

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

CRIMINAL REVISION APPLICATION NO. 127 OF 2021

APPLICANT : Smt. Jaya w/o Balkrishna Chandawar,
(Org. Complainant) Aged 40 years, Occu.: Service, r/o.
Flat No.102, 1st Floor, Aradhya
Apartment, Unique Cooperative
Housing Society, Chiranjeevi Nagar,
Somalwada, Nagpur.

//VERSUS//

RESPONDENT : Shri Amol s/o Sadashivrao Chandawar,
(Org. Non-applicant No.2) Aged 51 years, Occu: Service, R/o.
Plot No.59, Flat No.01, Saptashrungi
Apartment, Near Akshay Traders,
Suyog Nagar, Nagpur.
Presently residing at: Flat No.101,
Sarvadnya Apartment, Bhaskarrao
Borkute Patil Nagar, Near PHCA
Ground, Nagpur-440015.

Mr. K.P. Sadavarte, Advocate for the Applicant.

Mr. A.K. Neware, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 2nd MARCH, 2023.

ORAL JUDGMENT

01] Heard.

02] **Admit.** Matter is taken up for final disposal by consent

of the learned advocates for the parties.

03] In this revision application, the applicant has challenged the order dated 26th October, 2021 passed by the learned Additional Sessions Judge-8, Nagpur, whereby the learned Additional Sessions Judge allowed the appeal filed by the respondent under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short “the D.V. Act”) and dismissed the D.V. Act proceeding bearing Misc. Criminal Application No.2054/2014 against the respondent.

04] The facts giving rise to this revision are as follows:

The applicant and Balkrushna Sadashiv Chandawar, who is non-applicant No.1 in the D.V. Act proceeding, got married on 2nd December, 2022. The applicant and Balkrushna thereafter started residing together at the 2nd Floor, Dwarkapuri Apartment, near Harish Plywood, Ring Road, Nagpur. The applicant could not conceive after her marriage and, therefore, they decided to treat the applicant. The Test Tube Baby procedure was performed and she gave birth to a male child on 19th September, 2004. Balkrushna is the Loco Pilot, serving with Indian Railways. It is stated that due to the job requirements of Balkrushna, the applicant was kept in the

company of her parents or the parents of Balkrushna.

05] It is alleged by the applicant that she was subjected to ill-treatment and cruelty by Balkrushna and his other family members. She has stated that on 10th March, 2014, her husband Balkrushna (respondent herein) and one more relative came to the flat. They quarrelled with the applicant. They mercilessly beat her. They were under the influence of liquor. They filed a false report against the applicant. It is stated that they made the false allegations about her character and adulterous relation with one Sanjay Jaysinghpure. They drove her out of the residential flat. Therefore, she went to reside in the flat namely Aradhya Apartment, Unique Cooperative Housing Society, Chiranjivi Nagar, Somalwada, Nagpur. The said flat according to her, is owned by her husband Balkrushna. She has been residing in the said flat with her son. It is her case that she was subjected to ill-treatment and cruelty by Balkrushna and other family members. They made her life miserable. They raised doubt about her fidelity. She has been subjected to domestic violence. Therefore, she filed an application under Section 12 of the D.V. Act, seeking multiple reliefs. Her husband-Balkrushna is the non-applicant No.1 in the said application. The respondent was non-applicant No.2 in the

said application. The brother-in-law of the respondent was non-applicant No.3 in the said D.V. Act proceeding.

06] It is the case of the applicant that the learned Additional Sessions Judge has come to a wrong conclusion and dropped the D.V. Act proceeding against the respondent. It is stated that in the application made by her under Section 12 of the D.V. Act, specific instances have been stated. Specific allegation of mental and physical cruelty has been attributed to the respondent with her husband Balkrushna. It is stated that the application filed by the respondent was rightly rejected by the learned Magistrate. The learned Additional Sessions Judge, however, on some flimsy grounds and reasons, allowed the appeal and dropped the D.V. Act proceeding against the respondent.

07] The respondent in his reply has reiterated the facts stated in the application. According to the respondent, no case has been made out against him by the applicant, to continue the D.V. Act proceeding against him. It is contended that the applicant and her husband has been residing separately. The respondent never resided with the applicant and her husband in a shared household at Nagpur. He has been doing service in Water Resources Department of the Government of Maharashtra. Presently, he has

been posted at Wardha. It is contended that the respondent neither shared her household with the applicant nor was in a domestic relationship with her at any time. He was wrongly roped in the proceeding filed under Section 12. According to him, the genesis of this D.V. Act proceeding lies in the incident dated 10th March, 2014. It is his contention that his brother Balkrushna, being Loco Pilot, would remain absent from the house for days together. The applicant took the advantage of this situation. She was in adulterous relationship with one Sanjay Jaysinghpure. The brother of the respondent informed him about it. Therefore, they wanted to verify the correct factual position. They, therefore, planned with the help of the flat owners to catch the applicant red-handed with her paramour.

08] On 10th March, 2014, the husband of the applicant informed her that he would be out of house on account of his duty for six days. The applicant taking the advantage of this situation, called Sanjay Jaysinghpure to her house. As per the plan, on 10th March, 2014 at about midnight, his brother Balkrushna, he himself and their common friend by name Mangesh Surawar and the flat owners came to the flat. The door was closed from inside. They opened the door. They found the applicant and her paramour

naked and in a compromising position. They called the police. The applicant and her paramour were taken to the police station. The report was lodged. The applicant and her paramour admitted before the police their adulterous relationship. The applicant was, therefore, driven out of the said flat. She went to stay at her parent's house. After few days, she came to the flat at Dwarkapuri and broke open the lock and got the entry in the said flat. The said flat was earlier jointly owned by the respondent and his brother Balkrushna. His brother gifted his share to him. He is the absolute owner of the said flat.

09] It is stated that on account of this incident, the applicant got annoyed. The D.V. Act proceeding was filed after the said incident. It is further stated that his brother had filed a divorce petition on the ground of cruelty. The Family Court has granted divorce. He has filed a suit for possession of the flat where the applicant is residing. It is submitted that on account of this, he has been falsely implicated in the D.V. Act proceeding. It is his contention that the facts stated in the application clearly show that he was not in a domestic relationship with the applicant. He never lived with the applicant in a shared household. It is stated that vague and general allegations have been made against him. The

proceeding against the non-applicant No.2 was dropped by the learned Magistrate. The same has not been challenged. In short, it is his contention that the learned Additional Sessions Judge was right in allowing the appeal.

10] I have heard the learned advocates for the parties. Perused the record and proceedings.

11] The learned advocate for the applicant submitted that the specific allegations have been made against the respondent. The learned advocate submitted that on the basis of those allegations, it has been *prima facie* established that the applicant was subjected to domestic violence by the respondent with his brother Balkrushna. The learned advocate submitted that the order passed by the learned Additional Sessions Judge is not in accordance with law, inasmuch as the learned Judge has not taken into consideration the material facts pleaded in the application. The learned advocate submitted that considering the relationship of the respondent with Balkrushna and the applicant, he is covered in the definition of domestic relationship, as provided in Clause 2(f) of the D.V. Act. The learned advocate, therefore, submitted that the order passed by the learned Additional Sessions Judge deserves to be set aside.

12] The learned advocate for the respondent submitted that the incident germane to filing of the application by the applicant against the respondent and the husband cannot be brushed aside. The learned advocate submitted that the identical allegations were made against the non-applicant No.3. However, the proceeding against him was dropped by the learned Magistrate. The learned advocate submitted that in the application the role, similar to the one attributed to the respondent, was attributed to the non-applicant No.3 and, therefore, the learned Additional Sessions Judge was right in allowing the appeal. The learned advocate took me through the application and submitted that the statements are vague and general. The learned advocate submitted that as far as the respondent and his brother-in-law, the original non-applicant No.3, are concerned, the allegations are omnibus in nature. The learned advocate submitted that respondent never lived in a shared household with the applicant. The learned advocate submitted that, therefore, there was no domestic relationship between the applicant and the respondent, who is the brother of her husband. The learned advocate submitted that, therefore, the proceeding under Section 12 of the D.V. Act cannot be filed and continued against the respondent.

13] In order to seek support to this submission, the learned advocate for the respondent has relied upon the decisions in the cases of *Prabhakar Mohite and Another Vs. State of Maharashtra and Another* [2018(6) Mh.L.J. (Cri.) 478] and *Prakash Vinayak Gaikwad and Others Vs. State of Maharashtra* [2020(5) Mh.L.J. (Cri.) 499]. In the case of *Prabhakar Mohite* (supra), it is held that the person, who has never lived in a shared household with the victim and not in a domestic relationship with the victim, cannot be made to face such a proceeding on the basis of general and omnibus allegations without attributing any specific role to such a person. In the case of *Prakash Vinayak Gaikwad* (supra), it is held that the short visits of the parental relatives of husband are not sufficient to rope them in proceeding under the D.V. Act. It is held that in order to make out a domestic violence, as defined under Section 3 of the D.V. Act, the Act must be having certain intensity as well as repetitive nature.

14] In order to appreciate the rival submissions and consider the applicability of the proposition of the law laid down in the judgments cited (supra), I have minutely perused the record and proceedings. It is undisputed that the respondent never lived in a shared household with the applicant. In the application, the

applicant has stated that after her marriage, she and her husband went to reside in a separate flat at Dwarakapuri Apartment near Harish Plywood, Ring Road, Nagpur. In her application, she has also admitted that the incident had occurred in the night of 10th of November, 2014. The incident has been reported to the police. In a private complaint filed by her husband, the police have submitted the report, as per the order of the learned Magistrate. The copy of the said report is placed on record. The said report fortifies the allegations made by the respondent about her adulterous relations with Sanjay Jaysinghpure. It is further pertinent to note that on the basis of same set of facts, the divorce petition filed by his brother Balkrushna has been decreed. The main ground for divorce was cruelty and mental torture on account of the adulterous relationship of the applicant with Sanjay Jaysinghpure. The copy of the said judgment has been placed on record. It, therefore, goes without saying that the respondent never lived in a shared household with the applicant. The question is whether they were in a domestic relationship. Section 2(f) of the D.V. Act defines domestic relationship. Section 2(f) of the D.V. Act read thus:

“2(f). “domestic relationship” means 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;”

15] This definition will have to be borne in mind while considering the facts stated in the application. In order to constitute the domestic relationship between two persons, it must be established that they live or have, at any time, lived together in a shared household. This relationship is *sine qua non* to constitute the domestic relationship. The relationship by consanguinity, marriage or through a relationship in the nature of marriage, adoption or as a family member has been postulated in the definition. Even if it is assumed that the respondent may fall within the ambit and scope of relationship, postulated Section 2(f) of the D.V. Act, he could not be said to be in a domestic relationship with the applicant. It is not the case of the applicant that at any time, they resided together or jointly. The respondent is doing service since 1998. In his reply, he has categorically stated that on account of service, he has been posted outside the city of Nagpur. It is his case that, at present, he has been posted at Wardha. It is further his case that he has his own separate place of residence at Nagpur. In order to attract the definition of domestic relationship between the applicant and the respondent, there is no averment in the application.

16] It is to be noted that the learned Additional Sessions Judge found that in the application under Section 12 of the D.V. Act, the role attributed to the respondent and the original non-applicant No.3 was identical. The learned Additional Sessions Judge found that on the basis of the facts stated in the application, the proceeding against the respondent is required to be dropped. It is to be noted that the genesis of the dispute lies in the incident dated 10th March, 2014. In a divorce petition, the said incident has been proved. The parties have been fighting tooth and nail on that issue. Perusal of the application would show that the vague and general statements have been made by the applicant that the family members of her husband used to mentally and physically ill-treat her. Except the respondent, no other family member has been made party in the said application. Similarly, no specific statement attributing any role to other family members, has been set out. At the most, on the basis of the application, it can be seen that on the date of the incident dated 10th March, 2014, the respondent with his brother and the original non-applicant No.3 had come to her flat and caught her red-handed.

17] In my view, in this background, the order passed by the learned Additional Sessions Judge needs to be examined. The

allegations made in the application, in my view, are not sufficient to make the respondent to face the said proceeding. The learned Additional Sessions Judge was, therefore, right in allowing the appeal. The order passed by the learned Additional Sessions Judge is according to the law. The learned Judge has not committed any error or mistake apparent on the face of the record. The well reasoned order passed by the learned Additional Sessions Judge, Nagpur does not warrant interference. Therefore, the revision application is **dismissed**.

(G. A. SANAP, J.)

Vijay