was maintainable. Only considering the case of petitioners Nos. 3 and 4 is concerned, there is nothing on record to show that they are sharing common household or there is domestic relationship with petitioner Nos. 3 and 4. In view of the judgment of the **Inderjit Singh Grewal (supra)**, this Court holds that case is made out only to the extent of petitioner Nos.3 and 4. By no stretch of imagination, it can be said that they are liable either to pay maintenance or to provide shelter to the respondents or for that matter to provide any of the reliefs as prayed for in this application. In this view of the matter, this Court finds that it would be proper to allow the petition to the extent of the petitioner Nos. 3 and 4. No case is made out to quash the proceedings, so far as petitioner Nos. 1 and 2 are concerned. Hence, the following order :-

ORDER

- (i) The criminal writ petition is partly allowed.
- (ii) The proceedings bearing Criminal M.A. No.189 of 2015 is quashed and set aside by allowing application below Exh.20 therein to the extent of petitioner No. 3-Sau. Kusum Arun Dukare and petitioner No. 4-Arun Devram Dukare.
- (iii) The criminal writ petition is dismissed as regards petitioner Nos. 1 and 2.

[KISHORE C. SANT, J.]