

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.970 OF 2019

Thomas J. Emmatty .. Petitioner

v/s.

Manju John And Anr. .. Respondents

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Mr. Anil G. Lalla, a/w. Mr. Aditya Singh, Lalla and Lalla, for the
Petitioner.

Mr. Samarth S. Karmarkar, a/w. Mr. Parag Mishra, i/b. Karmarkar &
Associates, for the Respondent.

Mr. A.R. Patil, APP, for State.

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CORAM: R.G. AVACHAT, J.

DATE : 6 FEBRUARY 2023.

P.C:-

The challenge in this writ petition is to the proceedings initiated by the Respondent wife by preferring an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the Act).

2. Heard. Learned Advocate for the Petitioner husband would submit that it was a second marriage of both the Petitioner and Respondent Manju. Both of them have two children each from their

respective first marriage. Both of them met through a Matrimonial Website www.secondshaadi.com.. According to learned Advocate for the Petitioner/husband, the flat in which the Respondent wife has been residing, belongs to his mother. It is the Respondent wife, who has, in fact, thrown the Petitioner and his mother out of the flat. Attention of this Court was drawn to prayer clause of the application to submit that the Respondent wife has also prayed a direction to the Petitioner/husband to make provision of maintenance of her children born from her first marriage. According to learned Advocate, the averments in the application are general in nature. Both the Petitioner husband and the Respondent wife have been staying away from each other for little over 5 years. As such, no domestic relation does exist between the two. There is delay of over 1½ years in preferring the application. The criminal proceedings initiated by the Respondent-wife against her mother-in-law has been quashed by the Division Bench of this Court way back in April 2018. Learned Advocate for the Petitioner relied on the following authorities in support of his contentions and to ultimately urge for allowing this petition:

1. Kamlesh Devi V/s. Jaipal & Ors..¹
2. P. Ganesan V/s M. Revathy Prema Rubarani.²
3. Mathew Daniel V/s Leena Mathew.³

1 Spl. Leave Petition No.34053/2019 (Supreme Court).

2 C.R.PD (MD) No.909/2021, (High Court of Madras).

3 CDJ 2022 Ker HC 893.

4. Vijay Verma V/s State N.C.T. of Delhi & Anr..⁴
5. Kuldeep Singh & Ors. V/s Rekha.⁵
6. Nandkishor Pralhad Vyawahare V/s Sau. Mangala w/o Pratap Bansar.⁶

Learned Advocate for the Respondent-wife would, on the other hand, submit that the application is full with averments as to how the Petitioner husband committed domestic violence. According to him, whatever submissions have been made on behalf of the Petitioner, are all matters of facts. It is for the trial court to decide the matter on its own merits. He, therefore, urge for dismissal of the petition.

3. Considered the submission advanced. Perused the authorities relied on. Admittedly, the marriage between the Petitioner husband and Respondent Manju took place on 16 May 2015. It was a second marriage of both of them. They are blessed with two children each from their respective first marriage. The Respondent wife originally hailed from Kerala. It is but natural that the children of both of them from their first marriages would not have cordial relations inter se. Certain definitions in Sections 2 of the D.V. Act need to be adverted to, such as “aggrieved person” means any woman who is, or

4 Crl.M.C.No.3878/2009 (High Court of Delhi).

5 M.Cr.C.No.5644/2016 (High Court of Madhya Pradesh).

6 Criminal Application [Apl] No.578 of 2011, Bombay High Court, Nagpur Bench.

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. “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. “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

4. Section 3 of the Domestic Violence Act defines domestic violence to mean

“3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any

person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, strident, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

5. Section 12 of the Act speaks of application to be made to the Magistrate for various reliefs. The reliefs which a Magistrate may grant under the Act are in the nature of protection order (Section 18), residence order (Section 19), monetary relief, such as maintenance for the aggrieved person as well as her children, if any. All those reliefs are civil in nature. In case of *Kunapareddy Alias Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari And Anr.*⁷, the Apex Court has observed :-

⁷ (2016) 11 SCC 774

“Petition in present case is essentially under Ss. 18 and 20, DV Act, though not mentioned in the heading - In respect of petition filed thereunder, proceedings are to be governed by CrPC, as provided under S. 28, DV Act – At the same time, undisputedly, such proceedings are predominantly of civil nature – Procedure for obtaining order of reliefs is stipulated in Chapter IV, DV Act which comprises Ss. 12 to 19 – All aforesaid reliefs that can be granted by Magistrate are of civil nature.”

6. It needs no mention that application under Section 12 of the Act is neither an FIR nor complaint under Code of Criminal Procedure. It is true that some of the averments in the application do not stand to reason. In para 8 of the application it has been averred that the Petitioner husband had harassed the Respondent wife and her children. This Court do not propose to reproduce the averments/allegations made in the application under Section 12 of the Act. The application runs into not less than 18 pages. The prayers therein are for restraining the Petitioner husband from committing any act of domestic violence, direction to the Petitioner to pay Respondent-wife and her children Rs.50,000/- per month towards their maintenance, besides a sum of Rs.35,000/- for securing accommodation on rent, etc.

7. The record indicates that the Petitioner-husband has been directed to pay the Respondent-wife Rs.10,000/- per month towards interim maintenance. The said order dates back to 2019.

8. Since the averments in the application preferred under Section 12 of the D.V. Act and counter-averments made by the Petitioner-husband are all disputed questions of facts, could only be gone into by the trial court. The authorities relied on by learned Advocate for the Petitioner husband are of no assistance to him. In case of *Kamlesh Devi* (supra), the Respondents, against whom proceedings under Domestic Violence Act were initiated, were not the family members. Same is not the case here. So far as regards other authorities are concerned (supra), those are persuasive. It is true that the Full Bench of this Court in case of *Nandkishor Vyawahare* (supra) has held that the proceedings under D.V. Act could be quashed in exercise of jurisdiction under Section 482 Cr.P.C. It is further reiterated that the facts and circumstances of the present case do not warrant this Court to exercise jurisdiction under Section 482 Cr.P.C. to grant on Petitioner/husband the relief.

9. In the result, the petition fails. The same is, therefore, dismissed. The trial court shall make every endeavour to decide the application on its own merits within a period of eight months from the date of receipt of copy of this order.

(R.G. AVACHAT, J.)