

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2438 OF 2023

1. Abhijit S/o Ashok Kandekar (Husband)
2. Ashok Khanduji Kandekar (father-in-law)
3. Karuna Ashok Kandekar (mother-in-law)
4. Priti Rahul Wadmare(sister-in-law)
5. Swati Arvind Kambale(sister-in-law)

...Petitioners

Versus

1. The State of Maharashtra
2. Soni Abhijit Kandekar

...Respondents

...

Mr. R. B. Dhakane, Advocate for the Applicants.

Mr. S. P. Sonpawale, Advocate for Respondent No. 1

...

CORAM: R.M. JOSHI, J

DATE: SEPTEMBER 21, 2023

PER COURT :

1. With consent of learned Counsels appearing for the respective parties, heard finally.

2. At the outset, learned Counsel for the Applicants, on instructions, seeks withdrawal of the Application *qua* Applicant Nos. 1 to 3.

3. Application is dismissed as withdrawn *qua* Applicant Nos. 1 to. 3.

4. This Application is filed under Section 482 of

Code of Criminal Procedure seeking quashment of PWDVA No. 05/2023 pending before learned Majalgaon, Dist. Beed filed under the provisions of Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act').

5. Respondent No. 2 is wife of Applicant No. 1 – Abhijit and their marriage was solemnized on 29.08.2021. After marriage, she started staying along with Applicant Nos. 1 to 3 at Deolai, Paravara, Tq. Rahata, Dist. Ahmednagar. It is alleged by Respondent that after staying with him after sometime, her husband went to Pune. It is after persistent requests he took Respondent No. 2 along with him to Pune. She has made allegations against her husband of abusing and assaulting her and thereby caused physical and mental violence. As far as other Respondents are concerned, it is alleged that they used to instigate her husband to cause harassment to her.

6. Learned Counsel for the Applicants submitted that in order to maintain proceedings under the D.V. Act there has to be domestic relationship between woman and Respondents. It is submitted that the Applicant

Nos. 4 and 5 are sisters-in-law of Respondent No. 2 and they got married much prior to marriage of Respondent No. 2 and they are staying at their respective matrimonial homes.

7. With the help of learned APP, this Court has gone through the application filed before learned JMFC, Majalgaon. Perusal of said application clearly shows that it is specifically averred therein that Applicant Nos. 1 to 3 herein were staying along with Respondent. As far Applicant Nos. 4 and 5 are concerned, there is no specific statement in the application contending that they shared domestic relationship with her.

8. Provisions of the D.V. Act defines aggrieved person. Section 2(a) reads thus:

"aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

It further defined domestic relationship under Section 2(f), which reads thus:

"domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they

are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

It is thus, clear that in view of these definitions that the domestic relationship would be relationship wherein aggrieved person and Respondents live together or lived together at any point of time as joint family. Admittedly, Applicant Nos. 4 and 5 were not members of the joint family of Respondent No. 2 and her husband. Thus, Applicants are not covered by the definition of the domestic relationship as contemplated by Section 2(f) of the D.V. Act. Thus, the basic requirement for maintaining the complaint/application under Sections 17, 18, 19, 20 and 22 of the D. V. Act is not fulfilled. As a result of this, application would not be tenable against these Applicants. It is the contention of the Applicant Nos. 4 and 5 that they are sisters-in-law of Respondent No. 2. It is the case of Respondent No. 2 that she was married with Applicant No. 1 on 29.08.2021 whereas the Applicant Nos. 4 and 5 are already married and they are staying at their matrimonial home. Thus, they never shared domestic relationship with Respondent No. 2.

9. In view of above, application is allowed in terms of prayer clause 'B', qua Applicant Nos. 4 and 5.

(R.M. JOSHI, J.)

Malani