

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 43 OF 2023**

Shrinath Vijay Rao	... Petitioner
<i>Versus</i>	
Shraddha Shrinath Rao	...Respondent

Mr. Athnain Naik, Advocate with Ms. Krupa Naik, Advocate
for the Petitioner.

Ms. Asha Desai, Advocate with Ms. Natasha Volvoikar,
Advocate for the Respondent.

CORAM: PRAKASH D. NAIK, J
DATED: 23rd AUGUST 2023

ORAL ORDER

1. Heard learned Counsel for the Petitioner and the Respondent.
2. The petitioner has invoked the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), challenging the proceedings initiated by Respondent under the provisions of The Protection of Women from Domestic Violence Act, 2005, (Domestic Violence Act, for short).
3. The Petitioner and the Respondent are husband and wife. The marriage between them was registered on 26.11.2007. Out of their wedlock, child was born to them on 10.02.2011. However, subsequently, there were differences between them. The Respondent initiated the proceedings under the Domestic Violence Act.

4. The Respondent's contention in the proceedings initiated by her under the Domestic Violence Act is that there was verbal and emotional abuse to the Respondent by the Petitioner. The Petitioner was having fake accounts on social media and on Gmail. He was indulging in online chatting with women. He was confronted by Respondent. He used to lose his temper and get aggressive. She was assaulted. She was forced to move out of the house. The Petitioner used to drink alcohol, stay out every night with a lady with whom he was involved and forcing her to leave the matrimonial house. He was having extra marital affairs. He used to verbally abuse the Respondent using objectionable words. The Petitioner was insisting that he wants to marry another lady. The Respondent filed a Matrimonial Petition. Although attempts were made to settle the dispute, there was no settlement. That the Petitioner was forcing the Respondent to sign the Consent Terms and was threatening her that he will stop paying maintenance amount for minor daughter. The Petitioner had agreed for providing independent accommodation but nothing has worked out. The learned Civil Judge Senior Division has granted maintenance to the Respondent and her daughter. The Respondent is living with her parents since 06.09.2016.

5. Learned Advocate for the Petitioner submitted that complaint filed by the Respondent invoking the provisions of Domestic Violence Act, is false. The averments made therein are concocted and

afterthought. There are no instances of Domestic Violence Act. The impugned proceedings are initiated as a counterblast to the Matrimonial Proceedings initiated by the Petitioner. The Respondent in the complaint filed before the Lower Court under the Domestic Violence Act has stated that she has left the matrimonial home on 06.09.2016. The proceedings are initiated belatedly in 2020. The complaint of Respondent mentions that there were attempts to settle the dispute and the Consent Terms were to be finalized. Since the settlement could not be arrived at, the proceedings under Domestic Violence Act were initiated. Thus, the proceedings were initiated only after the failure of purported settlement between the parties. The Respondent had filed a police complaint at Pune. The Petitioner had sent a notice for restitution. Reply was given by the Respondent. The Petitioner filed the Petition for divorce. Maintenance has been granted to the Respondent. Two Consent Terms were executed between the parties. The Respondent had left matrimonial home in 2016 and the complaint under the Domestic Violence Act was filed on 16.07.2020. It is an abuse of process of law to initiate such proceedings. Hence the proceedings may be quashed.

6. Learned Advocate for Respondent submitted that the complaint filed by the Respondent provides specific instances of domestic violence. The proceedings cannot be quashed on the grounds urged by the Petitioner. Although the Respondent has left

the matrimonial home, the instances of domestic violence which had occurred while she was living in a shared household prior to the date of leaving matrimonial house, cannot be wiped out. Although maintenance has been granted to the Respondent, she is entitled for several other reliefs which can be claimed by her in the proceedings under the Domestic Violence Act. Mere reference of the execution of Consent Terms and failure to arrive at the settlement in the complaint filed by Respondent would not be ground for quashing the proceedings and the Petition may be dismissed.

7. The Respondent filed the complaint under Section 26 of the Domestic Violence Act for reliefs under Sections 18, 19, 20, 21 and 22 of the Domestic Violence Act. The Petitioner filed Matrimonial Petition before the Court of Civil Judge for dissolution of marriage. The Respondent had filed application for interim maintenance which was allowed by order dated 03.04.2018. Draft Consent Terms were filed by parties. Apparently, there was no settlement. Assuming that the Petitioner had initiated the matrimonial proceedings which are pending before the competent Court and that Consent Terms were attempted to be finalized between the parties, which they did not succeed, is no ground for quashing the proceedings. In the complaint filed by Respondent, it is indeed stated by her that she had left the matrimonial home in 2016. It is also apparent that she had initiated proceedings under the Domestic Violence Act in 2020. When the

complaint refers to instances of violence and abuse at this stage the proceedings cannot be dropped on aforesaid grounds. The Respondent has mentioned the ill treatment meted out to her by the Petitioner including assault.

8. *Prima facie*, there are averments in the complaint filed by Respondent under the Domestic Violence Act which cannot be discarded at this stage. The Petitioner had preferred an application before the learned Judicial Magistrate First Class, Panaji, which was purportedly an application for quashing the proceedings. The said application was rejected by Order dated 11.05.2022. The Petitioner has surprisingly contended before the learned Magistrate that the proceedings be quashed under Section 482 of Cr.P.C. The learned Magistrate has rightly held that the said Court had no inherent powers under Section 482 of Cr.P.C. The appeal preferred by the Petitioner challenging the aforesaid Order has been dismissed by the learned Additional Sessions Judge vide Order dated 24.01.2023. There is no infirmity in the said Orders. The Magistrate has no powers to invoke Section 482 of Cr.P.C.

9. No case is made out for quashing the impugned proceedings. Hence, the following order :

ORDER

Criminal Writ Petition No. 43 of 2023 stands rejected.

Disposed off.

PRAKASH D. NAIK, J

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