



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

92 CRIMINAL WRIT PETITION NO. 420 OF 2024

PUSHPAJEET GOPAL SONAWANE AND OTHERS

VERSUS

SUKESHINI PUSHPAJEET SONAWANE

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Advocate for the Petitioners : Mr. Patil Prafullasing H.

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CORAM : S. G. MEHARE, J.

DATE : 29.07.2024

PER COURT :-

1. Heard the learned counsel for the petitioners. None present for the respondent.
2. A small question is whether the respondent/wife is residing at Nandurbar either temporary or permanently ?
3. Learned counsel for the petitioners would submit that all other proceedings filed against the petitioners at Shahada. The respondent was residing at Shahada. Her daughter is still in the school at Shahada. Her Aadhar card is also of Shahada. However, only with a view to harass the petitioners, she showed the address of the house purchased by her father at Nandurbar. No cause of action arose at Nandurbar. Merely an affidavit is not sufficient. Since Section 27 allows the victim to

file a petition even at the place where she was temporary resides does not mean that she may file the petition at the place of her choice. There must be evidence that may inspire the confidence.

4. Learned counsel for the petitioners would further submit that this is a matter of fact finding and merely on the affidavit, her version should not be believed. For finding facts, the learned Judicial Magistrate First Class ought to have record the evidence before the application was rejected.

5. It appears that there is a serious controversy about the residence of respondent/wife at Nandurbar. The petitioners have prima facie material to show that the daughter of the victim is still going to the school at Shahada. The other proceedings were filed at Shahada. In such circumstances, the Court is of the view that the facts finding should have been recorded on the basis of evidence lead by the respective parties. Since Section 27 of D. V. Act grants a leave to file a petition where the victim is temporarily resides, it would not be accepted as a gospel truth. The period of stay at such new places should have been investigated. There should be a satisfaction of her temporary residence at the place where she has filed the proceeding. In the circumstances, the Court is of

the view that in such matters, the Court should have ordered to lead the evidence on such issue to both the parties and then adjudicate the dispute. Since, no evidence was recorded to find out whether the contention of the respondent that she is temporary residing at Nandurbar is genuine, true and correct, the impugned order warrants interference.

6. In view of that matter, writ petition is allowed.

7. The order of learned Judicial Magistrate First Class, Nandurbar (Court No.3), dated 30.12.2023, passed below Exh.23 in Criminal Misc. Application No.102 of 2023 stands quashed and set aside.

8. The matter is remitted to the Court of learned Judicial Magistrate First Class, Nandurbar (Court No.3) for fresh inquiry about the temporary/permanent residence of respondent/victim by granting an opportunity to lead the evidence to both the sides.

9. The issue of jurisdiction as provided under Section 27 of the D.V. Act should be decided first within two months from the date of appearance of parties.

10. Both parties are directed to appear before the learned Judicial Magistrate First Class (Court No.3), Nandurbar, on 12.08.2024.

11. No order as to costs.

(S. G. MEHARE, J.)

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vmk/-