

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.114 OF 2016

Kajal Ayesha Azmi & Ors. Petitioners
versus
The State of Maharashtra & Anr. Respondents
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- Ms. Juhi Valia i/b. Jayakar & Partners, Advocate for Petitioners.
- Mr. Arfan Sait, APP for the State/Respondent No.1.
- Mr. Dinesh P. Guchiya, Advocate for Respondent No.2

CORAM : SARANG V. KOTWAL, J.
DATE : 07th JULY, 2023

P.C. :

1. Heard Ms. Juhi Valia, learned counsel for the Petitioners, Mr. Dinesh Guchiya, learned counsel for the Respondent No.2 and Mr. Arfan Sait, learned APP for the State.
2. Rule. Rule is made returnable forthwith with consent of the parties.
3. The Petitioners have challenged the order dated 30/11/2015 passed by the Metropolitan Magistrate, 19th Court, Andheri, in the proceeding bearing No.289/DV/2015.

4. The Respondent No.2 herein is the original complainant. The Petitioner Nos.1 to 8 are the original Respondent Nos.4 to 11 in the proceeding before the learned Magistrate. The complaint was filed u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V. Act'), praying for reliefs u/s 18, 19, 20, 21 and 22 of the said Act. Learned Magistrate on 30/11/2015 passed an order calling upon say of the protection officer and directed issuance of notice to all the Respondents including the present Petitioners. The said order is under challenge in this Petition.

5. Learned counsel for the Petitioners submitted that the main allegations are against the Respondent Nos.1, 2 and 3 who are husband and parents-in-law of the complainant. The Petitioners before this Court are either the distant relatives or are sisters of the husband. There are absolutely no allegations against them attracting the provisions of the D.V. Act. She submitted that no relief is claimed against them and therefore

continuation of proceeding against them will be an abuse of process of law. She therefore submitted that the impugned order as far as Petitioners are concerned, be set aside.

6. Learned counsel for the Respondent No.2-original complainant submitted that though there are main allegations against the husband and his parents, there are some references to some of the Petitioners in the ground (n) and ground (c) of her complaint. Therefore, at this stage, there is some material against the Petitioners. He further submitted that the allegations are that the husband (original Respondent No.1) was already married and the complainant was not told about this when the marriage of the complainant and the original Respondent No.1 was performed. Hence Petitioners herein were also responsible.

7. I have considered these submissions. In the prayer of the complaint filed by the complainant almost all the prayers are for claiming relief from the husband. There is only prayer clause which seeks protection u/s 18 of the said act. However in the

entire complaint there is nothing to show how the Petitioners are likely to commit any act which can be described as domestic violence.

8. Apart from that I have perused the entire complaint. The relationship between the complainant and the Petitioners is described in paragraph No.2 of the complaint. For the sake of convenience, the Petitioners herein are referred to by their original status in the trial proceedings. The Respondent No.4 was the complainant's sister-in-law. The Respondent No.5 was another sister-in-law. The Respondent No.6 was husband of the Respondent No.5. The Respondent No.7 was sister of the complainant's father-in-law. The Respondent No.8 was sister of the complainant's mother-in-law. The Respondent No.9 was sister of the complainant's father-in-law. The Respondent No.10 was brother of the complainant's father-in-law and the Respondent No.11 was wife of the father-in-law's brother. These original Respondents are the Petitioners before this Court. As can be seen that some of the Petitioners are the distant relatives.

9. In the complaint, the main allegations are against the husband and his parents. Undoubtedly, the allegations against the husband are quite serious. But since the husband and the Parents are not before the Court, I am not going into those allegations. As far as the present Petitioners are concerned, there is vague reference to the Petitioner Vidya and Vandana and there is a vague reference that they also tortured the complainant. In another paragraph in ground (n) there is reference to the Petitioner Kajal and it is alleged that she threw the complainant out of her matrimonial house. Again this is a vague allegation without any details. Thus, there appears to be an attempt to rope in as many family members of the husband as possible. All the allegations against these Petitioners are very vague. From the reading of the complaint it does appear that they are roped in unnecessarily. The main proceedings are pending for quite some time since the year 2016 without much progress. All these Petitioners are not necessary parties as Respondents in the said proceedings. The allegations against the husband and his

parents can be decided during these proceedings. But continuation of proceeding against the present Petitioners will be an abuse of process of law. Therefore, I am inclined to quash and set aside the impugned order.

10. Hence, the following order :

ORDER

- (i) The Petition is allowed.
- (ii) Rule is made absolute in terms of prayer clause (A), qua the Petitioners only, which reads thus;

“That this Hon’ble Court be pleased to quash and set aside the Application and Issue of Notice order dated 30.11.2015 issued in Application bearing No.289/DV/2015 pending on the file of the Learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai.”

It is made clear that the proceedings will continue against the original Respondent Nos.1 to 3 before the learned Magistrate.

(iii) The Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)