

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.5184 OF 2022

Tarannum Khan .. Petitioner

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Sameer Sharif with Mr.Suhail Shariff i/b Falcom Legal for the
Petitioner.

Mr.S.R.Agarkar, A.P.P. for the State.

Ms.Devyani Kulkarni, Appointed Advocate, for the Respondent
No.2.

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CORAM: BHARATI DANGRE, J.

DATED : 21st APRIL, 2023

P.C:-

1. The Metropolitan Magistrate, 17th Court, Borivali, Mumbai, directed notice to be issued to the respondents in Complaint No.115/DV/2022, filed by Samina Ibrahim Khan.

In the complaint filed under Sections 12, 18 and 19 of the Protection of Women from Domestic Violence Act, 2005 (for short, **"The Act of 2005"**), she impleaded her husband as respondent No.1, elder sister-in-law as respondent No.2, her daughter as respondent No.3 and the present petitioner i.e. the younger sister-in-law as respondent No.4 and the first wife of the husband as respondent No.5.

2. When the complaint is perused, with the assistance of the learned counsel for the petitioner and the learned counsel

Ms.Devyani Kulkarni, who is appointed through Legal Aid to represent respondent No.2, it can be seen that, no ingredients of “Domestic violence” are spell out against the present petitioner, as in order to attract the act of domestic violence, as contemplated under Section 3 of the Act of 2005, which necessarily contemplate physical, sexual, verbal or emotional abuse as well as economic abuse, it must be necessarily established that the parties are in domestic relationship.

The term “domestic relationship” is specifically defined in the Act of 2005 to mean 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.

The term ‘shared household’ is also defined in Section 2(s) of the Act of 2005 with the specific connotation, being assigned to the said term.

3. In the backdrop of the nature of allegations and the legal provisions, when the petition is perused, a vague allegation is found to be levelled against all the respondents, by pleading as under :-

“7. The Applicant states that her in-Law’s behavior was extremely unrefined in those days and her husband, her mother-in-Law and her sister-in-law were constantly used to taunt the Applicant in each and every sentence.”

4. Pertinent to note that except this allegation, which itself are extremely vague in nature, no specific allegations is levelled against the petitioner. Apart from this, submission of the learned

counsel for the petitioner is to the effect that the petitioner was married in the year 2007 and was residing with her husband at Khar, whereas the marriage of the complainant and respondent No.1 came to be solemnized in the year 2018 and, therefore, there was no reason that she continued to live in shared household of the complainant.

In the wake of the above, since the issuance of notice against respondent No.4 i.e. the present petitioner is nothing but an abuse of process of law and would cause grave prejudice to her, as no allegations are levelled in the application, and since the ingredients of Section 3 of the Act of 2015 are not made out against her, the writ petition stands allowed in terms of prayer clause (C), by quashing and setting aside the order passed by the learned Metropolitan Magistrate, 17th Court at Borivali, by which notice was issued against her.

It is made clear that this order is restricted only against the petitioner/respondent No.4 and the learned Magistrate is at liberty to proceed with against the other respondents.

5. The writ petition is made absolute in the aforesaid terms.

6. Before I part, I record my appreciation for Advocate Devyani Kulkarni, who has effectively represented the cause of respondent No.2 before this Court. The Legal Services Authority is directed to pay the legal remuneration due to her within a period of six weeks from today.

(SMT. BHARATI DANGRE, J.)