

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

CRIMINAL WRIT PETITION NO.183 OF 2022

- 1] Manjulabai Gulabrao Sonone
A/a 69 years, Occu : Housewife
- 2] Sunil Gulabrao Sonone
A/a 44 years, Occu : Agriculturist
- 3] Sau. Pratibha Sunil Sonone
A/a 42 years, Occu : Agriculturist
- 4] Sharad Gulabrao Sonone
A/a 44 years, Occu : Agriculturist
- 5] Kiran Sharad Sonone
A/a 40 years, Occu : Agriculturist
1 to 5 R/o. Mangkinhi, Tah. Darwha,
Dist. Yavatmal.
- 6] Milind Gulabrao Sonone
A/a 59 years, Occu : Service
- 7] Sau. Chhaya Milind Sonone
A/a 52 years, Occu : Service
- 8] Rahul Milind Sonone
A/a 26 years, Occu : Education

6 to 8 R/o. Nagar Parishad School
(Hindi) No.1, Near Bus Stand,
Tah. Dist. Yavatmal.
- 9] Madhukarrao Maroti Khade
A/a 54 years, Occu : Service
R/o. Pusad, Tah. Pusad, Dist. Yavatmal

10] Madhao Marotii Khade
A/a 44 years, Occu : Agriculturist

11] Sau. Rama Madhao Khade
A/a 39 years, Occu : Service

No.10 & 11 R/o. Chikhli Damp,
Tah. Pusad, Dist. Yavatmal.

12] Kisan Mahadu Rokade
A/a 59 years, Occu : Agriculturist
R/o. Wada Farm, Tah. Manglurpir,
Dist. Washim.

.. Petitioners
(Ori. N.A. 8 to 19)

.. Versus ..

Sau. Shalini Swapnil Sonone
A/a 32 years, Occu : Private Service,
R/o. Warda, Tah. Manora,
Dist. Washim.

Present Add : Mangrulpir,
Rural Hospital, c/o. Shalini Pradhan,
Tah. Mangrulpir, Dist. Washim.

.. Respondent
(Ori. Applicant)

.....
Mr. A.A. Dhawas, Advocate for Petitioners,
Mr. G.N. Shinde, Advocate for Respondent.

.....

CORAM : G.A. SANAP, J.
DATED : 06.07.2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by the consent of learned advocates for the parties.

2. In this petition, challenge is to the judgment and order dated 25.03.2019 passed by the learned Judicial Magistrate, First Class, Mangrulpir, District-Washim, whereby the learned Magistrate rejected the application Exh.20 made by the petitioners, who have been arrayed as non-applicant nos.8 to 19 in D.V. Case No.13/2017 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the D.V. Act' for short).

3. In this judgment, the parties would be referred by their nomenclature in the proceeding before the trial Court. The respondent-original applicant has filed the application in the Court of the Judicial Magistrate, First Class, Mangrulpir under Section 12 of the D.V. Act for grant of protection. It is the case of the respondent that the marriage between her and original non-applicant no.1 was performed on 11.06.2016. Non-applicant nos.1

to 6 are residing together. The respondent started residing with them. It is stated that non-applicant nos.1 to 6, after marriage, ill-treated the respondent. The respondent was subjected to domestic violence by non-applicant nos.1 to 7 and therefore she filed the case against them under the D.V. Act.

4. The petitioners, after reporting their appearance before the learned Magistrate, made application Exh.20 for deletion of their names from the array of the party. This application was rejected vide order dated 25.03.2019. It is their case that the allegations made against them are vague and general. They are relatives of the respondent and non-applicant nos.1 to 7. They have not been residing with them. They are not residing in the same village with the respondent. They have been roped in without any reason. No case has been made out against them under the D.V. Act for claiming protection.

5. The respondent has filed the reply to the said application. In her reply, she tried to justify initiation of the proceeding against the petitioners.

6. The learned Magistrate, on going through the application, found that the averments made in the application are sufficient to proceed against the petitioners and rejected the said application.

7. I have heard the learned advocate for the petitioners and the learned advocate for the respondent. Perused the record and proceedings.

8. The learned advocate for the petitioners took me through the main application filed under Section 12 of the D.V. Act by the respondent and submitted that the allegations made against the petitioners (original non-applicant nos.8 to 19) are vague and general. No specific role has been attributed to them. No other particulars of torture or domestic violence have been stated in the application. The learned advocate submitted that the petitioners are not residing with the respondent. Learned advocate submitted that they have been falsely implicated in this case only because they are relatives of the non-applicant nos.1 to 6. Learned advocate

submitted that continuation of the proceeding against them would be an abuse of process of law.

9. Learned advocate for the respondent submitted that in her application the respondent has made the necessary averments to *prima facie* establish the domestic violence. The learned advocate submitted that in the application specific role has been attributed to the petitioners. The learned advocate submitted that the facts pleaded in the application are sufficient to justify the continuation of the application against the petitioners.

10. Undisputedly, the petitioners are the relatives of the non-applicant nos.1 to 7. It is also undisputed that they are not residing at Darwha, where the respondent and her family members are residing. It needs to be mentioned at this stage that as far as non-applicant nos.1 to 7 are concerned, specific role has been attributed to them in the application filed by the respondent. The allegations made against non-applicant nos.1 to 7 if proved, may constitute the domestic violence. The important question that needs to be addressed is, as to whether the respondent has attributed any specific

role to the petitioners and the same would constitute the domestic violence. Minute perusal of the application would show that no averments have been made in the application attributing any specific role to the petitioners. There are no averments as to any kind of torture and ill-treatment to the respondent at the hands of the petitioners. I am constrained to state on perusal of the averments against the petitioners that the same are as vague as the vagueness could be. It is note out of place to mention that in such a proceeding there is a tendency to implicate the relatives. It is the duty of the court to see that the relatives are not made to face the ordeal of the proceeding without the allegation of the specific role with regard to the domestic violence.

11. The respondent has joined the petitioners in the domestic violence proceeding with the husband of the respondent and other relatives of the husband. It is seen that the specific allegations of ill-treatment/domestic violence have been made against non-applicant nos.1 to 7. As far as the petitioners are concerned, the allegations made against them are vague and general in nature. In my view, on the basis of such vague and general allegations, the

relatives cannot be made to face the ordeal of such proceeding. It is to be noted that in order to proceed against the relatives in a proceeding under Section 12 of the D.V. Act, the allegations and role attributed to the relatives shall not leave the scope to doubt the credibility of the applicant. In a case where there is a scope to raise a doubt about false implication, the Court has to look into the averments made in the application carefully and form the opinion. In order to proceed against the relatives on the basis of allegations and averments made in the application, the court must be satisfied that the case of domestic violence is made against the relatives.

12. On minute perusal of the pleadings, the possibility of unnecessary involvement of the relatives in this proceeding cannot be ruled out. The learned Magistrate has failed to appreciate the facts pleaded in the application attributing the domestic violence to the petitioners. No specific role has been attributed to the petitioners. It is seen that they have been made to face this proceeding being the relatives of original non-applicant nos.1 to 7. In such a proceeding, the court has to ensure that the process of law is not misused. In the facts and situation, I am of the opinion that

the continuation of the proceeding against the petitioners with such averments would be an abuse of process of law. Therefore, the petition deserves to be allowed. Hence, following order :

O R D E R

- (i) Criminal Writ Petition is allowed.
- (ii) The order dated 25.03.2019 passed by the learned Judicial Magistrate First class, Mangrulpir, District-Washim is set aside.
- (iii) The application Exh.20 is allowed.
- (iv) The proceeding i.e. D.V. Case No.13/2017 is dismissed against the petitioners/non-applicant nos.8 to 19.

[G. A. SANAP, J.]

Gulande