

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO.
2693 of 2014

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MAHENDRA DHIRAJLAL BHAGAT & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR BJ TRIVEDI(921) for the Applicant(s) No. 1,10,2,3,4,5,6,7,8,9
MR JT TRIVEDI(931) for the Applicant(s) No. 1,10,2,3,4,5,6,7,8,9
MS JIGNASA B TRIVEDI(3090) for the Applicant(s) No.
1,10,2,3,4,5,6,7,8,9
MR HARDIK SONI, APP for the Respondent(s) No. 1
RULE SERVED BY DS for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE CHEEKATI
MANAVENDRANATH ROY

Date : 19/03/2024

ORAL ORDER

1. This petition under Article 226 of the Constitution of India and Section 482 of the Criminal Procedure Code, 1973 (CrPC) is filed for quash of Misc. Application No. 91 of 2010 filed by the second respondent under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the DV Act') seeking

maintenance for her and her minor child.

2. Heard, learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent – State. Though served with notice, the second respondent, who is the complainant and the wife of the first petitioner, did not turn up for hearing. Therefore, this petition is not opposed by the second respondent.

3. The second respondent is the legally wedded wife of the first petitioner. Their marriage was solemnized on 26.04.2001. Thereafter, they both led conjugal life and they begot a son and a daughter during their lawful wedlock. Subsequently, disputes arose between second respondent and the first petitioner and they are living separately. The minor children are living along with the second respondent.

4. The second respondent along with her minor child filed an application before the trial Court under the provisions of the DV Act claiming monthly maintenance for her and her child.

5. The petitioner Nos. 2 to 10 are the brothers, sisters, brothers-in-law and the sisters-in-law and also the mother of the first petitioner, respectively.

6. The petitioners sought quash of the said proceedings initiated by the second respondent on the ground that the petitioner Nos. 2 to 10, who are the brothers, sisters, brothers-in-law, sisters-in-law and the mother of the first petitioner, are all living separately and they are not living under one roof and as such, there is no domestic relationship between them and the second respondent and that, the application filed by the second respondent against them under the DV Act is not maintainable under law. It is also their contention that they are not liable to pay any maintenance to the second respondent.

7. It is clearly averred in the petition that the petitioner Nos. 2 to 10 are living separately. The said fact is not disputed and controverted by the second respondent who did not contest this petition despite receipt of notice in this petition. Therefore, the said averment in the petition that the petitioner Nos. 2 to 10 are residing

separately remains uncontroverted and unchallenged in this petition. Therefore, when they are not residing along with the first petitioner and the second respondent under one roof and when there is no domestic relationship between them and the second respondent and when there is no liability to pay any maintenance to the second respondent, initiating proceedings under the DV Act by way of filing the impugned application against them, certainly amounts to abuse of process of law. Therefore, on this sole ground, the said Misc. Application No. 91 of 2010 filed against the petitioner Nos. 2 to 10 herein before the trial Court, is liable to be quashed.

7.1 As regards the claim made by the first petitioner who is the husband for quash of the proceedings is concerned, admittedly, he is the husband of the second respondent. The said marital relationship between them is not disputed. Further, it is also not in dispute that they begot children during their lawful wedlock. Therefore, as a husband and as a father, *prima facie*, there is liability on the part of the first petitioner to provide the maintenance to them. There are certain disputed questions of fact where the first petitioner alleges

that the second respondent, who is his wife, voluntarily left his company and living separately and as such, he is not liable to pay the maintenance to her. These are the questions of fact, which are to be decided during the course of inquiry before the trial Court. The same cannot be decided in this petition filed for quash of the said proceedings. Therefore, the first petitioner is not entitled to any quash of the application filed by the second respondent under the DV Act. The trial Court has to decide the claim of the second respondent against the first petitioner in the final adjudication of the said application after conducting appropriate inquiry as required under the law.

8. Resultantly, the petition succeeds and is allowed in part. The proceedings initiated in Misc. Application No. 91 of 2010 on the file of learned Judicial Magistrate First Class, Surat against the petitioner Nos. 2 to 10 herein are hereby quashed. The application, in respect of the first petitioner is concerned, it is dismissed. However, it is made clear that the Court did not decide anything on merits as regards the claim made by the second respondent against the first

petitioner. The trial Court has to, independently, decide the claim of the second respondent on the basis of the material available on record before it, according to law. Since, the application was filed by the second respondent long back, in the year 2010, about 10 years ago, the trial Court shall make endeavour to dispose of the said application expeditiously and preferably, within three months from the date of receipt of this order.

8.1 Rule is made absolute, accordingly. **Direct service** is permitted.

[Cheekati Manavendranath Roy, J.]

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