

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 961 OF 2021

RANJANA W/O. NITIN VINCHURKAR AND ANOTHER
VERSUS

SMITA W/O. YOGESH VINCHURKAR AND ANOTHER

...

Advocate for Petitioners : Mr. Ashish V. Sonawane
APP for Respondent No.1 : Mr. Rahul G. Joshi

...

CORAM : KISHORE C. SANT, J.
DATE : 20th MARCH 2023.

Per Court :

Heard. Learned Advocate for the petitioners and learned Advocate for respondent no.1. None for respondent no.2.

1. By way of this petition, the petitioners, who are brother-in-law and wife of brother-in-law of respondent no.1 have approached this Court for quashing of the proceeding under Domestic Violence Act bearing PWDVA No.461/2020 pending in the Court of learned Judicial Magistrate First Class, Aurangabad. The learned Advocate for the petitioners submits that looking to the complaint as it is, no case is made out to proceed against the present petitioners.

2. Learned Advocate for respondent no.1 vehemently opposes the petition by inviting attention to averments in paragraph no.4, 5 and 19 of the application in the trial Court. However, it is seen that the allegations are only against husband. He read out paragraph no.4, wherein it is held that there was a demand at the hands of respondent no.2/husband, which was supported by this petition. This cannot be said to be an act of Domestic Violence against the petitioners. In paragraph no.5, the only allegation against the petitioner no.1 is that she was disappointed as the wife delivered a baby girl. In paragraph no.19, allegation is that the wife was harassed at the instance of husband of the present petitioner no.1. However no specific allegations are appearing even in these paragraphs. In paragraph no.21, the allegation is that all the respondents harassed wife. He further submits that the wife has prayed for various reliefs that is share etc. in the property mentioned in the prayer clause of the application by submitting that the properties are joint family properties standing in the name of her husband and both these petitioners and therefore they are necessary party.

3. Considering the argument and the submissions, this Court finds that looking to the complaint, it appears that no specific averments are made against the present petitioners. Though it is submitted that the properties are joint property, which are mentioned in the complaint, this Court finds that wife is always entitled to claim share in the property only to the extent of the property of her husband and not property of others and therefore even this argument need not be accepted. Considering the submission, this Court finds that proceeding against the petitioners would certainly amount to abuse of process of law and thus no case is made out attracting the provisions of D.V. Act against the present petitioners. The petition is therefore allowed in terms of prayer clause 'B'.

[KISHORE C. SANT, J.]

Najeeb.