

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.149 OF 2022**

Santosh Maikulal Kanojia & Anr.	]	..	Petitioners
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Vijay Kurlle for the Petitioners.
Ms.Anamika Malhotra, APP for the State.
Ms.C.S. Gongane for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 5th April, 2023

P.C.

1] Heard the learned counsel for the Petitioners, the learned counsel for Respondent No.2 and the learned APP for the State.

2] The Petitioners are the husband, mother-in-law, father-in-law, brother-in-law and another brother-in-law (sister's husband) of Respondent No.2, who had filed an Application under Section 12 and 23 of the Protection of Women from Domestic Violence Act, 2005 ("DV Act" for short), before the Metropolitan Magistrate Court at Sewree, Mumbai.

The proceedings being initiated against the present Petitioners, sought several reliefs, including the order under Section 18 and 19 and in the alternative, an alternative accommodation or payment of rent.

The maintenance to the tune of Rs.15000/- for Respondent No.2 and Rs.10,000/- each for the children is also sought under Section 20.

Apart from this, the damages and compensation to the tune of Rs.5 Lac for the injuries sustained on account of physical and mental as well as emotional and financial distress, is also prayed. The proceedings are initiated in the month of December, 2020 and in these proceedings, summons are being issued to the present Petitioners.

3] Perusal of the Application would reveal the details of the matrimonial discord between the husband and wife, where several accusations are levelled against, the other Petitioners being the relatives of the husband.

The longish Petition clearly indicate that Respondent No.1 had forwarded notice to the wife for divorce by mutual consent and in fact, she was also ready for the same and meetings were arranged from time to time. However, ultimately the talks could not be taken to its logical conclusion and the wife instituted proceedings under Section 498A, 506 read with 34 of the IPC, on 18.11.2020 and the FIR came to be registered at Byculla Police Station.

4] On 23.06.2022, Petitioner No.1 i.e. Husband lodged a complaint against the wife with Deputy Commissioner of Police, Zone I for cheating and fraud and usurping the amount of Rs.16,61,841/- from the fix deposit of Federal Bank and taking away the cash and jewellery from the house. The complaint effectively state, that huge amount was invested in a fixed deposit at Crawford Market Branch, Mumbai in the joint account of Petitioner No.3 i.e. mother and the Respondent No.2, Wife. The allegation is, the wife has blocked all the funds and

she is not permitting withdrawal of the amount despite the fact that the amount belongs to Petitioner Nos.2 and 3.

5] The submission of Mr.Vijay Kurle is to the effect that the institution of DV proceedings is nothing but abuse to process of law, as it is by way of an afterthought to the complaint which is lodged with DCP. Apart from this, upon filing the DV proceedings, an application came to be taken up under Section 340 of the Cr.P.C. which has been rejected by the Metropolitan Magistrate Court on 15.09.2021 on the ground that without filing say to the main application, application under Section 340 cannot be entertained, only on the basis of some bank statements and copies of other documents without examining any witness merely on the basis of its presence.

The court has recorded that the respondent need to file separate complaint, if at all advised and approach the appropriate court of law raising the grievance .

In any case the said order dated 15.09.2021 is not assailed in the present Petition and the limited relief that is sought in the present Petition is of quashing and setting aside the order issuing summons against the Petitioners.

6] As regards the complaint filed by Petitioner No.1 in respect of fixed deposit, the learned counsel for Respondent No.2 make a categorical statement that she has no way blocked the funds and she do not dispute that the amount which is deposited by way of fixed deposit belongs to the Petitioner Nos.2 and 3 and she will have no objection about the amount being disbursed in favour of Petitioner No. 3, if it is necessary for their maintenance.

Needless to state that as far as the remedies which are open to

the wife i.e. Responent No.2 in the DV proceedings independent of this amount, she can seek the orders under Section 12, 13, 18 and 19, which she has already sought in the application.

7] Since the the wife has projected herself to be an “aggrieved person” within the meaning of DV Act as defined under Section 3 of the said Act, merely because there is a preceding complaint in relation to the fixed deposit, it cannot be said that there is no substance in the complaint and the order of the learned Metropolitan Magistrate issuing summons to her in-laws would amount to abuse of process of law.

In any case from the narration in the complaint before the Magistrate, it is revealed that the relationship between the parties is already strained and in fact, notice for mutual divorce is already issued by Petitioner No.1.

8] In the wake of aforesaid circumstances, the present Writ Petition cannot be entertained, since there is no illegality in the impugned order.

Needless to state that the Petitioners are at liberty to adopt whatever stand, available in law, in order to contest, the relief sought in the Application.

All the rights and contentions of the Petitioners are kept open to be agitated before the Magistrate, when the response is filed.

[BHARATI DANGRE, J]