

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

CRIMINAL APPLICATION NO. 3848 OF 2022

Minabai Shivkumar Shete
and others

.. Applicants

Versus

The State of Maharashtra and another

.. Respondents

Smt. Sushma Tukaram Jadhav, Advocate for the Applicants.

Smt. P. V. Diggikar, APP for Respondent No. 1.

Mr. Mohit R. Deshmukh, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 24th April, 2023.

Date on which order pronounced : 07th June, 2023.

ORDER :-

. This application is filed by all the in laws of respondent No. 2 seeking relief of quashing of proceeding i.e. MCA No. 950/2021 on the ground that no case is made out against them to proceed with the said application. The proceeding is filed by respondent No. 2 against her husband and these applicants in the Court of learned C.J.M., Beed seeking various reliefs under the Protection of Women from Domestic Violence Act (for short "D.V. Act").

2. The facts giving rise to the present application are that, the respondent No. 2 married with Manoj Shivkumar Shete on 29.12.2018. She alleged that after the marriage her husband used to beat her by saying that he was not willing to marry with respondent No. 2, however, because of the force of his family members he got married with her. As far as these applicants are concerned, the allegations made are that at the instigation of these applicants the husband ill treated the respondent No. 2. The case of the applicants is that, on the very same allegations the respondent No. 2 had lodged FIR in the Police Station, Pimpalner for the offences punishable under Sections 498-A, 323, 504 of the Indian Penal Code (for short "I.P.C."). It is further case of the applicants that, against the complaint filed under Section 498-A of the I.P.C. they had approached this Court by filing Criminal Application No. 1277/2021. The Division Bench of this Court partly allowed the said application and quashed the proceeding filed under Section 498-A of the I.P.C. to the extent of the present applicants recording that no offence is attracted against the present applicants. The applicants have therefore contended that on the very same allegations now the proceeding under the D.V. Act is filed. Looking to the prayers in the said application it is seen that no relief as such is prayed against the present applicants.

3. Learned advocate for the applicants in view of the above facts submits that, looking to the averments in the application, no case is made out to proceed against the present applicants. To proceed further with the application in the learned Trial Court would be clearly an abuse of process of law. This Court in earlier case under Section 498-A of the I.P.C. has come to a conclusion that no offence is made out against the applicants. Now, the application under the D. V. Act is filed on the similar allegations. This application is filed only after filing of Hindu Marriage Petition for restitution of conjugal rights by the husband of the respondent No. 2 and prayed for quashing of the application pending before the learned Trial Court.

4. Learned advocate for respondent No. 2 submits that, this application filed under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") itself is not maintainable as the proceeding under the D. V. Act is in the nature of civil proceeding. He submits that the reliefs provided in the sections under chapter 4 are all civil in nature. His further submission is that, in view of Section 26 of the D. V. Act all such reliefs are also available in the proceedings pending before the Civil Court or the Family Court and thus, it is clear that the reliefs are in the nature of civil rights. Section 28 though provides that the proceeding be governed by Code of Criminal Procedure, but it is only

for limited reliefs. In this case, the wife has prayed for the reliefs of protection order, rent and for compensation and therefore, powers need not be exercised under Section 482 of the Cr.PC.

5. Learned advocate for respondent No. 2 in his support relied upon the judgment of the Hon'ble Apex Court in the case of **Kamatchi Vs. Lakshmi Narayanan** reported in **2022 SCC OnLine SC 446**. The Hon'ble Apex Court in the said case had considered the question of limitation under Section 468 of the Cr.PC. and held that the said is applicable and in that view of the matter that the limitation would arise only after breach of an order passed under Section 12 of the D. V. Act and in that view of the matter it is held that notice under Section 12 is only to call for the respondents in terms of the statute. Learned advocate thus submits that the proceeding cannot be said to be criminal in nature as the Court instead of issuing process issued notice only calling for respondent as to why application should not be allowed.

6. Learned advocate for respondent No. 2 further relied upon the judgment of this Court in the case of **Sukumar Pawanlal Gandhi and another Vs. Bhakti Sushil Gandhi and others** reported in **2016 SCC OnLine Bom 12942**. This Court had considered the question as to whether the High Court can exercise the power under Section 482 of the Cr.PC. for quashing of an application filed under Sub-Section (1) of

Section 12 of the D. V. Act. The Division Bench of this Court answered that, the powers under Section 482 of the Cr.P.C. can always be exercised for quashing the prosecution under Section 31 or 33 of the D. V. Act.

7. Learned advocate further relied upon the judgment of the Full Bench of this Court in the case of Nandkishor Pralhad Vyawahare Vs. Mangala Pratap Bansar reported in 2018 (3) Mh.L.J. (Cri.) (F.B.) 171. He submits that, the Full Bench of this Court held that the power given to the Court under Section 28 (2) of the D.V. Act is to provide a powerful tool in the hands of the Court to provide effective and speedy remedy to the aggrieved person. In view of the discussion it is held that, it is not possible to agree with the view taken by the Division Bench of the Court in the case of Sukumar Pawanlal Gandhi and another (supra) and declared it to be incorrect view. This Court has clearly held that, making Section 482 of the Cr.P.C. as not applicable may amount to doing harm to plain and clear language of Section 28 of the D.V. Act. It is further held that, power under Section 482 of the Cr.P.C. is not just to quash the proceedings, but is to be exercised for specific as well as broader purposes and generally to secure the ends of justice.

8. Learned advocate relied upon the order passed by the Hon'ble Apex Court in the case of **Hemant Namdeorao Nagrale Vs. Pratima @ Rani Hemant Nagrale and anr.** in Special Leave to Appeal (Criminal) No. 2071/2020.

9. This Court finds that there is nothing to hold that powers under Section 482 of the Cr.PC. are not available for quashing of the proceedings under the D. V. Act.

10. Learned advocate further relied upon the judgment of the Full Bench of Madras High Court in the case of **Arul Daniel and others Vs. Suganya** reported in **2022 SCC OnLine Mad 5435**. In this judgment a specific question was framed as to whether the proceeding under Section 12 of the D. V. Act can be challenged under Article 227 of the Constitution of India or under Section 482 of the Cr.PC. It is answered that the powers under Section 482 of the Cr.PC. cannot be exercised to quash the proceedings under Section 12 of the D. V. Act.

11. This Court has to consider the judgment of the Full Bench of this Court in the case of **Nandkishor Pralhad Vyawahare** (supra) wherein, paragraph No. 58 reads as below :

58. A plain reading of Section 482 of Criminal Procedure Code, which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific

as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only the respondent-man but also the aggrieved person-woman may feel like approaching the High Court to give effect to any order or to prevent abuse of the process of Court or to secure ends of justice. This would show that this power is capable of being used by either of the parties and not just by the respondent seeking quashing of the proceedings under Section 12 of the D.V. Act. If this power is removed from Section 28 of the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.

12. Learned advocate for respondent No. 2 could not produce any specific judgment except the judgment of the Madras High Court to show that the powers under Section 482 of the Cr.PC. cannot be invoked for quashing of the proceedings under the D. V. Act. In view of Full Bench judgment of our Court in the case of Nandkishor Pralhad Vyawahare (supra), this Court finds that, there is no merit in the submission that the application under Section 482 of the Cr.PC. is not maintainable. The learned advocate could not point out any judgment by the Hon'ble Apex Court taking view that powers of Section 482 of the Cr.PC. cannot be used to quash the proceeding under D. V. Act. This Court holds that the application under Section 482 of the Cr.PC.

can very well be entertained by this Court to quash the proceedings under the D. V. Act if the continuance of the proceedings is found to be abuse of process of law.

13. Now, coming to the case in hand, this Court finds that the allegations against the present applicants are vague. No specific allegation is pointed out by the respondent No. 2 showing that a case is made out even against the present applicants. This Court has already quashed the proceeding filed under Section 498-A of the I.P.C. filed by respondent No. 2 on the similar allegations. This Court finds that, the continuance of the proceeding before the learned Trial Court clearly amounts to abuse of process of law and for this reason this Court finds that the application deserves to be allowed.

14. In the result, the criminal application is allowed. The proceeding MCA No. 950/2021 pending before the learned C.J.M., Beed is quashed to the extent of the applicants.

15. The criminal application is disposed off accordingly.

(KISHORE C. SANT, J.)

PS.B.