

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.355 OF 2023

VASANT
ANANDRAO
IDHOL

Digitally signed by
VASANT
ANANDRAO IDHOL
Date: 2023.12.01
19:03:30 +0530

	Nitin Vikas Karake, Age : 35 years, Occupation : Service, R/at : Andheri, Mumbai Currently R/ at : Ogalewadi, Tal : Karad, Dist : Satara	...Applicant
	Versus....	
1.	Mrs.Chetana Nitin Karake, Age : 35 Years, Occupation : Business & Service, R/at : C/o : Akshay Arun Patil, Flat No.4, 1 st Floor, Sainand Apartment, Near Datta Servicing Center, Kolatkarr Gall Mangalwar Peth, Satara, Tal.Karad, Dist : Satara.	
2.	State of Maharashtra	...Respondents

Mr.Kalpesh U. Patil for the Applicant.

Mr.R.C. Barge for Respondent No.1.

CORAM : RAJESH S. PATIL, J.
DATE : 28TH NOVEMBER, 2023.

ORAL JUDGMENT :-

1. This Criminal Revision Application filed under Section 397 of the Code of Criminal Procedure, challenges the impugned judgment and order dated 26 September 2023 passed by the Sessions Court, Satara in PWDV Criminal Appeal No.5 of 2023 and

order dated 1 February 2023, passed below Exhibit - 18 in Criminal Miscellaneous Application No.481 of 2022, by J.M.F.C., Satara.

Facts :-

2. The Applicant (*husband*) and Respondent No.1 (*wife*) got married on 18 December 2014 at Satara. Respondent No.1 (*wife*) was earlier married, but since her first *husband* died, at the time of time of her second marriage, with the Applicant, she was a widow. There are no issues out of the present marriage. For sake of easy reference parties are referred as 'husband' and 'wife'.

3. As there were disputes and differences between the *husband* and *wife* ; *wife* filed Criminal Miscellaneous Application No.481 of 2022 under the provisions of the Domestic Violence Act, 2005 (for short "D.V. Act") under Sections 12, 18, 19, 20, 22 and 23 before J.M.F.C., Satara. In the said Application, it was pleaded that she was residing in Pune for the purpose of studying computer education at Pune, and she used to time and again go to Satara. It is further stated that the brother of the *wife* one Mr.Akshay Arun Patil, is residing at Satara, along with parents and he is taking care of monetary aspect as to education, medical expenses and day to day expenses of the Respondent / *wife*.

4. The *husband* appeared in the proceedings and thereafter filed an application below Exhibit -18 on 29 November 2022, before

J.M.F.C., Satara seeking rejection of the complaint filed under D.V.

Act on the ground of want of jurisdiction.

5. After the reply was filed to the application Exhibit - 18 by *wife*; J.M.F.C., Satara heard the parties and by his judgment and order dated 1 February 2023, rejected the application of the *husband*.

6. Being aggrieved by the order dated 1 February 2023, passed by J.M.F.C., Satara ; *husband* filed Criminal Appeal under Section 29 of the D.V. Act before the Sessions Court, Satara bearing PWDV Criminal Appeal No.5 of 2023. The Sessions Court, Satara, consequently after hearing the parties in PWDV Criminal Appeal No.5 of 2023, dismissed the appeal by its judgment and order dated 26 September 2023.

7. The present Criminal Revision Application is filed by the *husband* challenging both the judgment and order passed by J.M.F.C., Satara and Sessions Court, Satara.

Submissions :-

8. Mr.Kalpesh Patil on behalf of the *husband* made his submissions.

8 (i). Mr.Patil submitted that after the marriage between the parties, they started residing at Navi Mumbai till November 2016. Thereafter since the medical condition of the *wife* did not suit her to reside at Navi Mumbai, she shifted to Pune in a leave and license

premises from November 2016. In the said leave and license agreement, the Licensee were both the *husband* and *wife*. Thereafter from March 2018 to January 2019, the *wife* again shifted back to the residence of *husband* at Sanpada, Navi Mumbai. In January 2019, *wife* again shifted back to Pune and started residing in the premises on the basis of leave and license agreement entered into by *husband* and *wife* as Licensee. The said leave and license agreement subsisted till 30 November 2022.

8 (ii). Mr.Patil submitted that except paragraph 34 of the D.V. Application, there is no submission as to how J.M.F.C., Satara has jurisdiction to try and entertain the D.V. Application.

8 (iii). Mr.Patil submitted that in fact the *wife* was residing at Pune, she has substantial interest at Pune since the flat of her earlier *husband* is also in the city of Pune. Admittedly, she is residing in leave and license premises at Pune on the date when the D.V. Application was filed. In fact even the affidavit of disclosure shows her address of Pune.

8 (iv). Mr.Patil also relied upon the address of *wife* of her Aadhar Card, which is again of Pune.

8 (v). Mr.Patil also submitted that Section 27 of D.V. Act is clear, though it mentions about the permanent and temporary address. In the present proceedings *wife* does not have any address at Satara,

which can be called as permanent as her Pune address is a temporary address.

8 (vi). Mr.Patil also placed reliance on two judgments of this Court, the first judgment in the case of **Ramesh Mohanlal Bhutada & Anr. vs. State of Maharashtra & Ors.** reported in **2011 (6) Mah.LJ 167** and another judgment in case of **Mrs.Afia Rasheed Khan vs. Mr.Dr.Mazhasruddin Ali Khan & Anr.** reported in **2022 ALL MR (Criminal), 3125.**

8 (vii). Mr.Patil submitted that the present Criminal Revision Application deserves to be allowed and both the judgments and orders passed by the Sessions Court, Satara and J.M.F.C., Satara be quashed and set aside.

9. Mr.Rushikesh Barge on the other hand made his submissions on behalf of Respondent No.1.

9 (i). Mr.Barge submitted that his client - *wife* had been to Pune, admittedly only for the purpose of education and after her education is complete, she was supposed to go back to her parent's house at Satara ; as her relation with her *husband* was not of co-ordinal.

9 (ii). Mr.Barge further submitted that the argument as regards the residence of the first *husband* is concerned, there is a dispute between the Respondent / *wife* and her in-laws of the first *husband*. Apart from the dispute which is going on, there is loan of

Rs.28,00,000/- on the said flat.

9 (iii). Mr.Barge further submitted that the *wife* is residing permanently with her parents at Satara. The same can be seen from the title clause of the D.V. Application, wherein the address of parents of *wife* has been shown as Satara.

9 (iv). Mr.Barge further submitted that the present Application is filed only for the purpose of prolonging the litigation.

Analysis and Conclusions :-

10. I have heard the counsel of both the sides and I have gone through the documents on record.

11. It is an admitted fact that the marriage of the Applicant and Respondent No.1 took place on 18 December 2014 at Satara. It is further admitted that before the marriage, Respondent No.1 (*wife*) was residing with her parents at Satara. After the marriage, the *husband* and *wife* stayed at Navi Mumbai and also at Pune in a leave and license premises. In the D.V. proceedings filed by the *wife* at J.M.F.C., Satara, the address of the *wife* is that of Satara. So also in paragraph 34, it has been stated that she has been taking education of computer at Pune and she has been, time and again going to Satara.

12. Leave and license agreement of the premises at Pune shows the address of *husband* at Satara. Though the counsel for the

husband has submitted that Ogalewadi, Satara is the place within the jurisdiction of Karad J.M.F.C. It is a fact that even *husband* hails from Satara district, even though the taluka is different. There is no dispute that the premises where the *wife* was staying at Pune, was under leave and license basis.

13. The affidavit of disclosure filed by the *wife* in the first paragraph itself, mentions her address that of Satara. However, while filling information regarding personal, she has stated that matrimonial house address of the leave and license agreement at Pune. So also the said affidavit of assets and liabilities as regards to the details of legal proceedings and maintenance being paid mentions about filing of divorce petition viz. HMP (Petition A) No.105 of 2022, filed before the Judge Family Court, Satara. Counsel for Respondent No.1 was asked about the status of HMP (Petition A) No.105 of 2022. Counsel for Respondent No.1 submitted that the said divorce petition has been subsequently withdrawn by the *wife*. As regards the details of the liabilities of deponent, the said affidavit of disclosure mentions that the flat of pre-deceased *husband* has encumbrance of loan of Rs.28,00,000/-, and it is under dispute. Further as regards the information with respect to the income, assets and liabilities of other spouses, in the affidavit it is stated that the *husband* is working from home at Ogalewadi. The said place Ogalewadi is within the Satara

District.

14. Section 27 of the D.V. Act reads as under :-

“27. Jurisdiction.—

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India.” (Emphasis supplied)

15. Therefore, sub-clause (1) of Section 27 allows the aggrieved person to file the case where he/she permanently or temporarily resides or carries on business or is employed. There is no dispute that before the marriage, the *wife* was residing with her parents in their house at Satara. Even the marriage took place at Satara. The premises where the *wife* is residing is admittedly a premises which is obtained on leave and license basis. Supreme Court, in various judgments have held that the Licensee in a leave and license agreement does not have any right in the license premises.

16. Therefore, the law is clear that the Licensee will have no right in the licensed premises and as soon as the license term is over, the Licensee has to vacate the premises. In the present proceedings, leave and license premises expired on 30 November 2022. The Applicant was not able to show that the *wife* had any other premises to stay in the city of Pune. As regards the flat of the first *husband*, there is dispute which is pending between the first *husband's* parents and the *Wife*. So also there is encumbrance by way of loan of Rs.28,00,000/- on the flat as per the statement made in the affidavit of *wife*.

17. The judgment of this Court cited by the advocate for the Applicant (*husband*) i.e. **Ramesh Mohanlal Bhutada & Anr.** (supra), the facts were quite different, as in the said proceedings, the *wife* had filed the proceedings at the place called as Akot, which is according to her is residence place of her parents maternal brother and in the said proceedings, High Court remanded the matter to J.M.F.C. Therefore, since the facts were quite different, hence the proceedings were remanded back.

18. As regards the judgment of **Mrs.Afia Rasheed Khan** (supra), the fact in this judgment was that the *husband* along with grown up son was residing at Hyderabad and the *wife* had submitted that she has been residing in hotel Hayatt, Bandra-Kurla Complex,

Mumbai. Hence on the basis of her address at hotel Hayatt, she had filed the proceedings under D.V. Act at Mumbai while the *husband* stayed at Hyderabad. Therefore, this Court held that where the Application under Section 12 of the D.V. Act filed by the *wife* discloses or implies her intention to reside at a place in Mumbai was casual visit to acquire jurisdiction. The Court held that the *wife* was not temporarily residing within the jurisdiction of the Court at Mumbai and also visit to Mumbai was a casual visit.

19. In the present proceedings, it is not the case of the *wife* that she was temporarily residing at Satara. In fact, her case is that her permanent address is at Satara, which is her parent's residence. Before marriage she stayed at Satara. As I have already held that the place at Pune was temporarily place, as the premises was on leave and license basis and therefore, I hold that there is no permanent address of *wife* at Pune. Hence, at the most, her residence at Pune can be called as temporary place of residence, and her permanent place of residence would be at Satara. I do not find any ulterior motives in the said Application being filed at Satara. Even the *husband* has his native place of residence at Karad, which is 50 k.m. away from "Satara city", even though the *husband* is at present working in Navi Mumbai in IT Sector.

20. As far as Aadhar Card address is concerned, the said

Aadhar Card address is of the first *husband* of the *wife*. It makes sense that when a person applies for Aadhar Card, he / she will give the place where the person is residing at that moment. At the relevant time, since the *wife* was residing with her first *husband*, the address of the first *husband* has been mentioned on the Aadhar Card.

21. Taking into consideration of the above facts, according to me, there is no perversity in the finding of J.M.F.C., Satara and Sessions Court, Satara.

22. Hence, this Criminal Revision Application is dismissed. Hearing of the Criminal Miscellaneous Application No.481 of 2022, pending with J.M.F.C., Satara is expedited. J.M.F.C., Satara should make an endeavour to dispose of the Criminal Revision Application as soon as possible, preferably within a period of one year from the date of passing of this order.

23. All parties to act on the authenticated copy of this order.

(RAJESH S. PATIL, J.)