



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 44 OF 2023

Mahadeo S/o. Ramchandra Kongre and another
..VS..

Smt. Leena W/o. Pankaj Kongre and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.N. Bhattad, Advocate for applicants.
Mr. M.V. Amale, Advocate for respondent Nos.1 and 2.

CORAM : ANIL L. PANSARE, J.
DATED : AUGUST 21, 2023.

Heard.

2. The applicants are aggrieved by the order dated 27.04.2022, passed by the Additional Sessions Judge, Nagpur in Criminal Revision No. 663/2021.

3. The applicants (original non-applicant Nos.2 and 3) had filed an application Exh.13 in Misc. Criminal Application No. 175/2018 seeking discharge. The learned Judicial Magistrate, First Class, (Court No.2), Kalmeshwar has on 21.08.2021 rejected the said application. The applicants approached the Sessions Court against the said order by filing an application under Section 397 of the Code of Criminal Procedure (for short, "the Code"). The Sessions Court has rejected the said revision application.

4. Learned counsel for the applicants submits that non-applicant Nos.1 and 2 (original complainant

Nos.1 and 2) have filed an application under the provisions of the Domestic Violence Act, 2005 (for short, “the D.V. Act”) against Shri Pankaj S/o Mahadeo Kongre (original non-applicant No.1), present applicants as non-applicant Nos.2 and 3, Sachin Mahadeo Kongre (original non-applicant No.4) and Smt. Kavita W/o Sachin Kongre (original non-applicant No.5),

5. That the applicant No.1 and 2 are father in law and mother in law of non-applicant No.1 and Grand parents of non-applicant No.2. The non-applicant No.3 is husband and father of non-applicant No.2 respectively and non-applicant Nos. 4 and 5 are brother and sister in law of the non-applicant No.1 and uncle and aunt of non-applicant No.2.

6. The non-applicant No.1 got married to non-applicant No.3 at Kalmeshwar on 29.11.2012 and after marriage they started residing on the second floor of the house owned by applicants. Applicants used to live on the ground floor and non-applicant Nos.4 and 5 used to live on first floor of the house. The non-applicant No.3 was employed with Crain India Limited and therefore most of the time, the non-applicant No.1 used to live in Rajasthan where the oil fields of the said company were situated.

7. Learned counsel for the applicants submits that no case has been made out under the provisions of D.V. Act and therefore, the applicants had filed application Exh.13 seeking discharge. The trial Court,

however, has rejected the same. However, in doing so, the trial Court has made certain remarks which according to the applicants, make them entitled for discharge. The trial Court observed that the remedy under the D.V. Act is of civil nature and, therefore, the non-applicants before it cannot be termed as accused. The trial Court has noted that the applicant has already led the evidence and closed her side. The Court opined that the provisions seeking discharge is meant for the accused who are booked in criminal prosecution. In the present case, the non-applicants are not accused nor will they be punished.

8. The learned counsel for the applicants intends to take advantage of such observations. He contends that the trial Court itself has said that the applicants are not accused and will not be punished.

9. To my mind, this submission requires outright rejection, as it does not take into account the purport of making such observations by the trial Court. The view expressed by the trial Court that the non-applicants are not accused and will not be punished is in context with the nature of proceedings viz. under the provisions of D.V. Act. Such view cannot be stretched out of the context.

10. Both the Courts below have noted that at the relevant time, the applicants and respondents were residing together and were in domestic relationship. On the point of domestic violence, the Courts below held

that there are allegations against the non-applicants before the trial Court which includes present applicants and the truth as regards such allegations could only be revealed, once the evidence is led.

11. The learned counsel for the non-applicants submits that the non-applicants (the applicants and non-applicant Nos.3 to 5 herein) before the trial Court have filed affidavit of chief-examination and the evidence is likely to be concluded soon.

12. In the circumstances, since the Courts below have rendered a concurrent findings against the applicants, I need not, in the jurisdiction under Section 482 of the Code, delve into the allegations made against the applicants. Suffice it to say that since the non-applicant No.1 herein has closed the evidence and applicants have filed affidavit of chief-examination, it will not be appropriate to interfere with the concurrent findings recorded by the Courts below. Thus, there is no substance in the application.

13. The Criminal Application (APL) No.44/2023 is rejected. No costs.

(ANIL L. PANSARE, J.)