

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1516 OF 2022

1. Pankaj Motilal Baviskar
2. Motilal Bhimrao Baviskar
3. Alka Motilal Baviskar
4. Nitin Motilal Patil
5. Yogita Sharad Patil ...Petitioners

Versus

1. The State of Maharashtra
2. Pavllavi Pankaj Baviskar ...Respondents

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Mr. A. D. Sonar, Advocate for Petitioners.
Mr. S. N. Morampalle, APP for Respondent No. 1.
Mr. V. B. Patil, Advocate for Respondent No. 2.

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CORAM : R.M. JOSHI, J

DATE : AUGUST 17, 2023

PER COURT :

1. At the outset, learned Counsel for the Petitioners, on instructions, seeks withdrawal of the Petition *qua* Petitioner Nos. 1 to 3.

2. Petition stands dismissed *qua* Petitioner Nos. 1 to 3.

3. This Petition is filed under Articles 226 and 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure for quashment of the

complaint bearing Criminal Misc. Application No. 290/2022 dated 21.03.2022 filed by the Respondent No. 2 against Petitioners for the offences punishable under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short '**D.V. Act**').

4. Learned Counsel for the Petitioners submits that as far as Petitioner Nos. 4 and 5 are concerned, they are brother-in-law and sister-in-law of Respondent No. 2 respectively. It is the contention of learned Counsel for the Petitioners that they never stayed in a joint family and as such, they does not share domestic relationship with Respondent No. 2. Hence, application under domestic violence is not tenable against them.

5. Learned APP and learned Counsel for Respondent No. 2 opposed the said submissions by referring to the allegations made against them in the application filed before JMFC. It is their contention that having regard to the reliefs prayed by the Respondent, these Petitioners also needs to be continued as Respondent in the said proceedings.

6. Perusal of the application filed before learned JMFC also does not specifically states that Petitioner Nos. 4 and 5 were sharing common household. Section 2(1) of the D.V. Act defines 'aggrieved person'. Section 2(f) defines 'domestic relationship' which means a relationship between two person who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage or living together as a joint family. There are no specific allegations against Petitioner Nos. 4 and 5 as they were residing together as a joint family. Thus, application filed under the provisions of D.V. Act is not maintainable as far as Petitioner Nos. 4 and 5 are concerned. Domestic relationship is *sine qua non* for maintaining proceedings under the D.V. Act. It is immaterial as to what relief is prayed by the Respondent. Since, the maintainability of the application depends on the domestic relationship between aggrieved person and Respondent No. 2, absence thereof does not entitle her to maintain the said proceedings against Petitioner Nos. 4 and 5.

7. In view of above, Petition stands allowed in terms of prayer clause 'B' qua Petitioner Nos. 4 and 5.

(R.M. JOSHI, J.)

Malani