



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

WRIT PETITION NO.1724 OF 2022

Anita W/o Sandip Tarlekar,
Age: 45 years, Occu: Service,
R/o. S-2, First Floor, Shivam Building,
Behind Nav Maharashtra School, Gangva Chowk
Pimpri Gaon, Pimpri Chinchwad,
Maharashtra-411017. ..Petitioner

Versus

1. The State of Maharashtra
2. Mahadevi W/o Manish Mandge,
Age 29 years, Occ: Household,
R/o. Bhusani, Tal & Diust. Latur,
Current Address: Rajkumar Naste,
R/o. Helamb Tal-Devni,
Dist. Latur. 413519. ..Respondents

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Mr. S. R. Zambare, Advocate for the Petitioner.
Mr. S. B. Narwade, APP for Respondents-State.
Mr. S. V. Gundre, Advocate for Respondents No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th OCTOBER, 2023.**

PER COURT:-

1. The petitioner seeks quashment of the proceeding bearing Criminal Miscellaneous Application (P.W.D.V.A.) No.143/2022 filed by respondent no.2 before Judicial Magistrate First Class, Latur invoking provisions under Sections 12, 18, 19, 20, 21 and 22 of the Protection of Women From Domestic Violence Act, 2005 (for short "D.V. Act"). The Writ Petition is taken up for final hearing at the stage of admission by consent of the parties.

2. The respondent no.2 approached Judicial Magistrate First Class, Latur under Section 12 of the D.V. Act alleging that she married with Manish Mandge on 17.12.2020 as per Hindu Rites and Customs. She resided in the matrimonial home situated at Pimpri Gaon. She was treated well for three months. Thereafter, she was tortured on account of trifle reasons and demand of the amount. Lastly, she was driven out in the month of September-2021. The efforts were made to reconcile the dispute, however failed because of persistent demand of money by in-laws. The petitioner is added as respondent no.3 in the aforesaid application. The learned Magistrate issued the process against all three respondents including petitioner. The respondent no.2 claimed the protection order under Section 18, resident order under Section 19 and compensation and maintenance order under Section 20 against in-laws.

3. Mr. Zambare, learned Advocate appearing for the petitioner would submit that the petitioner is maternal Aunt of the husband of respondent no.2. She never shared household with respondent no.2 and her family. No domestic relationship is asserted between petitioner and respondent no.2. He would submit that the petitioner resides at different place and unconcerned with the family affairs of respondent no.2 and her family. The petitioner is a Teacher at Mahatma Phule Mahavidyalaya. The allegations made out in D. V. complaint are vague and omnibus. The learned Magistrate without applying mind to the contents of the complaint issued process. He would, therefore, urge to quash the proceedings as against the petitioner.

4. Mr. Gundre, learned Advocate appearing for respondent no.2 invites attention of this Court to the contents of

the D.V. complaint to contend that respondent nos.1 to 3 have mentally and physically tortured the petitioner and persistently raised demand of Rs.10,00,000/-. The domestic violence on the part of each of the respondents can be proved after recording of evidence. As such, supports the order of issuance of process.

5. Having considered submissions advanced, it is apposite to refer to the scheme of Domestic Violence Act and terminology defined thereunder. It can be gathered that Section 12 of the D.V. Act provides for remedy to the person aggrieved of domestic violence out of domestic relationship during her residence in a shared household. At this stage, it would be appropriate to refer to the relevant definition under D.V. Act:

“2(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

2(f) "domestic relationship" means a relationship between two persons 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, adoption or are family members living together as a joint family;

2(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in

respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;”

6. The definition of the domestic relationship requires that person must live or have lived at any point of time together in a shared household being relative by consanguinity, marriage or relationship in the nature of marriage or family member living as a joint family. Further definition of shared household clarifies that the person aggrieved lives or has lived in a domestic relationship with respondent in that household. In this background, the complaint under Section 12 of the D.V. Act can be instituted by the person who has been subjected to domestic violence by person who had any point of time shared household with the applicant.

7. Turning back to the factual aspects of the present matter, particularly pleadings in the complaint, it can be gathered that omnibus stipulation is made against respondent nos.1 to 3 that husband, mother-in-law and Aunt have tortured mentally and physically to the complainant on account that she is jobless. The second contention in the complaint is that respondent nos.1 to 3 have raised the demand of Rs.10,00,000/- for purchasing house. Apparently, the petitioner is not family member of the complainant and her husband. As can be seen from the title clause, the place of residence of the petitioner is different than the complainant or her husband. In entire complaint there is no

stipulation to suggest that the petitioner at any point of time resided together with the complainant or her husband.

8. At this stage, the reference can be given to the law laid down by the Supreme Court of India in the matter of ***Satish Chander Ahuja Vs. Sneha Ahuja***¹, wherein it is observed that the words “lives or at any stage has lived in the domestic relationship” have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household. The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. Further in case of ***Shyamlal Devda and others Vs. Parimala***², the complaint was made against 14 persons, wherein Supreme Court of India observed that in absence of specific allegations as to how other relatives have caused domestic violence and specific pleadings regarding entitlement of relief from the respondents, *prima facie* case cannot be made out against respondents and the criminal case of domestic violence cannot be continued. Similar view is taken by this Court in the case of ***Ganesh Badri Rathod Vs. Nikita Ganesh Rathod***³, ***Vaibhav Dattuji Jagtap Vs. Kavita Prakashrao Jagtap***⁴, ***Baburao Dharmaji Shinde Vs. Aasha Sanket Powar***⁵ and ***Suresh Bajarang Zarekar Vs. State of Maharashtra***⁶. Applying the aforesaid principles of law in the facts of the present case, it is evident that the petitioner is separately residing and never had shared household. *Prima facie*,

1 AIR 2020 SC 5397.

2 AIR 2020 SC 762.

3 2022 (1) ABR (CRI) 567.

4 AIR ONLINE 2021 BOM 1300.

5 2021 (1) ABR (CRI) 483.

6 (2018) 4 BOMCR (CRI) 810.

it cannot be presumed that there was domestic relationship of the petitioner with respondent no.2. The pleadings in the complaint nowhere suggests particulars of domestic violence as against the petitioner. Even the complaint sans requisite contents to show how reliefs claimed can be granted against the petitioner. Apparently, the petitioner has been added as respondent in the complaint without requisite pleadings and cause of action. Resultantly, the continuation of the proceeding against the petitioner would be sheer abuse of process of law. Even otherwise, the complaint filed under Section 12 of the D.V. Act is not maintainable against the petitioner for want of requisite averment in the complaint. Resultantly, Writ Petition succeeds. Hence, following order:

ORDER

- a. Criminal Writ Petition is allowed.
- b. The proceeding initiated by respondent no.2 in Criminal Miscellaneous Application (P.W.D.V.A.) No.143/2022 pending before learned Judicial Magistrate First Class, Latur under Section 12 of the D.V. Act is quashed and set aside to the extent of the petitioner.
- c. Criminal Writ Petition is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE