

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

41 CRIMINAL APPLICATION NO.2491 OF 2022

**ABHAY ARUN DAITHANKAR AND OTHERS
VERSUS
MOUSAMI W/O. ABHAY DAITHANKAR AND OTHERS**

Mr. R. R. Deshpande, Advocate h/f Ms. Priyanka R. Deshpande,
Advocate for the applicants
Ms. Ranuka Ghule Palve, Advocate for the respondent Nos. 1 to
3

CORAM : KISHORE C. SANT, J.

DATE : 17th APRIL, 2023

P. C.

1. Heard the learned advocate for the parties. The matter is taken up for final disposal by consent.

2. This is an application filed by husband, father-in-law and brother-in-law of respondent No.1 who has lodged the proceeding under the D. V. Act in the court of JMFC, Latur bearing Criminal Misc. Application No. 168/2021 for herself and respondent Nos.2 and 3 who are sons of applicant Nos.1 and respondent No.1 and admittedly respondent No.2 has now

attained majority.

3. Learned advocate for the applicants points out from the application itself that it is admitted position that the respondents are residing separately since 2015. Therefore, there is no question of having any domestic relation as defined under Section 2(a). She further submits that applicant Nos. 2 and 3 do not fall in the definition of section 2(a) of the Act. She further pointed out that looking to the application as it is all the allegations are against applicant No.1. Allegations against applicant Nos. 2 and 3 can at the most be said to be allegations under General Law and certainly cannot be said to be an act falling under the Domestic Violence Act. As regards applicant No.1 he raises two main points. First; that section 12 mandates the learned Magistrate can pass any order only after receipt of report from Protection Officer or Service Provider. She further submits that in view of section 12 (3) every application under sub-section (1) needs to be in the form under Rule 6(2). She submits that in the present case the learned Magistrate has

committed error by issuing the notice to the applicants without calling for report from the Protection Officer or Service Provider and therefore, order dated 09-12-2021 is thus be quashed and set aside. She submits that thus entire proceeding need to be quashed and set aside as no instances of domestic violence act are made out.

4. Learned advocate for the respondents vehemently opposed the application stating that relation between the parties is not disputed. From the contents it is clear that the applicant Nos.2 and 3 also used to instigate applicant No.1 and it is for that reason applicant No.1 used to harass the wife. She further pointed out that from the instances where all the applicants have made demand of Rs.5 lakh for starting shop etc and she submits that application deserves to be dismissed.

5. The learned advocate for respondent Nos. 1 to 3 submits that a clear case is made out against all the applicants. The relationship is not disputed. It is admitted fact that the

parties has resided together for some time. She prays for dismissal of the application.

6. This court has heard the parties.

7. The learned advocate for the applicants relied upon the judgment passed by this court in Criminal Application No. 1054/2015 at Principal Seat in support of her submission about domestic relationship. He further relied upon the judgment reported in *2010 All MR (Cri) 2259 in the case of Jayesh Uttamrao Khairnar and Ors Vs State of Maharashtra* on the point that when domestic relation is not found to be sufficiently demonstrated with the complainant, the proceeding deserves to be quashed. Third judgment of Punjab and Haryana High Court passed in *Criminal Misc. Application No. 24058/2014 in the case of Om Prakash Syngal and others Vs Shimla Garg*. In support of his contention that domestic relation continues so long as the parties live under the same roof and enjoy living together in a shared household. This court finds that there is

substance with the submission fortified by these judgments. The position that parties are residing separately since 2015 is not disputed even by the respondents.

8. Considering the above position, the judgments and submissions this court finds that certainly a case is made out for quashing and setting aside the application pending before the learned JMFC, Latur. Hence, the following order:

ORDER

a] The criminal application is partly allowed.

b] The Proceeding bearing Criminal Misc. Application No. 168/2021 pending before the learned JMFC, Latur is quashed and set aside to the extent of applicant Nos. 2 and 3.

[KISHORE C. SANT, J.]