

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

Criminal Writ Petition No. 1071 OF 2022

Vikram s/o Devidas Rathod,
Age : 34 years, Occu. : Service,
R/o Plot No. 106, Gut No.150,
Beed By Pass Road, Deolali Chowk,
Satara, Tq. & District, Aurangabad.

...Petitioner

Versus

1. Vrushali w/o Vikram Rathod,
Age : 30 years, Occu. : Service,
R/o C/o Anil Raghunath Jadhav,
Ganpat Nagar, Bhimasheth Chawl,
Chawl No.2, Room No.3, Ashilegaon,
Ulhas Nagar-4, District Thane.
2. Yeshwant s/o Vikram Rathod,
Age : 4 years, Occu. : Nil,
R/o as above.
3. Sanjivani w/o Devidas Rathod,
Age : 54 years Occu. : Household,
R/o : Plot No.106, Narayan Nagar,
Beed By Pass Road, Deolali Chowk,
Satara, Tq. & District, Aurangabad.
4. Devidas s/o Pandurang Rathod,
Age : 68 years, Occu. : Reired,
R/o as above.

5. Sachin s/o Devidas Rathod,
Age : 33 years, Occu. : Service,
R/o as above.

...Respondents

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Advocate for Petitioner : Smt. Pooja V. Langhe

Advocate for Respondents : Smt. Pallavi Wangikar h/f Mr. R.V. Gore

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CORAM : KISHORE C. SANT, J.

RESERVED ON : 31st MARCH, 2023.

PRONOUNCED ON : 5th JUNE, 2023.

JUDGMENT :

1. Rule.
2. Rule made returnable forthwith by consent of the parties.
3. This petition is by husband aggrieved by an order dated 24.06.2022 passed by the learned Judicial Magistrate, First Class, Chalisgaon in an application below Exhibit-36 in P.W.D.V.A. No.108/2017, thereby rejecting the application, raising objection about the jurisdiction to the Court and filing complaint under Section 193 against respondent no.1/wife.
4. The facts in short are that the petitioner and respondent no.1 got married on 15.05.2014 at Chalisgaon. After marriage, for a brief period, the couple

resided at Aurangabad thereafter resided at Ulhas Nagar, District Thane at Mumbai for service. The couple also is blessed with a child/respondent no.2.

5. Wife filed a complaint on 27.03.2017 with Ulhas Nagar Police Station making various allegations of cruelty, harassment etc. against her husband and her in-laws. Thereafter she filed proceeding under Domestic Violence Act (D.V. Act for short) in the Court of Chalisgaon on 24.05.2017. The petitioner appeared before the Court at Chalisgaon and raised maintainability of the proceeding before the Court stating that in view of Section 27 of the D.V. Act, since the wife and in-laws, no one residing at Chalisgaon, the Court at Chalisgaon has no territorial jurisdiction. It is also prayed to file complaint under Section 193 against respondent no.1 for making false statement in the proceeding.

. The learned Court at Chalisgaon rejected the said application on the count that the marriage has admittedly taken place at Chalisgaon. The permanent address of the wife is at Chalisgaon. The wife has already filed affidavit of evidence at Exhibit-27 and there is strong prima-facie evidence on record to show her permanent address of Chalisgaon and therefore the said Court has jurisdiction.

6. It is the submission of the learned Advocate for the petitioner by pointing out Section 27 of the D.V. Act, which is reproduced below :

Section 27 in The Protection of Women from Domestic Violence Act, 2005

“ 27. Jurisdiction.—

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India.”

. She submits that in this case admittedly all the alleged instances have taken place either at Aurangabad or at Ulhas Nagar, where the parties resided after marriage. From the averment in the application itself, it is clear that even presently the wife herself is staying at Mumbai for her job and in such circumstances, when no cause of action has arisen Chalisgaon and when no one is residing at Chalisgaon, the Court at Chalisgaon will not get jurisdiction to entertain proceeding under the D.V. Act.

7. She relied upon the judgment in the case of **Nandkishor Pralhad Vyawahare Vs. Mangala w/o Pratap Bansar**, reported in 2018(3) Mh.L.J. (Cri.) (F.B.) 171. She submits that this Court has power under Section 482 of the

Code of Criminal Procedure for redressal of grievances of party arising from orders passed in proceedings under Section 12, 18, 19, 20, 21, 22, 23 and 31 of Protection of Women from Domestic Violence Act. She further pointed out from paragraph no.41 of the said judgment that the High Court can exercise its power under Section 482 of Cr.P.C. There is no dispute about the said preposition.

. The next judgment she relied upon is in the case of **Arul Daniel and Others Vs. Suganya**, reported in 2023 Cri. L.J. 339 in support of the submission that the proceeding under Section 12 of the D.V. Act can be challenged under Article 227 of the Constitution or under Section 482 of Cr.P.C. About the said submission also, there is no dispute.

8. So far as the jurisdiction, she relied upon the judgment in the case of **Afia Rasheed Khan Vs. Dr. Mazharuddin Ali Khan**, reported in LAWS(BOM)-2021-12-32 . On the point of jurisdiction, in the said judgment, it is held that the wife had cohabited at Hyderabad and thereafter was staying at Mumbai. She initiated D.V. proceeding in the Court at Bandra. The learned J.M.F.C., Bandra declined to entertain proceeding for want of jurisdiction by holding that there was no cause of action, as none of the incident had arisen in Mumbai. In that case, Mumbai was not a place of permanent residence and in that view, Court

had held that the proceeding was not maintainable for want of territorial jurisdiction.

. The next judgment in the case of **Prashant s/o. Manmohanji Laddha & Anr. Vs. Sau Madhuri w/o. Prashant Laddha & Ors.**, reported in 2018 ALL MR (Cri) 2971. Wherein the wife filed proceeding in Nagpur, where she was residing with her brother just for one month of filing of the proceeding, when her permanent address was some other place. The Court had held that the place of residence shown in the proceeding as to the place on continuing basis in pursuit of some activity or want or need which may be economic, educational, financial, cultural or social and in that view this Court at Nagpur had no any jurisdiction. This case clearly distinguishable on facts. In the present case, the parents of the wife residing at Chalisgaon and marriage had taken place at Chalisgaon. Even in the proceeding, permanent address is shown as of Chalisgaon. It is not that the wife has resided there just for a brief period.

9. She further relied upon the judgment in the case of **Dr. Saurabh s/o Shivhar Velukar Vs. State of Maharashtra and Another**, reported in 2018(4) Mh.L.J.(Cri.) 792. In this case, the matrimonial place was at Latur. The alleged ill-treatment was given at Latur. The parents of the wife were staying at Gangakhed, Dist. Parbhani, where the wife had initiated 498A proceeding. In

this case, this Court had held that Gangakhed Court has no jurisdiction. This case is also not applicable for the reason that for the offence under Section 498A of the Indian Penal Code. Jurisdiction is as per the Section 177 of Cr.P.C., whereas in the case of D.V. Act, it is not Section 177 of the Cr.P.C. which decides jurisdiction, where the offence took place. The same analogy is in the further judgments in the case of **Shekhar Shivdas Mahire & Ors. VS. Sarikabai Shekhar Mahire & Anr.**, reported in 2010 (2) Bom.C.R.(Cri.) 672 and in the case of **Charan Das Vs. Mt. Surasti Bai**, reported in AIR 1940 Lahore 449.

. The next judgment in the case of **Y. Abraham Ajith Vs. Inspector of Police, Chennai**, reported in 2004 AIR (SCW) 4788, it is held that the proceeding under Section 498A was filed at Chennai, since the parties had resided at Nagercoil and the allegations were also in respect of Nagercoil, therefore the concerned Magistrate had no jurisdiction to deal with the proceeding and the proceeding filed at Chennai was quashed.

10. The next judgment she relied upon, is in the case of **Vijay Sudhakar Patil Vs. Sau. Asha Vijay Patil**, reported in 2014 SCC OnLine Bom 550. In this case, wife had initiated proceeding under the D.V. Act at Khamgaon, Dist. Buldhana, whereas her permanent address was Jamner, Dist. Jalgaon. In that

view, it was held that the Court at Khamgaon had no jurisdiction.

. She further points out from the order passed by this Court in Criminal Application No.2203/2022 in the case of Anand Shesherao Dhanle and Others Vs. Sow. Komal w/o Anand Dhanle @ Komal d/o Kishor Kadam and Another. In that case, marriage was performed at Taluka Pathri, Dist. Parbhani. The parties resided at Taluka Pathri. The wife was staying at Rajgurunagar, Pune. It was held that in that case, the wife had initiated proceeding only to harass the husband and the residence at Rajgurunagar was shown only for the purpose of filing the proceeding.

11. The last judgment she relied upon, is in the case of **Ramesh s/o Mohanlal Bhutada and Another Vs. State of Maharashtra and Others**, reported in 2011(6) Mh.L.J.167, wherein the marriage had taken place at Akola and thereafter parties resided at Nasik. The proceeding was initiated by wife in the Court at Akot. It was held that Akot was the place, where the wife used to pay only casual visits. The said place was neither place of her parents, nor a place of permanent residence. In that view, parties were directed to lead evidence on the point of jurisdiction before the concerned Court.

. For the reasons discussed above, this Court finds that none of the judgments, would help to the petitioner in the facts of this case.

12. The learned Advocate for the respondents submits that from the wording of Section 27 of D.V. Act, it is clear that the Court within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed etc. has a jurisdiction. In this case, it is not disputed that the marriage had taken place at Chalisgaon, where the parents of the wife were residing. In the proceeding also, respondent no.1 has given her permanent address at Chalisgaon. She submits that the Court thus has rightly considered the averments. She further submits that the Court has to see as to where the parties are residing either permanently or temporarily. The residence at Chalisgaon was the residence of parents of respondent no.1 and is shown as permanent address.

13. She placed reliance on the judgment in the case of **Shyamlal Devda and Others Vs. Parimala**, reported in 2020 AIR (SC) 762. In this case, the facts were that the marriage had taken place in Rajasthan. The respondent/wife resided and appellant no.14/husband in matrimonial house at Chennai along with appellant no.1 and 2 i.e. parents of appellant no.14. Thereafter appellant no.14 went to Bengaluru from Chennai to attend a wedding of sister of respondent and respondent/wife expressed her desire to remain at Bengaluru for sometime. The wife stayed her parents' house for short time and thereafter

she did join her matrimonial house for cohabiting with appellant no.14. Appellant no.14 filed petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights before the Family Court at Chennai. The wife thereafter filed proceeding under the D.V.Act in the Court of Metropolitan Magistrate at Bengaluru against husband and other relatives. It was informed by the Advocate for appellant no.14/husband to the Court of Metropolitan Magistrate at Bengaluru that the family members of her husband including those who are residents in the State of Rajasthan, Gujarat and other relatives in Chennai and the complaint is an abuse of the process of the Court. It is in that view of the matter, the Magistrate at Bengaluru issued notices against her husband and his other relatives holding that the Court at Bengaluru has jurisdiction. The order of issuance of summons was challenged by the husband and in-laws before the High Court. The High Court dismissed the petition holding that the complaint filed at Bengaluru is maintainable in view of Section 27 of the D.V. Act. The Hon'ble Apex Court on considering the matter on the point of jurisdiction held in paragraph No.10, which is reproduced below.

“10. Insofar as the jurisdiction of the Bengaluru Court, as pointed out by the High Court, Section 27 of the Protection of Women from Domestic Violence Act, 2005 covers the situation.”

14. One more thing needs to be noted that from the impugned order, it is

seen that the evidence i.e. affidavit of wife is already filed on record at Exhibit-27. Though the proceeding is of May 2017, the application is filed on 21.01.2020 at belated stage. Objection to jurisdiction ought to have been filed at the earliest possibility opportunity. From the application itself, it is seen that the said is filed after evidence of wife was filed. In spite of many opportunities, application was not argued and Court has decided it by making observations to that effect. This also shows that the application may have been filed just to prolong the proceedings.

15. In view of the above facts, submissions and judgments cited, this Court finds that while deciding the jurisdiction of the Court, it is to be decided in view of the Section 27 of the D.V. Act. The judgment relied upon by the respondent is applicable to the facts of the present case. Whereas the judgments relied upon by the petitioner are either in the cases under Section 498-A of the IPC, where the jurisdiction is conferred under Section 177, 178 of the Cr.P.C. In the proceeding under the D.V. Act, the jurisdiction is conferred by Section 27 of the Act. So far as the judgments in the case under the D.V. Act relied upon the petitioner, are concerned, these are the cases, where it is clearly demonstrated that the jurisdiction is shown only for the purpose of filing of the application under the D.V. Act. The residents were either temporarily or the place where

the wife had made a casual visit and the place, where the relatives other than the parents were residing. In this case, the marriage has taken place at Chalisgaon, whereas the parents were permanently residing at Chalisgaon and therefore it cannot be said that the Court at Chalisgaon has no jurisdiction. This Court finds that the learned trial Judge has rightly passed an order and there is no merit in the petition and the same deserves to be dismissed. Hence the following order.

ORDER

- (i) The petition is dismissed. Rule stands discharged.

[KISHORE C. SANT, J.]

16. The learned Advocate for the petitioner submits that in this petition, interim relief was granted by this Court and it is running till now. She prays for continuation of the same for a period of four weeks.

. The learned Advocate for the respondents opposes the prayer.

17. However, considering that the interim relief is running since long, same is continued for four weeks from today.

[KISHORE C. SANT, J.]

Najeeb..