

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

49 CRIMINAL WRIT PETITION NO.1300 OF 2022

**NARAYAN EKNATH DEVKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Ms.S.S. Renge, Advocate for the petitioners.
Mr.P.M. Kulkarni, APP for the respondent/State.
Mr.Rahul K. Kasat, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 11.04.2023**

PC :-

01. Heard learned Advocates for the parties at length. The petition is taken up for final disposal at the stage of admission by consent of the parties.

02. This petition is filed by husband and other in-laws of respondent No.2 for quashing of proceeding under the Protection of Women from Domestic Violence Act (for short "DV Act") filed by respondent No.2, wife of petitioner No.1. While issuing notice, the petition is withdrawn to the extent of petitioner No.1 and therefore now the petition survives only to the extent of petitioner Nos.2 to 15.

03. Respondent No.2 filed Criminal Misc. Application No.401 of 2020

in the Court of learned JMFC, Georai, seeking relief under the DV Act by making allegations against the petitioners. The learned Advocate for the petitioners points out that respondent Nos.2 and 3 are parents of the husband. Respondent Nos.4 and 5 are grand-father aged 90 years and grand-mother aged 85 years of husband respectively. Petitioner nos.6 and 7 are uncle and aunt of husband, whereas petitioner Nos.8, 10, 12 and 14 are married sisters of the husband and petitioner Nos.9, 11,13 & 15 are husbands of the sisters respectively. Petitioner Nos.4 to 15 are residing separately since long and there is no allegation that they are residing together and this position is accepted. Petitioner Nos.2 and 3 are not residing with respondent No.2, however, vague allegations are made against them. Respondent No.2 had even filed complaint under section 498-A of the Indian Penal Code against all the petitioners. The petitioners, therefore had approached this Court by filing Criminal Application No.2230 of 2020. This Court by judgment and order dated 25.07.2022 was pleased to quash the proceedings to the extent of present petitioner Nos.4 to 15. The learned Advocate for the petitioners submits that in the said judgment this Court has already considered that these petitioners are not residing with respondent No.2. No specific allegations are made against these petitioners in the said complaint. She submits that these

observations are not challenged by respondent No.2. Present petition is filed on exactly same allegations, those were levelled in the complaint under section 498-A of the IPC, which is already quashed. In her support, she relied upon judgment delivered by Full Bench of this Court reported in **2018 (3) Mh.L.J. (Cri) 171 in the case of Nandkishor Pralhad Vyawahare Vs. Mangala w/o. Pratap Bansar.**

04. The learned Advocate for respondent No.2 vehemently opposes the petition. He submits that at least three instances are quoted in the application, wherein the allegations are specifically made against the petitioners. He invites attention of this Court to para 6 of the application, wherein the incident of January, 2020 is quoted that took place immediately after the marriage. These persons taunted the wife saying that she does not know household work and in the marriage they were not properly treated. It is alleged that on that count the petitioners abused her, which caused physical and mental harassment. Second incident quoted is the incident that took place in the month of January, 2020 at Dimakhwadi, when the wife was staying along with these petitioners at the native place. The allegation made is that she was mentally and physically harassed. The third incident quoted is

the incident dated 18.06.2020, wherein it is alleged that in presence of these petitioners the husband of respondent No.2 slapped her and demanded Rs.5 lakhs for purchase of a car. He thus submits that clearly a case is made out against these petitioners. Respondent No.2 has quoted these incidents even in her affidavit-in-reply that is filed on 21.03.2023. The learned Advocate for the respondent further submits that in view of availability of alternative remedy under section 29 of the DV Act, this petition is not maintainable. Thus, he relied upon judgment reported in MANU/MH/1841/2022 in the case of Harsherekha Ajay Garg & Ors. Vs. The State of Maharashtra & Ors. He also relied upon judgment reported in 2022 SCC OnLine Bom 1198 in the case of Aditya Anand Varma & Ors. Vs. State of Maharashtra.

05. On going through the grounds in the petition and the complaint application under the DV Act, it is found that for some time petitioner Nos.2 and 3 were residing with petitioner No.1 and respondent No.2. So a case is made out against them. So far as petitioner Nos.4 to 15 are concerned, it is not a case that they have ever stayed together or shared household. The allegations that they mentally and physically harassed respondent No.2 are concerned, it is seen that there is no specific allegation. It is only stated in the

application that all these petitioners behaved in well manner for initial two days, however, thereafter they started saying that respondent No.2 does not know household work etc. However, no single incident is quoted neither single name is taken of any of the petitioner. So far as incident in the month of January, 2020 is concerned, again no specific name is taken by her. Only vague allegation is that all these petitioners had been to Dimakhwadi and there they mentally and physically harassed respondent No.2. So far as incident dated 18.06.2020 is concerned, though date is given correctly, however said allegation is only against husband saying that he slapped the wife in the presence of all these petitioners. This cannot be said to be an allegation against all the persons. This Court finds that looking to the judgment reported in the case of Nanskishor (Supra), this Court can certainly invoke powers under section 482 of the Cr.PC. and Article 227 of the Constitution of India, where the allegations are found to be baseless and vague. In this case it further needs to be seen that petitioner Nos.4 and 5 are the old aged persons having age of 90 and 85 years. Petitioner Nos.6 and 7 are uncle and aunt of respondent No.2. They can hardly be said to be persons sharing household. So far as respondent Nos.8 to 15 are concerned, it is not disputed that they are married sisters staying with their husbands at different

places. It is also not disputed that they are married even prior to the marriage of respondent No.2 and thus on that count also it cannot be said that they have shared household or there is any domestic relationship.

06. Considering these facts this Court certainly finds that this petition can be entertained directly though alternate remedy is available. Coming to the judgments relied upon by the respondent No.2, this Court finds that there is no exact law laid down in the judgments that a petition cannot be entertained when alternate remedy is provided under the Statute. In the case of Harsherekha (Supra) in para 25, this Court has considered para 52 of the judgment of Nandkishor (Supra). However, it only states that there is alternative remedy under section 29 of the DV Act. In the case of Aditya Anand Varma (Supra), this Court has only considered that there is remedy of appeal provided under section 29 of the DV Act. In this judgment also there is no law laid down because alternate remedy is provided, High Court cannot exercise jurisdiction. On the contrary, in para 13 of the judgment this Court has observed that in exceptional situation jurisdiction can be exercised by relying upon case of Whirlpool Corporation Vs. Registrar of Trade Marks (1998) 8 SCC 1.

07. Thus, considering the above facts and legal position, this Court finds that clearly a case is made out calling for interference at the hands of this Court. Continuation of Criminal M.A. No.401 of 2020 against petitioner Nos.4 to 15, pending before the learned JMFC, Georai, would be clearly an abuse of process of law. Hence, following order :-

ORDER

- i) Criminal Writ Petition is partly allowed.
- ii) Proceeding bearing Cri.M.A. No.401 of 2020 pending before the learned Judicial Magistrate, First Class, Georai is quashed to the extent of petitioner Nos.4 to 15.
- iii) It is expected of the Trial Court to dispose of the proceeding as expeditiously as possible and preferably within six months from today.
- iv) It is further expected to decide the application for interim maintenance within four weeks from today.
- v) Needless to say that the Trial Court shall not be influenced by the observations made in this order.

[KISHORE C. SANT, J.]