



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 5623 OF 2024

Santosh Shantaram Naik and Ors. .. Petitioners

versus

The State of Maharashtra and Anr. .. Respondents

Adv. Vaibhav P. Punekar a/w Adv. Asma F. Shaikh, for the Petitioners.

Mr. Avinash D. Kamkhedkar, APP for the State.

CORAM: MANJUSHA DESHPANDE, J.

DATE : 18th JULY, 2025

PC:-

1. The Petitioners are challenging the Domestic Violence proceedings initiated by Respondent No.2 herein by filing Application bearing No. DVC/15/2022 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (“DV Act”) before the Metropolitan Magistrate, 45th Court, Kurla.

2. The Petitioners contend that Petitioner No.1 got married to Respondent No.2 on 25th February 2008. After residing in the joint family for some time, the couple moved out of the house. Since 2009 till their separation on 10th March 2016, they were residing

separately. Even after that upto the year 2021, there was no contact between the Petitioners and Respondent No.2. Respondent No.2 has filed a complaint under DV Act on 18th January 2022. It is a contention of the learned Advocate for the Petitioner that only when the notice was issued by the Petitioner to Respondent No.2 for the settlement of marital dispute by filing a Petition for divorce by mutual consent, she has filed the DV complaint, which is an afterthought.

3. Considering the fact that she was not residing in the shared household along with the Petitioners, there is no question of initiating any action against them under the DV Act. Learned Advocate for the Petitioners relies on the cross-examination of Respondent No.2 wherein she has admitted that she was not residing along with Petitioner Nos. 2 to 4 after the birth of her first child. It is further pointed out from her cross-examination that, from 08th March 2016 she has been residing in her maternal home. It is further pointed out that she has admitted that, Petitioner No.1 had gone to the maternal house in 2016 to bring her back to his house. However, she had not gone back to the Petitioner's house and filed the

complaint under the DV Act.

4. Learned Advocate for the Petitioners submits that these admissions are enough to support his submissions that Respondent No.2 complainant, apart from the first year of the marriage, has not resided in the shared household with Petitioner Nos. 2 to 4 and that after a gap of almost 6 years she has filed the complaint which is nothing but an afterthought with a view to harass the Petitioners by implicating them in false complaint.

5. I have perused the cross-examination relied upon by the learned Advocate for the Petitioners. From the cross-examination, it is evident that she has been residing separately from Petitioner Nos. 2 to 4 from the year 2009 onwards. She has also admitted that when her marriage took place, the sister of the husband was already married in the year 1991, and even in the complaint, there are no specific allegations against Petitioner Nos. 2 to 4. It is informed that the cross-examination of the complainant is over.

6. In view of the admissions given by the complainant in her cross-examination, *prima facie*, she does not make out any case of Domestic Violence against Petitioner Nos. 2 to 4.

7. In view of the above observations, issue notice to the Respondents, returnable on 18th August 2025.
8. Learned APP waives notice on behalf of the Respondent-State.
9. In the meanwhile, there shall be a stay to the further proceedings in the complaint to the extent of Petitioner Nos. 2 to 4.

[MANJUSHA DESHPANDE, J.]