



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

17 CRIMINAL WRIT PETITION NO. 1720 OF 2023

Mrs. Vandana Bhavesh Patil.

... Petitioner

Versus

1] Akshar Parshaubhai Patel.

2] Parshaubhai Shambubhai Patel.

3] Pratibhaben Parshaubhai Patel.

... Respondents

...
Ms. Rashmi Kulkarni a/w Mr. Bhushan M. Kathar, h/f Mr. Swapnil Mule a/w
Ms. Namita Thole, Advocates for the Petitioner.

Mr. D. S. Patil, Advocate for Respondents.

...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 18th March, 2024.

Per Court:

1 Heard.

2 This writ petition is filed for challenging the order dated 9th October, 2023 passed below Exhibit-1 by the learned Judicial Magistrate First Class, Nandurbar in Criminal M.A. No.425 of 2023. It was application filed under Sections 12, 18, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short "the DV Act"). The Trial Court suo moto held that it has no jurisdiction and the petitioner has no *locus-standi* to file such application. The application was rejected.

3 It is averred in the petition that the petitioner's daughter Shreya came to India from the USA. The engagement ceremony was performed with respondent No.1 at Nandurbar. That time, all the relatives from both the families had gathered. The marriage was to be solemnized in India. Her daughter went to the USA. The respondent No.1 was also serving in USA. During Covid-19 period, in peculiar fact situation they stayed under one roof. Their marriage was registered on 19th March, 2021 in Fort Bend County, Texas, USA. On the second day, all the marriage ceremonies as per Hindu rituals were performed in the house of respondent No.1's sister viz Mrs. Priya Majmudar at Zachary Lane Sugarland, Huston, USA. Thereafter, respondent No.1 got a job and he started to reside separately at New Jersey City saying that he has no friends in Cherry hill area where both were residing. Thereafter, there was agreement between them to stay together with a condition that all the expenses shall be borne by the daughter of the petitioner.

4 The petitioner further contended that respondent No.3 started demanding money to Shreya for the petitioner on this or that count. Some amount was transferred from Nandurbar, which was never returned to them. Thereafter, respondent No.1 started to threaten Shreya that he would divorce her. He also terrorized, abused and harassed her mentally and physically. He also tarnished her

image and character on various occasions and also assaulted her so that she will leave his company. Respondent Nos.2 and 3 tried to convince respondent No.1 that he should behave properly with Shreya and also directed him to control his liquor consumption and smoking vices. Thereafter, respondent Nos.2 and 3 started to blame Shreya. The petitioner being mother of Shreya (the wife of respondent No.1), filed Criminal M. A. No.425 of 2023 in the Court of learned Judicial Magistrate First Class, Nandurbar under Sections 12, 18, 19, 20 and 22 of the DV Act for relief of protection to Shreya from harassment, rent amount of Rs.50,000/-, maintenance amount of Rs.50,000/- and compensation of Rs.1,25,00,000/-.

5 The learned Trial Court prior to issuing notices to the respondents held that the application is not maintainable as petitioner's daughter is residing at the USA and their marriage took place in the USA. The acts of domestic violence were committed with her daughter in the city of New Jersey, USA, therefore, the Trial Court held that it has no jurisdiction to try and entertain the complaint and hence it was held that the application under DV Act is not maintainable in India.

6 The grounds of objections of this petition are that the trial court failed to consider Section 27 of DV Act and erred in holding that the provisions of DV Act can not be invoked. It is prayed to allow the writ petition.

7 The respondents by filing their affidavit-in-reply strongly opposed the petition and submitted that the alleged domestic violence took place in the USA and the impugned order passed by the Trial Court is legal, correct and no interference is warranted in it. It is also averred that the mother cannot file such application. It cannot be filed in the India as the alleged domestic violence took place in the USA. It is lastly prayed to dismiss the writ petition.

8 The learned counsel for petitioner pointed out Section 27 (1)(c) of the DV Act, which reads as under:-

“27. Jurisdiction. – (1) The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which –

(a) ...

(b) ...

(c) the cause of action has arisen.

shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.

9 The learned counsel for petitioner submitted that the Court of learned Judicial Magistrate First Class, Nandurbar is having jurisdiction to grant the protection order as per Section 27 (1)(c) of the DV Act because the petitioner was forced and compelled to pay money to respondent Nos.2 and 3. They paid it from Nandurbar. The domestic violence took place with her also and cause of action arose there. She further pointed out that the “aggrieved person” as defined

under Section 2(a) of the DV Act, means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. She further pointed out the Section 12 of the DV Act, which empowers the aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to file such application. Thus, any other person can file such application. This was not considered by the Trial Court.

10 The learned counsel for petitioner is relying upon the authority of the Hon'ble Supreme Court in the case of ***Shyam Lal Devda and Ors. Vs. Parimala (Criminal Appeal No.141 of 2020)***, in which the Honourable Supreme Court in paragraph 10 held as under:-

“10. Insofar as the jurisdiction of the Bengaluru Court, as pointed out by the High Court, Section 27 of the Protection of Women from Domestic Violence Act, 2005 covers the situation. Section 27 of the Act reads as under:

27. Jurisdiction -

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which -

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the Respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and

other orders under this Act and to try offences under this Act

(2) Any order made under this Act shall be enforceable throughout India.

A plain reading of the above provision makes it clear that the petition under the Domestic Violence Act can be filed in a court where the "person aggrieved" permanently or temporarily resides or carries on business or is employed. In the present case, the Respondent is residing with her parents within the territorial limits of Metropolitan Magistrate Court, Bengaluru. In view of Section 27(1) (a) of the Act, the Metropolitan Magistrate court, Bengaluru has the jurisdiction to entertain the complaint and take cognizance of the offence. There is no merit in the contention raising objection as to the jurisdiction of the Metropolitan Magistrate Court at Bengaluru."

11 The learned counsel for respondents submitted that the marriage took place in the USA and therefore, domestic violence alleged to have been committed in the USA, is not cognizable in India. He submitted that the petitioner is mother of the wife of respondent No.1. The petitioner cannot file such application. The petitioner has no *locus-standi* to file the application under the provisions of the DV Act. The application is rightly returned on the jurisdictional point that the Court of Judicial Magistrate First Class, Nandurbar has no jurisdiction. No such cause of action arose at Nandurbar to file such application under the DV Act. It is lastly prayed to dismiss the writ petition.

12 Perused the impugned order, the application Exhibit-1 and reply affidavit of the respondents. The petitioner's averments in the petition are that she was compelled to pay amount to the respondent Nos.2 and 3. She paid it to them from Nandurbar. There the J.M.F.C. Court Nandurbar has jurisdiction to try the application under the provisions of the DV Act. As per Section 12(1) of the DV Act any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the DV Act. Thus, the petitioner has *locus-standi* to file application under the DV Act. This provision was not considered by the Trial Court in its proper perspectives.

13 As far as cause of action to file the application is concerned, it is averred in the application that cause of action occurred when the petitioner paid that amount to respondent Nos.2 and 3, which amounts to domestic violence. There is documentary evidence of payment of Rs.2,75,000/- in the bank account of respondent Nos.2 and 3. Thus, the alleged violence to compel to pay that amount took place at Nandurbar. There are other kind of domestic violence caused to the daughter which need not be discussed here. Thus, as per Section 27 (1) (c) of the DV Act, there is territorial jurisdiction to the Court of Judicial Magistrate First Class, Nandurbar, as the cause of action arose there. Only because respondent No.1 is residing in USA it cannot be held that the proceeding under DV Act cannot be filed in

India. Therefore, the argument of learned advocate for the respondents is not accepted.

14 The reasons and findings given by the learned Trial Court on the issue of maintainability and jurisdiction are not as per Section 12(1) and 27 (1)(c) of the DV Act and the law laid down in case of ***Shyamlal Devda and Ors.*** (cited supra). The Trial Court erred in deciding the issue of jurisdiction, *locus-standi* of the applicant and maintainability of the said application. Thus, an impugned order passed by the learned Trial Court is illegal, erroneous and not sustainable either on facts or law. It requires interference. It deserves to be set aside. The writ petition, therefore, deserves to be allowed. For the reasons stated above, the argument of the learned counsel for respondents is not acceptable. Hence, the following order:

ORDER

- I. The criminal writ petition is allowed in terms of prayer clause (B).
- II. No costs.

[SANJAY A. DESHMUKH, J.]