

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

CRIMINAL WRIT PETITION NO. 1703 OF 2022

1. Kalpesh Ramesh Kathar,
Age 31 years, Occ. Pvt. Service,
R/o. C/o. Rahul Viaijinathseth Kathar,
Matoshri Nagar, Lane No.3,
Garkheda Parisar, Aurangabad
(Husband of complainant)
2. Yamunabai Ramesh Kathar,
Age 60 years, Occ. Household,
R/o. Palshi, Tq. Soyegaon,
Dist. Aurangabad.
(Mother-in-law of complainant)
3. Nilesh S/o. Ramesh Kathar,
Age 35 years, Occ. Private Service,
R/o. Palshi, Tq. Soyegaon,
Dist. Aurangabad.
(Brother-in-law of complainant)
4. Kirti w/o. Rahul Kathar,
Age 29 years, Occ. Household,
R/o. Matoshri Nagar, Lane No.3,
Garkheda Parisar, Aurangabad.
(Sister-in-law of complainant)

.. PETITIONERS.

VERSUS

Suvarna w/o. Kalpesh Kathar,
Age 25 years, Occ. Household,
R/o. C/o. Murlidhar Dattatraya Kathar
(Wani), Tarkheda (Bk), Tq. Pachora,
Dist. Jalgaon
(wife of petitioner No.1)

.. RESPONDENT.

Mr. A.L. Kanade, Advocate for petitioners,
Mr. Madhav K. Jadhav, Advocate for respondent.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 1st SEPTEMBER, 2023

JUDGMENT :-

The petitioners are seeking to quash and set aside the proceeding bearing PWDVA Application No.61 of 2022 pending before the Judicial Magistrate First Class, Pachora, Dist. Jalgaon, under the provisions of Sections 12, 18, 19 and 22 of the Protection of Women From Domestic Violence Act, 2015 (hereinafter referred to as “the D.V. Act” for the sake of brevity). The respondent herein has instituted a complaint under the D.V. Act against the petitioners seeking various reliefs under Section 12, 18, 19, 20 and 22 of the D.V. Act. She alleges that she was married to petitioner No.1 Kalpesh in the year 2019. Thereafter, she went to reside in the permanent residence of petitioner Nos. 2 to 4 at village Mauje Palshi, where, she resided for one year in the company of other family members. However, she was tortured for one or the other count. It is further alleged that the petitioner No.1 was serving at Surat. He took her to Surat. However, on telephonic instructions of petitioner Nos. 2 to 4, she was harassed. It is further alleged that due to constant mis-behaviour of the petitioner and demand of Rs. 2 Lakhs, she was required to leave the company of petitioner No.1. Then, she came back to her parental home. It is further alleged that attempts for conciliation were made. Those also failed. In this background the respondent No.1 approached the court of JMFC, Pachora for aforesaid reliefs.

3. The learned counsel for petitioners would submit that the petition, to the extent of petitioner No.1 – husband is already not pressed. So far as petitioner Nos. 2 to 4 are concerned, they are separately residing. Admittedly, the petitioner No.1 is in service in the State of Gujarat and the respondent is residing with him. The petitioner Nos. 2 and 3 are residing at Palshi, Taluka Soyegaon, Dist. Aurangabad. He would submit that there is no domestic relationship between the petitioners and respondent. He would further submit that it is well settled that the provisions of Section 482 of Cr.P.C. are applicable even in the D.V. Act proceedings. In support of such contention, he relies on the judgment of this Court in Criminal Application No. 312 of 2023 (Gojarbai Mohan Zombade and others Vs. Prachi Dhananjay Zombade). He would further submit that similar relief can be granted to petitioner Nos. 2 to 4, as there is no domestic relationship between them and the respondent, as defined under the D.V. Act.

4. The learned counsel for the respondent vehemently opposes the prayer by inviting attention to the averments in the application and submits that the application is filed before the Judicial Magistrate First Class, Pachora. He would submit that initially, respondent herein stayed with the petitioners at village Palshi for one month. At their instigation, the husband used to insult her and driven her out of the house. In that view of the matter, he would submit that there is sufficient reason to continue the proceeding against the petitioner Nos. 2 to 4. He would further submit that already, recording of evidence has started before the Magistrate. At this stage, no interference is required in this criminal writ petition.

5. Having considered the submissions advanced, it is apparent that the respondent herein is seeking reliefs mainly against the husband. It is a matter of record that the respondent resided with her husband at Surat in the State of Gujarat. There is nothing to indicate that the respondent resided alongwith the petitioner Nos. 2 to 4. As rightly pointed out on behalf of the petitioner, petitioner No.2 Sumanbai is residing at Palshi, Taluka Soyegaon. Similarly, petitioner No.3 is in private service and residing at Palshi. Petitioner No.4 is a married sister-in-law of respondent and she is also residing at Garkheda Parisar at Aurangabad. It is apparent that the respondent has no domestic relationship with petitioner Nos. 2 to 4. Even going by the averments of her application, no such relationship can be established. The reliefs claimed in the application before the learned JMFC can be considered only against the husband. In that view of the matter, the writ petition deserves to be allowed. Hence, the following order :-

: O R D E R :

[I] Criminal writ petition is allowed.

[ii] Proceeding bearing PWDVA Application No. 61 of 2022 pending before the learned JMFC, Pachora Dist. Jalgaon under the provisions of Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 is hereby quashed and set aside as against the petitioner Nos. 2 to 4 herein.

[ii] Criminal writ petition stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-