

rajshree

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

CRIMINAL APPLICATION NO.1169 OF 2022

Hullashchandra Dulerai Mehta & Anr.	]	..	Applicant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Aditya Mehta for the Applicant.

Mr.N.B. Patil, APP for the State-Respondent No.1.

Ms.Suchita Pandey h/f Omprakash Pandey for Respondent No.2.

PSI Ashok Sutar, D.B. Marg Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 19th April, 2023.

P.C.

1] The learned counsel Ms.Suchita Pandey, representing Respondent No.2 expresses her consensus with the learned counsel for the Applicant, that in the Application filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, there is no averment that they resided in shared household with the Respondent No.2.

The learned counsel for the Applicants argued on the last date of hearing that they were residing in Morbi, Gujarat and barring a few days after the marriage, for performance of religious ceremonies, their daughter-in-law, never stayed with them.

If the complaint filed by the wife-respondent is carefully perused, it also do not contain any averment about she residing in the shared household with the two Applicants. Since the aforesaid argument advanced by the learned counsel for the Applicant is not disputed by the counsel for Respondent and on the last day of hearing it was submitted that in the verification statement, such averment is contained.

Today, the learned counsel for the Respondent admit that there is no statement to that effect.

2] In absence of any averment that the two Applicants resided in shared household with the wife, who had filed complaint, I do not think that the proceedings under the DV Act, can be continued against them.

Necessarily, the order passed by the Metropolitan Magistrate dated 17.07.2019 of issuing notice to the Respondents including the present Applicants, is to be set aside.

Needless to state that this order of issuing notice is found to be not sustainable against the present Applicants as its continuation against the applicants would amount to abuse of process of law and cause grave injustice.

But needless to state that the Court may proceed against the husband.

In the wake of above, Application filed under Section 482 of the Cr.P.C. is allowed in terms of prayer clause (a).

No order as to costs.

[BHARATI DANGRE, J]