
(2022) 12 BOM CK 0009

In the Bombay High Court

Case No : Criminal Application No. 647 Of 2022, Criminal Writ Petition No.1154 Of 2021

Rahul Ashok Yadav And Others

APPELLANT

Vs

Manorama Rahul Yadav And Others

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Domestic Violence Act, 2005 — Section 12, 18, 19
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2022) 12 BOM CK 0009

Hon'ble Judges : Kishore C. Sant, J

Bench : Single Bench

Advocate : K. N. Shermale, S. S. Dixit

Final Decision : Disposed Of

Judgement

Kishore C. Sant, J

1. By way of these petitions, these petitioners have challenged same order passed by the learned Judicial Magistrate, First Class, Akole directing issue of process in Criminal Inquiry Application No. 168/2019 filed under the provision of the Protection of Women From Domestic Violence Act. Petitioner No.1 in Cri. W. P. NO. 647/2022 is husband of respondent. Petitioner No.2 is father-in-law. Petitioner No.3 is mother-in-law. Petitioner in writ petition No.1154/2021 is brother-in-law of respondent No.1-wife who has filed inquiry application. (the parties hereinafter referred to as per their designation in Cri. Writ Petition No.647/2022)

2. Respondent-wife of petitioner No.1 filed inquiry application praying for various reliefs under Sections 12, 18, 19, 20, 21 and 22 under the Domestic Violence Act, 2005. It is alleged that respondent and petitioner No.1 got married on 13-11-2016. After few months of the marriage she found that husband was frequently going to Nashik. On enquiry it was shockingly revealed that the petitioner No.1 was already married and some disputes are going on in the court

at Nashik against his first wife. In one of the cases even there is an order to pay Rs.12,000/- per month to the earlier wife of petitioner No.1. On asking about this, he accepted his guilt. However, later on he started harassing & beating her. Further allegations so far as other petitioners are concerned is that they are encouraging or instigating the husband. When she was pregnant, the husband asked her to terminate the foetus on the pretext that new child will bring bad luck to the family. He did not even give proper medical treatment to her for skin disease to her. On 05-01-2019 husband picked up a quarrel with wife assaulted her and drove her out of house. With the help of some others she tried to go to the house at Solapur to join the company of the husband however he did not allow her even to enter the house. Now so far as the income is concerned it is stated that husband is in service as Counselor in Women and Child Development Department, Solapur and his salary is Rs.45,000/- per month. It is alleged that now wife has apprehension from all the petitioners. Presently she is staying alone by taking a room on rent. The husband has not made any provision and rent amount is also not paid to her by the petitioners. She thus, prayed for medical expenses, and other expenses Rs.7000/- per month. Rs.3000/- per month for taking education. On all the counts, she prayed for total Rs.10,000/- per month in addition she also claimed amount of Rs.2500/- towards rent. Towards compensation for mental and physical harassment she prayed for compensation of Rs.5 Lakhs. This application was filed on 21-05-2019. Alongwith main application she also filed an application for interim relief. On filing this application the learned Judicial Magistrate First Class was pleased to issue notice by order dated 21-05-2019.

3. The petitioners appeared and filed their say on 17-10-2019 denying all the allegations. It is contended that wife has no locus-standi. There is no cause of action to file proceeding. All the documents annexed to the application and even the marriage certificate are denied. It is the say of the petitioners that the respondent wife is already married to one Manoj Rupwate residing at Akole. Though there is no divorce obtained from said Manoj, she thereafter started residing with some other person. From that relationship there is one child born to her. There is no relationship between the petitioners and respondent-wife. They have never resided together. It is contended that respondent-wife belongs to Buddhist community whereas this petitioner belongs to Hindu Mahar community. Petitioner No.1 has never converted to the Buddhism. Thus, there is no question of marriage between respondent-wife and petitioner No.1. Further all the documents such as marriage invitation card, certificate of marriage etc are denied. It is contended that the marriage certificate purportedly issued by Buddhist Society of India, Mumbai is also false and fabricated. The petitioner got knowledge about said documents for the first time. It is further contended that petitioner No.1 is already married to one Prajakta Hire. However, because of some family dispute there are disputes going on in the court at Nashik wherein he is paying an amount of Rs.12,000/- per month towards maintenance. There are no averments that the petitioners and respondent-wife have ever stayed

together etc. The petitioners also filed an application for interim relief. The petitioners even filed an application for sending the alleged documents such as marriage certificate, birth certificate of child etc for verification. It is submitted that original documents are not filed on record and application came to be filed seeking direction to take suitable action against respondent-wife. Thus, the case of the petitioners is that there is no relationship between respondent-wife and petitioners. The entire proceeding is taken out under false pretext that there is a marriage and domestic relationship. The petitioners have thus filed these petitions.

4. It is the submission of the learned advocate for the petitioners that looking at the contents of the inquiry application it is seen that allegations are only against Rahul i.e. husband of respondent-wife. No allegations are there to make out and no cause of action is there against these petitioners. He submits that documents furnished by the respondent-wife are also bogus. He submits that as a matter of fact no marriage between the petitioner No.1 and respondent-wife has taken place. Learned counsel for the petitioner has pointed out that husband has also filed a regular criminal case in the court of JMFC bearing RCC No.60/2020 for taking action against the accused persons therein including respondent-wife for preparing bogus documents and producing false and fabricated evidence in the court. The petitioner has also filed an application Exh.34 before the court below for referring those documents to hand writing expert. Though a say is filed showing that now case is made out against him, still court has not considered their say properly. From reading of the say and the material on record, it was necessary for the court below not to issue process. He thus criticized the order passed by the learned JMFC and submitted that the same deserves to be quashed and set aside. By the said order the learned court has directed to issue notices to the non-applicant Nos.1 to 4 through Protection Officer and call incident report for Protection Officer and prays for allowing the petition.

5. Heard the learned counsel for the respondent-wife. This proceeding is filed under the Domestic Violence Act. There are sufficient averments made in the inquiry application. The learned court below has rightly considered the contents of the inquiry application and has passed the order. At this stage no conclusion can be drawn that no case is made out against the present petitioners etc.

6. Learned counsel for the petitioners relied upon the judgment passed in Criminal Application (APL) No. 578/2011 passed by this court at Nagpur Bench showing that application under Section 482 can be entertained as the same is criminal proceeding. He further relied upon the judgment reported in 2016 (11) SCC 774 in the case of Kunapareddy Alias Nookala Shanka Balaji VS Kunapareddy Swarna Kumari and another to show the nature of proceeding is criminal. He further relied upon the judgment in the Criminal Writ Petition No. 647/2022 in the case of Rahul Ashok Yadav and others Vs Manorama Rahul Yadav passed by this court at Aurangabad Bench. He also relied upon the order passed in Criminal Application (APL) No. 434/2022 Anil S/o. Bhaurao Salway and

others Vs Pooja Wd/o. Swapnil Salway by this court bench at Nagpur. He also relied upon the judgment in the case of Mrs. Afia Rasheed Khan Vs Dr. Mazharuddin Ali Khan in Writ Petition No. 4184/2021 of this court at Bombay. Relying upon all these cases he submits that it is necessary to show that the parties are in domestic relation with the complainant and have shared household. It is thereafter complaint can be entertained against the said persons. From this case, it is seen that as per the allegations petitioner No.1 and the respondent stayed at Solapur as petitioner No. 1 is residing at Solapur because of his service. The petitioner No.2 and petitioner No.3 in writ petition No. 647/2022 so also, the petitioner in Writ petition No. 1154/2021 stay at different places and thus, there is no question of respondent and these (11) criwp647.22 petitioners staying together and having any domestic relationship.

7. Learned counsel for the respondent submits that this is a criminal proceeding under the Domestic Violence Act. The learned trial court has rightly passed the order by looking at the contents /averments of the application. All the petitioners are close relatives and they are from one family and therefore, the proceeding is perfectly maintainable against them. He relies upon the judgment reported in 2022 SCC Online SC 446 in the case of Kamatchi VS Lakshmi Narayan & specifically para 31 of the judgment. It is submitted that petition is not maintainable & prayed for dismissal of both the petitions.

8. Thus, considering the arguments advanced at the bar and considering the judgments, the complaint needs to be seen. Inquiry application states that respondent got married with petitioner No.1 in petition No. 647/2022 at Pimpalgaon Khand, Tq. Akole, Dist. Ahmednagar. She went to reside with petitioner No.1 at Solapur. There she came to know that her husband is already married to one other lady with whom there were disputes and on that count some court proceedings were going on at Nashik. All allegations are against the petitioner-husband. The allegations so far as the other petitioners are concerned is only that when the husband started ill-treating the wife she had been to the other petitioners with a request to convince her husband to stop the ill-treatment. They did not intervene. It is further alleged that they started instigating the husband for no reason. However, there is no specific instance quoted against these petitioners except husband. Even the allegations that when she was pregnant, the husband asked her to terminate the pregnancy is also only against the husband. The allegations that she was not allowed to stay at the house is only against the husband. It is thereafter, it is stated that even the petitioner in writ petition No. 1154/2022 brother-in-law is also having good income source as he is in service and therefore, she made prayers against the respondents in inquiry application.

9. So called allegations against other relatives except husband do not make out any case to attract the provision of Domestic Violence Act. There is no statement in the entire complaint that the complainant has ever stayed with these petitioners or that they have shared a common household. Thus considering the

above, this court holds that there is absolutely no case made out against respondent Nos. 2 to 4 in the inquiry application. The Criminal Writ Petition No.647/2022, thus is partly allowed to the extent of petitioner Nos. 2 and 3 and Criminal Writ Petition No.1154/2021 is allowed. Proceeding of Cri. Inquiry Application No. 168/2019 filed by respondent-wife in the court of JMFC, Akole is quashed and set aside to the extent of respondent Nos. 2 to 4 in that proceedings. The Criminal Writ Petitions stand disposed off accordingly.

[KISHORE C. SANT, J.]

1. After pronouncement of judgment a request is made by the learned advocate for the petitioners to expedite the trial. Request is granted. The trial is expedited.