

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

927 CRIMINAL WRIT PETITION NO.964 OF 2019

**NALINI WD/O. NAMDEO SURYAWANSHI AND ANR
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

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Advocate for Petitioners : Mr. Patil Ujwal Subhash
APP for Respondents: Mr. P N Kutti
Advocate for Respondent 2 : Mr. Nilkanth Batule (appointed)

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CORAM : KISHORE C. SANT, J.
Dated: January 31, 2023

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PER COURT :-

1. Heard learned advocate for the parties. Taken up for final disposal by consent of the parties.

2. This petition is filed by mother-in-law and brother-in-law of respondent no.2 praying for quashing of the proceeding bearing Criminal Misc. Application No. 1574 of 2018 filed by respondent no.2 in the Court of JMFC, Dhule, bearing Cri.MA No.1574 of 2018 for the reliefs under sections 12, 18, 19, 20, 22 and 23 of the Protection of Women From Domestic Violence Act, 2005 (for short "DV Act").

3. Learned advocate for the petitioners submit that the informant/respondent no.2 has lodged this complaint after the

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proceedings filed on the basis of information lodged by her for the offence punishable under sections 498-A of the IPC were quashed by this Court in Criminal Application no.3116 of 2018. He submits that, the allegations in that FIR and present complaint are very same. It is only because her 498-A of the IPC case is quashed. Now, she has filed the proceeding under the “DV Act”. Even otherwise, he submits that looking at the complaint as it is, no specific allegations are made out showing that the ingredients of “DV Act” are attracted. From the complaint itself, it is clear that these petitioners were staying at different places. In paragraph no.9 the respondent on her own had stated that when these petitioners used to come home, they used to harass her. Thus, it is clear that they are not staying together. This court initially was not inclined to entertain the petition solely on the ground that the proceeding before the Trial Court is of 2018. This petition was filed in the month of June, 2019. In the meantime, now evidence is started in the main proceedings. However, learned Advocate submits that it is only evidence of respondent no.2 is filed and even first witness is yet to be cross-examined. He submits that hence, there is no case made out under the “DV Act”. Merely

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because there is some delay; that may not be a reason for not to entertain the petition. The petition was not moved because of the Corona Period and it was pending for that and delay cannot be attributed to the petitioners.

4. Learned advocate for respondent no.2 vehemently argued that there are specific allegations made against the petitioners in the complaint. He submits that from paragraph no.16 it is clear that it is these petitioners, who drove the informant out of the house. He submits that, there was also a demand of Rs.2,50,000/- by non-applicants before the trial court and prays for rejection of the petition.

5. Learned APP also opposed the petition saying that since allegations are made out against these petitioners, it would not be proper to quash the proceedings at this stage.

6. Having considered the submissions, this court finds force in the submission of the petitioners that respondent no.2 has filed complaint only after realizing that her complaint under section 498-A is quashed by this Court. Learned counsel further submits that on the basis of the very same allegations, she has now filed a complaint under "DV Act". This clearly
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shows that any how she wants to implicate the petitioners into some other litigation. Looking at the allegations it is seen that there is no averment in the complaint that these petitioners had stayed with the respondent no.2. From paragraph no.4, it would appear that for some time they had resided together. Marriage had taken place on 28.5.2002 and complaint is filed in the year 2018. Thus, it is quite natural that for some time they may have stayed together for initial period. Looking at further contents of the complaint, it is seen that the informant has not given exact dates of the alleged incident. This Court, therefore, finds that continuation of the proceeding as against these petitioners would be an abuse of process of law.

7. In view of the said discussion, this Court finds that a case is made out to call for the interference at the hands of this Court. A case is made out to quash the proceedings of Criminal Misc. Application No.1574 of 2018 to the extent of the petitioners herein only. Hence, Writ Petition is allowed in terms of prayer clause 'A' to the extent of the present petitioners only. Criminal Writ Petition is disposed off.

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8. Learned advocate for respondent no.2 was appointed by this Court through legal aid. He shall be entitled to receive the fees as per the rules.

(KISHORE C. SANT, J.)

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