

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

949 CRIMINAL WRIT PETITION NO.1372 OF 2022

**PRASHANT DILIP THORAT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Smt. S.K. Doke h/f. Mr.R.A. Shinde and Mr.K.R. Doke, Advocate for the petitioners.

Mrs.D.S. Jape, APP for the respondent/State.

Mr.Kshitij Surve, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 27.01.2023**

PC :-

01. At the outset, learned Advocate for the petitioners seeks leave to withdraw the petition to the extent of petitioner No.1.

02. Leave granted.

03. In this petition, the petitioners have challenged an order of issuance of process in PWDVA No.233 of 2020. Respondent No.2-wife had lodged proceedings praying for various reliefs under the Protection of Women from Domestic Violence Act. Petitioner No.2 is mother-in-law, petitioner No.3

is brother-in-law and petitioner No.4 is wife of brother-in-law of respondent No.2.

04. The facts in short are that the husband of respondent No.2 is serving in Military. Petitioner No.3 is also serving in Military. It was case that while settling the marriage, it was impressed upon father of respondent No.2 that petitioner No.1-husband is Army Officer in the Army. After marriage, she stayed for 4-5 days with the respondents at their native place. Thereafter, husband left for his job and respondent No.2 also left for her ladies hostel for completing her education. After completing the education when respondent No.2 went to join company of the husband, she realized that her husband is only working as a Nike and is not an officer at all. He was addicted to liquor and smoking. She was shocked because of the behaviour of her husband. It is further alleged that her husband went to the house of brother-in-law, who stays at Chandimandir. There some talks took place and for looking for new house, some concern about financial constraint was expressed. Upon that the wife of brother-in-law told respondent that in-fact she wanted her sister to marry with husband of the respondent No.2, however, that did not happen. Thereafter, it is alleged that on Saturday and Sunday, husband and wife went

to Amrutsar. There some talks took place that some amount is required for development of agricultural land at village. It is alleged that there petitioner No.4 told respondent No.2 that money be demanded from her house.

05. On these facts, wife filed proceeding under the provisions of the DV Act. There was also an application for interim maintenance filed by the respondent No.2-wife. The learned JMFC, Aurangabad granted an amount of Rs.5000/- towards interim maintenance.

06. There is also a reference of various litigations pending between the parties like proceedings under section 125 of the Cr.PC. filed by the wife, divorce proceedings filed by the husband, appeal filed against decree of divorce is rejected, second appeal is pending in this Court. Thus, it seems that the dispute between husband and wife has given rise to various proceedings.

07. In this petition, the petitioners have only challenged order of issuance of process in the proceedings under the DV Act. It is main contention that their residence is not common. The concept of house hold is not applicable in this case as the mother-in-law is staying at native place., brother-

in-law and his wife are staying at Amrutsar i.e. place of job; whereas wife and husband are staying at Chandimandir, where husband is having job in the Army.

08. The learned Advocate for the petitioners strenuously submits that looking to the submissions as it is, it is submitted that the petitioners are not sharing common household with the respondent wife. Whenever they have stayed together on occasional visits and this cannot be said to be that they are residing together. At the most the allegations show that the case is made out against petitioner No.1-husband. No case is made out against other petitioners.

09. The learned Advocate for the respondent No.2 also vehemently argued the matter and he submits that against the divorce decree, appeal was filed and after dismissal of the appeal, second appeal is pending. Thus, divorce proceeding has not yet attained finality and therefore the wife had rightly filed complaint under section 494 of the IPC, since the husband has married for second time. He further submitted that from the pleading of the application, it is clear that at least on few occasions, there was harassment at

the hands of the petitioners. Demand of the amount by the wife of the brother-in-law also clearly attracts the provisions of the DV Act and prays for rejection of the petition. The learned Advocate also relies upon judgment delivered by the Hon'ble Supreme Court in Criminal Appeal No.2069 of 2014 in the case of Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and another to submit that the Court has rightly considered that in the incidents the DV Act are clearly made out. Therefore, summons is rightly issued.

10. After hearing the parties and after going through the petition and the documents, it is found that certainly there are allegations against the present petitioners. However, it is not the case that they were staying together. Whenever there is reference of these petitioners, it has clearly come that on those occasions it is husband and respondent No.2 had been to the house of the brother-in-law i.e. petitioner No.3. It does clearly appear that all these persons are residing at their respective places and they are not residing together. Therefore, this Court finds that case is made out to allow this petition to the extent of petitioner Nos.2,3 and 4. Since this petition to the extent of petitioner No.1 is withdrawn, no orders are required in respect of petitioner No.1.

11. The petition is thus allowed in terms of prayer clause (B) to the extent of petitioner Nos.2 to 4. The proceeding of PWDVA No.233 of 2020 pending before the learned JMFC, Aurangabad and the order dated 02.11.2020 are hereby quashed and set aside to the extent of petitioner Nos.2 to 4. Since the proceeding is of the year 2020, the learned Trial Court is requested to expedite the hearing of PWDVA No.233 of 2020 and decide the same preferably within six months from the date of receipt of this order.

[KISHORE C. SANT, J.]