

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

CRIMINAL APPLICATION NO.3292 OF 2022

Ranvir Vikram Udhan
Age: 42 years, Occu. Business
Flat No.201, Marvel Sarento
Panclobroad Near Roshan Seher
Society Banar 411 045

... Applicant

Versus

1. Harshada W/o Ranjitsingh Udhan
Age: 40 years, Occu: Household
Resident of: Paras, Kavish Apartment,
Girijadevi Housing Society, Aurangabad

2. Jyotiraditya S/o Ranjitsingh Udhan
Age: 18 years, Occu: Education
Resident of Paras Kavish Apartment
Girjiadevi Housing Society, Aurangabad
[dismissed vide order dated 03.07.2023]

... Respondent

...

Mr. Akshay Kulkarni h/f Mr. A. A. Yadkikar, Advocate for the
Applicant
Respondent No.1 Served

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 11.09.2023

FINAL ORDER :-

1. By this application filed under Section 482 of the Code of Criminal Procedure, the applicant seeks to quash and set aside the proceedings bearing No. PWDVA 555/2021 filed under the provisions of Section 12, 17, 18, 19, 20, 22 and 23

of the Protection of Women from Domestic Violence Act [hereinafter referred to as 'D.V. Act' for short] pending before the learned Judicial Magistrate, First Class [JMFC], Aurangabad.

2. The respondent No.1 herein married with the brother of the applicant in the year 2003. After marriage, initially she was residing in joint family house at village Kandari, Taluka Ghansawangi, District Jalna. However, In the year 2008, respondent no.1 along with her husband and son shifted her residence to Aurangabad and started residing in a flat, which stands in the name of the applicant. It appears that, because of dispute of respondent no.1 with her husband, she left the company of her husband.
3. The respondent no.1 instituted proceeding bearing PWDVA No. 555/2021 before JMFC, Aurangabad invoking provisions of Sections 12, 17, 18, 19, 20, 22 and 23 of D.V. Act. She made certain allegations against husband and seeks various relief as provisioned under D.V. Act, which includes grant of maintenance and making provision towards residence etc. The applicant has been added as respondent no.3 in the said proceeding.
4. Learned Advocate appearing for the applicant would submit that in the entire application, one-line reference is made to the applicant that applicant also insulted her and mentally tortured. Except this one line allegation, there is nothing against applicant. Even specific no relief is claimed against the applicant. He would therefore submit that the

proceedings against the applicant is *malafide*. Further, in absence of domestic relationship between applicant and respondent no.1, the proceeding itself would not be maintainable against applicant. He would submit that powers under Section 482 of Cr.PC can be invoked to quash baseless proceedings initiated against relatives of Husband under D.V. Act.

5. Although notice of this proceeding has been duly served upon respondent no.1, none appears for her. The applicant has not pressed this application against respondent no.2.
6. Perusal of the application filed before JMFC invoking the provisions of D.V. Act shows that in entire application, the reference as regards to the present applicant is made only once in Paragraph No.7, wherein, it is stipulated that, non-applicant nos.2 and 3 abuses the applicant and insults her so also tortures mentally and physically. If the aforesaid omnibus statement is considered along with other part of pleadings in the D.V. Application, it is apparent that, respondent no.1 was residing along with her husband at Aurangabad since 2008. She was never in the shared accommodation with the applicant. *Prima facie*, there is no domestic relationship between the applicant and respondent no.1. The applicant is residing at Ghansawangi, District Jalna and respondent no.1 resides at Aurangabad. In this background, the omnibus allegation against the applicant that he ill-treats respondent no.2 is not believable. Pertinently, no relief is claimed against the applicant in the prayer clauses of

domestic violence application. At this stage, it would be appropriate to refer recent pronouncements by this Court in the subject matter.

7. This Court, in Criminal Application No.312/2023 [Dhananjay Mohan Zombade and Ors. Vs. Prachi] decided on 18/07/2023, after taking survey of the various judgments in the subject matter, concluded that where proceeding is abuse of process of Court in that case, the provisions of Section 482 of Cr.PC can be invoked. It is also observed that if the proceedings is palpably not tenable, shall not be allowed to continue. It is further observed that if the pleadings in the application do not show that the applicant lived or living with respondent together as a member of joint family, the proceedings under D.V. Act cannot be entertained for want of domestic relationship. A similar view is also taken by this Court in the case of Ganesh Vs. Nikita and Ors. in Criminal Application (APL) No.280/2021 decided on 27/07/2021. It is observed that Section 2(g) of D.V. Act defines domestic violence. If the complaint under the provisions of D.V. Act is filed against the persons who is not in domestic relationship, it would not be maintainable. It is further observed that in absence of domestic relationship and living in shared household, the provisions of D.V. Act cannot be invoked.

Similarly, the Supreme Court of India, in the matter of **Shyamlal Devda and Ors. Vs. Parimala**¹, observed that in absence of specific allegations against the respondent, the criminal case of domestic violence cannot be continued and is liable to be quashed and set aside.

¹ (2021) 1 SCC 414

8. If the aforesaid position of law is applied in the facts of the present case, it would be evident that, no proceedings can be continued against the applicant for want of requisite pleadings in the domestic violence application. In entire application , there is no attribution that the applicant ever stayed with respondent no.1 in a shared accommodation or he had domestic relationship within the meaning of Section 2 (g) of D.V. Act. Consequently, the applicant cannot be termed as respondent within the meaning of Section 2(q) of D.V Act, which mandates that the respondent must be a person in a domestic relationship with the aggrieved person. Even referring to the prayers in the application, it can be gathered that, no relief is claimed against the applicant by respondent no.2
9. In that view of the matter, Criminal Application is allowed. The impugned proceeding/complaint bearing PAWDVA No.555/2021 pending before the Judicial Magistrate, First Class, Aurangabad under Sections 12, 17, 18, 19, 20, 22 and 23 of D.V. Act stands quashed and set aside qua applicant.

[S. G. CHAPALGAONKAR]
JUDGE