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Cri.WP-823-2024

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

CRIMINAL WRIT PETITION NO. 823 OF 2024

Nur Ali s/o. Sardar Ali Shah

Age : 44 years, Occu: Business
R/o. Block No. 44/4 74,
Katodara Houseing Colony, Surat.

2. Shah Shabanabi Nur Ali

Age: 40 years, Occu: Household,
R/o. Block No. 44/4 74,
Katodara Houseing Colony, Surat.

3. Sardarali Navajali Shah

Age : 73 years, Occu: Nil,
R/o. Ho. No.123, Mandarwaja Bakhad,
Mohalla, Khwaja Nagar, Surat.

4. Kheroonsha Sardar Ali Shah

Age :66 years, Occu: Household,
R/o. Ho. No.123, Mandarwaja Bakhad,
Mohalla, Khwaja Nagar, Surat.

...PETITIONERS

VERSUS

Rehana Bi Sayyad Ali Shah,

Age: 38 years, Occu: Business,
R/o. Plot No.185, Patelwadi,
Nandurbar.

...RESPONDENT

Mr. Sohail Subhadar Shaikh, Advocate for the Petitioners.

Mr. Ram B. Deshpande, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 9th JULY 2025.
PRONOUNCED ON : 29th JULY 2025.

ORDER :-

1. Heard Mr. Shaikh, the learned Advocate for the Petitioners, and Mr. Deshpande, the learned Advocate for Respondent. The matter is heard finally at the stage of admission, with the consent of the parties.
2. This Writ Petition arises out of proceeding in Criminal Misc. Application No.383 of 2021, pending before the learned Judicial Magistrate, First Class, Nandurbar. The petitioners are the original opponents in complaint filed by the Respondent before the learned JMFC, Nandurbar, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "D. V. Act") claiming relief under Sections 18, 19, 20, 22 and 23 of the D. V. Act which is sought to be quashed by this writ petition.
3. The respondent is the daughter-in-law of petitioner No.1 and 2. The petitioner Nos. 3 and 4 are the brother-in-law and wife of brother-in-law of respondent.

4. The respondent filed a complaint under the D. V. Act. It is stated that respondent married to son of petitioner Nos. 1 and 2, namely, Sayyad Ali Sardar Ali in the year 2002. The husband of the respondent died on 4th December 2003. It is alleged that in the marriage, her parents spent amount of Rs. 4 lakhs approximately. She was staying in the joint family at Surat. The present petitioners used to harass her on petty reasons. They used to keep her starved. They started demanding an amount of Rs.10 lakhs, and on that count, they used to harass her mentally and physically. When she was pregnant, it is alleged that the petitioners again started harassing her, saying that no amount is paid by her father in the marriage, and now, again there would be one more addition in the family, and started asking her to terminate the pregnancy. They did not like husband of the respondent taking her care during the pregnancy.

5. She delivered a baby on 2nd October 2003 at her parents' house at Shahada. The husband of the informant, because of the harassment, allegedly committed suicide on 12th October 2003. After demise of the

husband, the petitioners again started harassing her. After the son of informant became major and started looking after family business, the same is not liked by the petitioners and again there was harassment on that count. It is ultimately alleged that now the flat in which the opponent was staying with her son is being tried to be occupied by the petitioners. It is on this, the complaint was filed and reliefs were prayed for.

6. The petitioners appeared and filed say. It is specific case of the petitioners in the say that the petition is filed only to harass the petitioners. There is no shared household since 2003 i.e. since death of husband of respondent. Thus, no proceeding is maintainable against them. The petitioners are residents of Surat, whereas the respondent is residing in Shahada.

7. The petitioners have now approached this Court for quashing of the proceeding mainly on the ground that the provisions of D.V. Act came into force in the year 2005. The respondent and petitioners are

staying separately since 2003 i.e. prior to coming into force of D. V. Act. The provisions of the D. V. Act are, therefore, not applicable, and no proceeding can be filed for the alleged act, even if any.

8. The learned Advocate for the petitioners relied upon the following judgments:

- (i) *Tulshiram @ Tulsidas s/o. Haribhau Patil and Ors. Vs. The State of Maharashtra Through Wadi Police Station and Ors. in Criminal Application (APL) No.387 of 2020 (Nagpur Bench).*
- (ii) *Shivaji Gangadhar Ingale and Ors. Vs. The State of Maharashtra and Anr. in Criminal Writ Petition No.358 of 2022 (Aurangabad Bench).*

9. In the case of ***Tulshiram Patil*** (supra), the Court considered that the parties therein were not residing together or they never lived in a shared household with the complainant. By considering the definition given in Section 2(f) of the words, “domestic relationship” and in Section 2(q) “Respondent”, the Court held that when the persons do not stay together under one roof, they cannot be said to be persons having a

domestic relationship. So far as the word Respondent is concerned, the Court held that the complainant has to be a person aggrieved against the persons who are in domestic relationship. By considering Section 2 of the D. V. Act, the Court considered whether the act cannot be said to be an act of Domestic Violence. In the said case, the Court recorded that the complainant failed to show domestic relationship as defined under Section 2(f) and a shared household as defined in Section 2(s) of the said Act. It is further held that the petitioner therein also cannot be termed as a Respondent as defined in Section 2(q) of the Act, and on that basis, the complaint came to be quashed and set aside by granting liberty to file appropriate proceeding under Civil or Criminal law for ascertaining the rights.

10. In the case of *Shivaji Ingale* (supra), the facts were that the petitioner was charged under Section 4 of the Protection of Children from Sexual Offences (for short “POCSO”) Act, for an act committed prior to enactment of POCSO Act. This Court further considered Article 20(1) of the Constitution of India. It was held that when the Act was

allegedly committed, the provisions of POCSO were not in force, and therefore, the petitioner therein could not be charged for the offences under the POCSO, as on the date of commission of alleged act, POCSO was not in force.

11. The learned Advocate for the respondent relied upon a judgment passed by the Hon'ble Apex Court in the case of ***Kamatchi Vs. Lakshmi Narayanan***¹, wherein the Apex Court held that there is no limitation for filing a complaint under the D. V. Act. The Hon'ble Apex Court considered Section 468 of Cr.PC and held that the same is not applicable. It was the case where the proceeding was filed for breach of an order passed under Section 12. It is held that the limitation would start only from the date of breach of order under Section 12. However, the question in the present case is that on the date of alleged incident, the provisions of D. V. Act were not in force. Secondly, in the present case, it is seen that since 2003, parties are not in domestic relationship, and therefore, they cannot be said to be respondent, and in view of this,

¹ 2022 STPL 4200 SC

no provisions of D. V. Act would be applicable in the present case.

12. Considering all above, this Court is of the opinion that continuation of the present proceeding against the present petitioners would be an abuse of process of law. The proceeding is not maintainable under the D. V. Act. Hence, the following order:

ORDER

(i) Criminal Writ Petition stands allowed in terms of prayer clause (B) which reads as under:-

(B). That, the proceeding in Criminal M. A. No.383 of 2021 pending before the learned Judicial Magistrate First Class, Nandurbar may kindly be quashed and set aside.

(ii) With this, criminal writ petition stands disposed off.

[KISHORE C. SANT, J.]