

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 312 OF 2023

1. Dhananjay Mohan Zombade Deleted vide
Court order
dt. 16.2.2023
 2. Gojarbai Mohan Zombade
age 60 years, occ. Household
r/o Sathenagar, Sanja
Tq. & Dist. Osmanabad.
 3. Balaji s/o Mohan Zombade
age 34 years, occ. Driver
r/o as above.
 4. Nanasaheb s/o Mohan Zombade
age 39 years, occ. Labour
r/o Near Parvatibai Sadhashiv Nikam School
Rajiv Gandhi Nagar,
Sangamwadi
Pune city, Khadki 411003
 5. Pushpa Nanasaheb Zombade
age 35 years, occ. Housewife
r/o as above.
 6. Vaishali Subhash Adsul
age 34 years, occ. Housewife
r/o Shahu Nagar, Upla
Tq. & Dist. Osmanabad.
- Applicants

Versus

Prachi w/o Dhananjay Zombade
age 27 years, occ. Private service
r/o Tamri, Osmanabad
Tq. & Dist. Osmanabad

Respondent

Mr. G. J. Kore, Advocate for the applicants.
Mr. Rajesh Mewara, Advocate (appointed) for respondent.

CORAM : R. M. JOSHI, J.

DATE : 18th JULY, 2023.

JUDGMENT :

1. This application is filed under Section 482 of the Code of Criminal Procedure for quashment of proceedings bearing PWDVA No. 129/2021 under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “DV Act”).

2. At the outset, learned counsel for the respondent has raised objection regarding the maintainability of the application on the ground that the provisions of Section 482 of the Code of Criminal Procedure can not be invoked in the present case. It is his contention that the Hon’ble Apex Court in the case of Kamatchi vs. Laxmi Narayan, **AIR 2022 SC 2932**, has held that the proceeding under DV Act are civil in nature and hence application under Section 482 of Code of Criminal Procedure is excluded thereto. In support of his submissions, he placed reliance on other judgments, which are dealt with hereinafter.

3. At the outset, provisions of Section 482 of the Code of Criminal Procedure need to be considered. It read thus :-

482 Saving of inherent powers of High Court : Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Section 482 of the Code of Criminal Procedure confers inherent powers on High Court to pass orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or even otherwise to secure the ends of justice. Needless to record that Section 482 of the Code of Criminal Procedure can be invoked in the cases where the procedural law as contemplated by the Code of Criminal Procedure is made applicable.

4. Before considering the precedents cited supra, it would be relevant to look into the provisions of DV Act and Code of Criminal Procedure in order to ascertain as to whether there is legislative intent of exclusion of application under Section 482 of the Code of

Criminal Procedure to the proceedings under DV Act. In this regard, it would be relevant to take note of Section 28 of the DV Act, which reads thus :

28. Procedure :- (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offence under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

(2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

It is pertinent to note that Section 28 of the DV Act provides that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offence under Section 31 of the DV Act shall be governed by the provisions of the Code of Criminal Procedure. The legislative intent is, therefore, absolutely clear that all the proceedings under the aforesaid sections as well as offence under Section 31 of the DV Act are to be governed by the Code of Criminal Procedure. No doubt, sub-section (2) of Section 28 permits the Court to lay down its own procedure for disposal of an application under Section 12 or sub-section (2) of Section 23. But this provision does not affect general

application of provisions of the Code of Criminal Procedure to DV Act. The intention of legislature to make applicable Code of Criminal Procedure for DV Act is crystal clear, irrespective civil nature of proceeding.

5. There are statutes which provide for civil remedy as well as regarding offences wherein jurisdiction of Magistrate can be invoked e.g. Patents Act, 1970. Chapter XX provides for penalties. Similarly, copyright Act, 1957, Chapter XII provides for civil remedies whereas Chapter XIII provides for offences, which Magistrate is entitled to take cognizance thereof. Even in these cases for the trial of offences, there is no exclusion of application of Section 482 of Code of Criminal Procedure.

6. Even though it is held from time and again by almost all Courts that the civil remedy is available and essentially proceeding under DV Act is of civil nature. However, it cannot be ignored that with application of Code of Criminal Procedure, under Section 28 of the Act, application of Chapter VI of Code is inevitable. Unlike, cases governed by Code of Civil Procedure, in absence of any respondent the proceeding can be decided ex-parte against him. In such

proceeding question of securing presence of respondent by issuance of warrant etc. does not arise. In proceedings governed by Code of Criminal Procedure, under Section 61 of Code of Criminal Procedure, Magistrate issues summons for appearance of the respondent and unless his presence is exempted by specific order, the consequences of issuance of warrant of arrest follows. Thus, there is no justification to say that the proceedings under DV Act are civil in nature, though relief claimed is essentially a civil remedy. The rigour of Code of Criminal Procedure is not excluded and which is often used as tool to cause intended harassment to respondent.

7. Moreover, perusal of DV Act does not show application of any provision contrary to the provisions of Code of Criminal Procedure, except procedure laid down by Magistrate but this does not contemplate application of Code of Civil Procedure. There is nothing to indicate even by inference that provisions of Code of Criminal Procedure wont apply or even would apply partially to these proceedings. In fact, there is a positive statement in Section 28 about applicability of provisions of Code of Criminal Procedure without making any exception. It does not draw any distinction between the procedure applicable for civil and criminal remedies as contemplated

and specifically provided by other acts as mentioned above. This leads to only inference that the legislature intends application of Code of Criminal Procedure to the proceedings under DV Act. For want of specific provision of even by implication, there is no justification to hold that application of Section 482 of the Code of Criminal Procedure was excluded to proceedings under DV Act. Such selective exclusion would not be tenable in the eyes of law.

8. In the light of this, if the provision of Section 482 of the Code of Criminal Procedure is again considered, then the said inherent powers of the High Court would not get affected unless specific provision is made to exclude its applicability to the DV Act. Pertinently, power of High Court under Section 482 of the Code of Criminal Procedure is not restricted only to giving effect to any order under Code of Criminal Procedure but even to prevent abuse of process of any Court. These powers are of widest amplitude which can be exercised to secure ends of justice, unless barred by specific provision or by implication. Needless to say that such power can be exercised to prevent unwanted harassment caused to a respondent with application of rigour of Code of Criminal Procedure.

9. In the backdrop of aforesaid provisions, if the precedents are considered, then it is clear that the Hon'ble Apex Court no doubt, in the case of Kamatchi (supra) has held that the proceedings under the DV Act are essentially in the nature of civil proceedings. It is however, pertinent to note that the said judgment is passed in the context of challenge to the order passed by the Trial Court holding that the proceeding filed before it is barred by limitation. It is held in paragraph No. 20 of the judgment that :

“20. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.”

Thus, by implication applicability of the provision of Section 468 of Code of Criminal Procedure is excluded. In respectful view of this Court, in the said judgment, the issue whether or not the provisions of Section 482 of the Code of Criminal Procedure has application to DV Act, was not involved nor decided therein.

10. On the other hand, in case of Shyamlal Devda and others vs. Parimala, **(2020) 3 Supreme Court Cases 14**, Hon'ble Apex Court has set aside the order passed by the High Court wherein the proceedings under DV Act were not quashed under Section 482 of the Code of Criminal Procedure. Though this judgment also does not specifically decide applicability of Section 482 of the Code of Criminal Procedure to DV Act, however, the said judgment more than sufficiently indicates that there is no bar to exercise powers under Section 482 of the Code of Criminal Procedure to the proceeding under DV Act.

11. Full Bench of this Court in the case of Nandkishor Pralhad Vyawahare vs. Mangala w/o Pratap Bansar, **2018(3) Mh.L.J. 913**, has framed issue for consideration i.e. "whether or not High Court can exercise its powers under Section 482 of the Code of Criminal Procedure, 1973 in respect of the proceedings under the Protection of Women from Domestic Violence Act, 2005 ?" While answering the said question, it is clearly held that the provision of Section 482 of the Code of Criminal Procedure has application to DV Act. Considering the law on the point of binding precedents, the Full Bench judgment of this Court binds this Court. The judgment of

Full Bench of Madras High Court in the case of Arun Daniel (supra) has persuasive value but it does not bind this Court. For the reasons recorded hereinabove, with utmost respect to the Full Bench of Madras High Court, this Court does not concur with the said judgment.

12. As far as judgments cited by learned counsel for the respondent are concerned, in case of Kunapareddy vs. Kunapareddy Swarna Kumari and others, MANU/SC/0628/2016, the Hon'ble Apex Court was dealing with the issue as to whether amendment could be allowed in the proceedings under DV Act. In case of State of West Bengal and others vs Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129, the issue before the Hon'ble Apex Court was as to whether the provisions of Section 482 of the Code of Criminal Procedure would apply to the confiscation proceeding under Section 59-G of Forest Act. In this case, it was held that Section 59-G of Forest Act confers specific power in officer appointed under Section 59(C) and District Judge to whom the appeal can be preferred under Section 59-C and 59-D. In view of such specific power created by the Statute, it was held that application under Section 482 of the Code of Criminal Procedure is not tenable. In the instant case, no specific

power is vested in other authority by DV Act in order to apply the said judgment to the present case. In case of Oliver Menezes vs. Serita Therese Mathias, **2021 DGLS (Kar.) 304**, the Karnataka High Court has no doubt held that Section 482 of the Code of Criminal Procedure is not applicable to the DV Act. However, this Court respectfully disagrees with the said view. Delhi High Court in the case of Sirisha Dinavahi Bansal vs. Rajiv Bansal, **MANU/DE/1388/2020**, was dealing with the situation when remedy of appeal under Section 29 of the DV Act was available and in such circumstances, it is held that the petition under Section 482 of the Code of Criminal Procedure is not maintainable. There is no such efficacious remedy is available under DV Act for quashment of proceeding which amounts to abuse of process of Court and hence invocation of Section 482 of the Code of Criminal Procedure is fully justified.

13. No doubt, the provisions of Section 482 of the Code of Criminal Procedure cannot be invoked as a matter of course. The Hon'ble Apex Court in the case of Gian Singh vs. State of Punjab, **(2012) 10 SCC 303**, has held that if the High Court finds that any proceedings is abuse of process of Court then in that case, non-

invocation of provisions of Section 482 of the Code of Criminal Procedure would not be justified. It needs to be recorded that merely because the enactment of DV Act is to provide for more effective protection of the right of woman, it would not mean that a proceedings which is palpably not tenable shall be allowed to be continued. If it is allowed so, then it will be nothing less than sheer abuse of process of Court. Thus, in the considered view of this Court, the present application for quashment of proceeding under DV Act is maintainable.

14. On merits of the application, learned counsel for the applicants states that he does not wish to press application to the extent of Applicant No. 2 Gojarbai Mohan Zombade and applicant No. 3 Balaji s/o Mohan Zombade. Hence, application qua these applicants stands dismissed as withdrawn. He also states that application is already dismissed against applicant No. 1 (husband).

15. Learned counsel for applicants submits that applicants No. 4 to 6 never shared the household with respondent as they have residence at different places. It is contended that applicant No. 4 is brother-in-law of the respondent and applicant No. 5 is his wife

whereas applicant No. 6 is the married sister-in-law of the respondent and that they never lived together with respondent in joint family under one roof.

16. Learned counsel for the respondent opposed the said submission by stating that the said issue cannot be decided at this stage as the same would be subject matter of trial after leading evidence.

17. In order to decide this controversy, it would be relevant to take note of provisions which define “aggrieved person” and “domestic relationship”. Section 2(a) of DV Act defines “aggrieved person” which reads thus :-

2(a) “aggrieved person” means any woman who is, or has been, in domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

Section 2(f) states “domestic relationship” to be “a relationship between two persons who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage, or through a relationship in the nature of

marriage, adoption or are family members living together as a joint family”.

According to these definitions, domestic relationship between aggrieved person and respondent is *sine qua non* to maintain any proceeding under DV Act. In order to constitute relationship between two persons as domestic relationship, they must live or at any point of time lived together in a shared household when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Admittedly, the relationship of respondent with applicants No. 4 to 6 is as a family member. Thus, in order to constitute domestic relationship, the family members of the aggrieved person must be living together with aggrieved person as joint family. It is, therefore, essential that the applicant pleads that there is domestic relationship between her and respondent and that the other family members have lived or are living together as a joint family, to maintain any such complaint/application under the provisions of the DV Act.

18. In the instant case, applicants No. 4 to 6 have come out with a specific case that they never lived as joint family with the respondent. In order to substantiate the said contention, documentary evidence such as Aadhar Card etc. is placed on record. Genuineness thereof is not challenged. On the other hand perusal of the complaint/application to the Magistrate does not show pleadings that these applicants have lived or living with the respondent together as members of joint family. Thus, for want of specific pleadings, and in view of unimpeachable evidence placed on record by these applicants showing their separate place of residence, the application/complaint against such applicants could not have been entertained as these applicants do not come within the definition of domestic relationship with the respondent.

19. The Hon'ble Supreme Court in State of Haryana and others vs. Bhajan Lal and others, **AIR 1992 Supreme Court Cases 335** has laid down the guidelines that must be adhered to while exercising its inherent powers under Section 482 of the Code of Criminal Procedure to quash the First Information Report. The relevant paragraph reads thus :-

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) x x x

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) x x x

(5) x x x

(6) x x x

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

20. The Hon'ble Apex Court in case of Kahkashan Kausar alias Sonam and others vs. State of Bihar and others, (2022) 6 SCC 599 has observed the misuse of the provisions of Section 498A of Indian Penal Code to cause harassment to the relatives of husband. The observations made therein deserve consideration which read thus :-

“17.this Court has at numerous instances expressed concern over the misuse of Section 498-A I.P.C. and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

21. Unfortunately, similar trend seems to have been adopted and proceedings under DV Act are filed at even distant place i.e. place where aggrieved person resides as per Section 2(s) of Act and not only husband and joint family members residing under one roof are made

respondents but distant relatives those who have no domestic relationship are also roped in order to cause harassment and to build pressure on husband. In considered view of this Court the observations made by Hon'ble Apex Court, while dealing with offence under Section 498-A of Indian Penal Code, apply to the cases under DV Act, which are filed in clear abuse of process of Court. The present case is squarely covered by illustrations (1), (3) and (7) in case of Bhajanlal (supra) and hence such proceeding cannot be permitted to be continued.

22. In view of the above discussion, this is a fit case to quash proceedings under DV Act qua applicants No. 4 to 6. Hence order :-

ORDER

(i) Application stands dismissed qua applicants No. 1, 2 and 3 as withdrawn.

(ii) Application stands allowed in terms of prayer clause "A" qua applicants No. 4 to 6.

(iii) The impugned complaint No. (PWDVA) 129/2021 pending before Judicial Magistrate First Class, Osmanabad, stands quashed and set aside qua applicants No. 4 to 6.

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(iv) Fees of appointed counsel is quantified at
Rs.10,000/-.

(R. M. JOSHI)
Judge

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