

IN THE COURT OF THE CIVIL JUDGE AND JMFC**BAGEPALLI.****PRESENT****Sri. PRAVEEN R.J.S****CIVIL JUDGE & JMFC, BAGEPALLI****DATED THIS THE 27TH DAY OF SEPTEMBER 2018****D.V.C.No.18/2017**

Complainant/ s :

1. Smt. Nageena
W/o V. Mohammed Pasha
Aged about 27 years,
House wife,
Residing at 19th ward,
Opposite to Jamia Masjid,
Bagepalli town,
Bagepalli taluk,
Chickballapur district.

[Represented by A.G. SudHakar
advocate]

-vs-

Respondent/s :

1. Sri V. Mohammed Pasha
S/o Wajid Saheb
Aged about 28 years,
Territory Manager,
CIPLA, Bangalore
Now residing at Chowdareddypalya
Near Kalyani Rice Mill, 1st cross
Chintamani Town, Chikkaballapur
District
2. Smt. Tajunnissa
W/o Wajid Saheb,
Aged about 46 years,
residing at Chowdareddypalya
Near Kalyani Rice Mill, 1st cross,
Chintamani Town, Chikkaballapur
District
3. Smt. Ayisha
W/o Sri. Ashwaq,

Aged about 33 years,
residing at Chowdareddypalya
Near Kalyani Rice Mill, 1st cross,
Chintamani Town, Chikkaballapur
District

4. Smt. Reshma
W/o Iliyaz Pasha,
Aged about 30 years
residing at Chowdareddypalya
Near Kalyani Rice Mill, 1st cross,
Chintamani Town, Chikkaballapur
District

5 Smt. Gohar Tabassum
D/o Wajid Sab
Aged about 22 years
residing at Chowdareddypalya
Near Kalyani Rice Mill, 1st cross,
Chintamani Town, Chikkaballapur
District

6 Sri Babu
S/o Sri Nazir sab
Aged about 38 years,
R/at Chowdareddy Palya,
Nera Kalayani Rise Mill,
1st Cross, chintamani town,
Chikkaballapur district.
Respondent No. 6 working
as two wheeler mechanic,
Kolar main raod,
Opp. Madina Masjid.

[Represented by Sri. G.M Ibrahim
advocate for R-1 & 6;]

**ORDER ON APPLICATION FILED UNDER SECTION 239 OF
CRIMINAL PROCEDURE CODE FILED BY THE
RESPONDENTS 3 TO 5**

1. The present application has been filed by the Respondents 3 to 5 seeking their discharge in the present case.

2. In support of the application, the applicants have contended that they are absolutely innocent and are in no way connected to the allegations made ; that the marriage of the Respondent 3 was held about 14 years ago and that the marriage of the Respondent No.4 was held about 6 years ago and the Respondent 5 was married 2 years ago and since the dates of their marriages they are all residing with their husbands at their marital homes and at different places and are not residing with Respondents 1 and 2 and except having a blood relationship with the Respondents 1 and 2 they are in no way concerned to the matrimonial dispute between the petitioner and the Respondent 1; that they are residing with their respective husbands in the address mentioned above; that the petitioner has lodged a complaint against them alleging harassment for dowry and that the Bagepalli police have registered a criminal case against the Respondents 1,2 and 6 only ; that there is no specific allegation made against the Respondents 3 to 5 in the complaint nor does it reveal anything against them and that the present case is filed unnecessarily implicating the Respondents 3 to 5; that the allegations made in the

complaint or the documents produced by the petitioner or the charge sheet filed by the police does not make out any ground for proceeding against the Respondents 3 to 5 and that if the application is not allowed they would be put to hardship and as such the application is required to be allowed.

3. The complainant has filed her objections to the said application contending that the application is not maintainable in facts or in law; that the Respondents 3 to 5 cannot take advantage of the addresses given in the cause title; that the present applicants were as much involved in inflicting domestic violence against the complainant as were the other Respondents and that these acts can only be vetted out during the trial and as such the present application is required to be rejected.

4. I have heard the learned counsel for both the parties.

5. The point that would arise for my consideration are as under:

- 1) Whether the application filed by the Respondents 3 to 5 requires to be allowed?

6. My answers to the above point is **in the negative** for the following:-

REASONS

7. Point No.1- The present application has been filed by the Respondents

3 to 5 seeking their discharge in the present case contending that the marriage of the Respondent 3 was held about 14 years ago and that the marriage of the Respondent No.4 was held about 6 years ago and the Respondent 5 was married 2 years ago and since the dates of their marriages they are all residing with their husbands at their marital homes and at different places and are not residing with Respondents 1 and 2 and except having a blood relationship with the Respondents 1 and 2 they are in no way concerned to the matrimonial dispute between the petitioner and the Respondent 1; that they are residing with their respective husbands in the address mentioned above. In support of the said application the counsel for the Respondents 3 to 5 would take this court through the marriage certificate of the 3rd Respondent issued by the concerned masjid to contend that she was married on 8.2.2004; similarly the marriage certificate of the 4th Respondent issued by the concerned masjid to contend that she was married on 8.4.2013 and the marriage certificate of the 5th Respondent to contend that she was married on 19.9.2016. The learned counsel would be emphatic in his submission that these marriage certificates would be the ultimate proof that the Respondents 3 to 5 have nothing to do with the present case. Unfortunately, the first principle as regards the concept of discharge is that the Court cannot embark upon a trial to see ultimately whether the matter

would end in acquittal or conviction. The Court is only required to see if the case of the prosecution. In this case, would stand purely on its own legs and does not otherwise seem preposterous or frivolous. More over, the Court cannot look into the materials placed by the Respondents 3 to 5 and will have to go only by the complaint materials. In this regard it would be pertinent to note what the Hon'ble High Court has said while elucidating on Section 239 of the Criminal Procedure Code in the case of Sarje Rao vs The State of Karnataka through Chikkodi Police reported in **2014 SCC OnLine Kar 6639** as under

“13. There is no power vested under Section 239 of Cr.P.C to consider the documents or any other materials other than the materials or the report or the documents submitted along with the charge sheet by the learned Magistrate or the learned Sessions Judge. What is contemplating under this Particular provision is that the learned Magistrate has to go through the contents of charge sheet papers and the documents submitted by police under Section 173 of Cr.P.C only and find out whether any prima facie case has been made out in order to put the accused persons on the trial. On the basis of the materials on record, if the learned Magistrate is of the opinion that even translating the entire charge sheet into evidence at that stage on their face value, if it is uncontested by other side without providing an opportunity of cross-examination of the witnesses even at

that stage if the Court is of the opinion that no offence has been constituted or no offence is made out, even on broadly looking into the materials on record then only the learned Magistrate can say that the allegations are groundless and then only he can discharge the accused persons under Section 239 of Cr.P.C”

Therefore even if the learned counsel for the Respondents 3 to 5 would like this court to hold that the Respondents 3 to 5 have no relation to the acts complained of since as per the documents referred to supra they are residing separately, this court, however is still be bound by the fact that these documents cannot be taken to be a fait accompli and would still have to be tested at the time of trial. More importantly, there is absolutely no averment in the application seeking discharge that these applicants have completely ceased to visit the house of their parents subsequent to the marriage. An incident of domestic violence need not necessarily have to happen on a daily basis and it would suffice if there are frequent and/or occasional visits as well. Moreover in these days of technology, domestic violence can as well be inflicted through phones/email and other modes of technology. Therefore merely because the Respondents 3 to 5 are residing separately it cannot be taken to mean that they have had no occasion to inflict any acts of domestic violence and as such separate residence alone cannot be a ground for this court to discharge the accused. It is in this

regard that the definition of domestic violence as defined under the Act assumes significance which reads as under

3. Definition of domestic violence.

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation

For the purposes of this section,

“physical abuse ”means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) verbal and emotional abuse includes

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the

aggrieved person is interested;

(iv) economic abuse includes

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

Another important aspect that this court has to bear in mind, since it is the vehement submission of the applicants that they are residing elsewhere and there is no occasion for them to inflict domestic violence is the definition of a shared household as per the Section 2(s) of the Act of the Act which reads as under

(s) shared household means a household where the person

aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

Therefore it is evident that a shared household need not necessarily be in the present and even if at some point in the past the Respondents and the petitioner have shared a household that would suffice. Admittedly in the present case the marriage as between the complainant and the 1st Respondent was in the year 2013. Therefore even as per the document produced by the Respondent 5 she did indeed share a household at some point of time in the past. In so far as Respondents 3 and 4 are concerned it is not their case that after the marriage of the Complainant with the 1st Respondent they have not even visited their maternal homes. This is to be

seen in the backdrop in the light of the specific averment made at para 4 of the complainant's affidavit wherein she has stated as under

“The 2nd Respondent is my mother in law and the Respondents 3 to 5 are the sisters of my husband. The 6th Respondent is uncle of Respondent No.1. After my marriage with the 1st Respondent and all the respondents and I have residing (sic) in the same house jointly.” and further at para 6 as under

“ The 1st Respondent at the instigation of other respondents has harassed me physically as well as psychologically for each and every silly reason and demanded to give consent for mutual divorce nor more dowry”

Therefore the contention of the Respondents 3 to 5 that their documents ought to be accepted as a fait accompli cannot be accepted. Ultimately whether the complainant is able to make good on her allegations is a matter that should not concern the court right now. All that the court is required to see is whether there is material sufficient to go ahead with the trial. It is to be remembered that these are matrimonial matters which happen within the four confines of a wall and it would be too much for this court to accept to expect documentary material even at this nascent stage and it is for this reason that the affidavit filed along with the complaint assumes significance.

8. Another strenuous contention urged by the learned counsel for the

Respondents 3 to 5 is that even earlier the complainant had filed a first information alleging offences under Section 498A of the penal code and that the jurisdictional police have only filed a report against the Respondents 1, 2 and 6 and therefore that in itself would be sufficient for this court to discharge the present Respondents 3 to 5. Be it noted that the yardstick applied by the police while filing a final report based on a first information can by no means be equated to the yardstick to be applied by this court when a complaint under the provisions of the Protection of Women from Domestic violence Act 2005. The jurisdiction of the police while filing a final report cannot be mixed up with the jurisdiction of this court while dealing with a complaint under the Act, even if the Respondents 3 to 5 would so desire. Even further a final report filed by the police is not binding in any event on the court and if during the trial for any reason the court feels that the complicity of the present applicants for the aforesaid offences is apparent it can always array these applicants in the said case as well as the accused persons. Be that as it may, as discussed earlier, the footing on which a criminal case proceeds is entirely different from the view this case would have to proceed.

In the light of the aforesaid discussion, the present application being bereft of merit requires to be rejected and hence I pass the following

ORDER

Application filed under Section 239 of the Criminal Procedure Code by the Respondents 3 to 5 is dismissed.

(Dictated to Stenographer directly on the computer, computerized by him, corrected by me, signed and then pronounced in open court on the **27th day of September 2018**).

**(PRAVEEN.R.J.S)
CIVIL JUDGE & J.M.F.C,
BAGEPALLI.**