

**(2016) 06 KAR CK 0170**

**In the Karnataka High Court**

**Case No :** Criminal Petition No. 100004 of 2016

Smt. Shakuntala Totappa Beleri

APPELLANT

Vs

Smt. Chaitra Manjunath Shatar

RESPONDENT

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**Date of Decision :** 23-06-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

Protection of Women From Domestic Violence Act, 2005 — Section 12, 2 (f), 2(a)

**Citation :** (2016) 4 AICLR 685 : (2016) 3 AirKarR 736 : (2016) 4 KCCR 3739

**Hon'ble Judges :** A.N. Venugopala Gowda, J.

**Bench :** Single Bench

**Advocate :** M.M. Patil, Advocate, for the Petitioner; Jagadish Patil, Advocate, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

A.N. Venugopala Gowda, J.—This petition was filed for quashing of the case filed by the respondent herein, registered as Cri. Misc. No. 165/2015 and pending on the file of the Civil Judge & JMFC, Mundargi.

2. The factual scenario is, that the marriage of the respondent was solemnised with one Sri. Manjunath Shettar, on 16.12.2013. Prior to the said marriage, the petitioner, a widow and a senior citizen, made a Will dated 05.04.2013, vide Annexure - A, bequeathing her properties in favour of said Manjunath Shettar, by treating him as a well-wisher. Finding change in the attitude of Manjunath Shettar, who started neglecting the petitioner, the Will was revoked on 06.04.2015 vide Annexure - B. On 15.07.2015, the respondent submitted to the CDPO, a complaint vide Annexure - C, against the petitioner and upon receipt of its notice, statement of objections vide Annexure - D was filed. Manjunath Shettar lodged a complaint dated 31.07.2015 vide Annexure - H, against the petitioner. However, on 22.08.2015, Manjunath Shettar withdrew the said complaint by submitting a statement vide Annexure - J.

3. The respondent filed application vide Annexure - E, on 23.11.2015, under

Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the Act) for grant of the reliefs in terms of Sections 18, 19, 20, 22 and 23. The JMFC, Mundargi, having registered the case in Cri. Misc. No. 165/2015 and ordered notice as per Annexure - F, statement of objections of the petitioner, vide Annexure - G was filed on 21.12.2015.

4. Sri. M.M. Patil, learned advocate, contended that the respondent is not an "aggrieved person" to claim any relief against the petitioner, under the provisions of the Act, as (i) there did not exist domestic relationship between the parties; (ii) the respondent did not live with the petitioner in a shared household; and (iii) that they are not related by consanguinity. Learned advocate submitted that there was no adoption of respondent's husband and the complaint has been filed by presuming that there is adoption of Manjunath Shettar by the petitioner. Learned counsel submitted that there being abuse of process by the respondent, with the mala fide intention of harassing the petitioner, the impugned proceeding is liable to be quashed.

5. Sri. Jagadish Patil, learned advocate, on the other hand, submitted that in view of the facts and circumstances, there is need for trial of the case by the learned Magistrate and hence, this petition is liable to be dismissed.

6. Perused the petition and considered the submissions. The point for consideration is, whether there was domestic relationship, as defined in Section 2(f) of the Act, between the respondent and the petitioner and whether the respondent can maintain application under Section 12 of the Act, against the petitioner?

7. Concededly, the petitioner is a widow, aged about 78 years. Neither in the complaint filed before the learned Magistrate nor in this petition, the respondent has produced any material which shows that Manjunath Shettar was adopted by the petitioner. There is no material of whatsoever nature with regard to the respondent or her husband being the relatives of the petitioner and/or they being related by consanguinity and lived together in a shared household. The respondent does not fall in any of the five relationships defined under Section 2(f) of the Act. It is on account of revocation of the Will dated 05.04.2013, by the petitioner, the respondent and her husband have lodged complaints and applications stated supra.

8. In order to maintain an application, under Section 12 of the Act, what is required to be brought to the notice of the Magistrate is the particulars of relationship, as defined under Section 2(f) of the Act and the domestic violence, in terms of Section 3 of the Act, committed by the accused. When the application, as at Annexure-E, is perused, it is a printed form and the blanks have been filled. The application is vague and lacking in all material particulars.

9. The learned Magistrate, in the Order passed on 25.11.2015, directed registration of Criminal Miscellaneous case and to issue notice to the respondent. It is apparent that the application has not been perused. Without any application

of mind and acting mechanically the case was registered and notice was issued to the petitioner. As the respondent and/or her husband are not related to the petitioner, the application cannot be maintained. It will be abuse of process of law to allow the said prosecution to continue against the petitioner, who, apart from being a widow and without issues, is an aged person and living alone.

10. It is trite that, if the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceeding can be quashed, in exercise of inherent power under Section 482, Cr.P.C.

11. Apex Court, in the case of *Amit Kapoor v. Ramesh Chander* (2012) 9 SCC 460, has held that when omnibus allegations are made particularly against the relatives who are not generally concerned with the affairs of the couple, the courts have to be cautious in issuing process against the relatives.

12. The petitioner being not a relative of the husband of the respondent or the respondent, will have no interest in raising any demand for dowry or causing domestic violence and/or keep the ornaments of the respondent, with her. The attempt to implicate the petitioner in the criminal case, when the petitioner is not at all related to the respondent and her husband, amounts to clear case of abuse of process of court.

13. The application filed before the Magistrate vide Annexure - E, on the face of it being abuse of the Court's process, there is need for quashing of the impugned proceeding by keeping in view the principles laid down by the Apex Court in catena of decisions. (Reference may be made to *K. Ramakrishna v. State of Bihar* (2000) 8 SCC 547; *Pepsi Foods Ltd. v. Judicial Magistrate* (1998) 5 SCC 749; *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335; *Asmathunnisa v. State of A.P.* (2011) 11 SCC 259.

14. Having regard to the aforesaid facts and circumstances of the case and applying the tests laid down by the Apex Court, in the decisions, a reference to which was made supra, the impugned proceeding is clearly an abuse of the Court's process.

15. In the result, the petition is allowed and the entire proceedings of the case in Cri. Misc. No. 165/2015 on the file of the JMFC, Mundargi vide Annexures - E and F is quashed.