



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Sri Shivakumar.R. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 30th Day of July 2022

CRL. MISC. CASE NO.449/2016

PETITIONER/S :

Smt.Rukmini W/o Manjunathachari, D/o Vishwabramhachar, aged 26 years, R/o #109 Vaishnavi Nagar, Kengeri Check Post, Baba Sahebara Palya, 8th Cross, Near Panchamukhi Temple, Bengaluru-60, now R/o Gadihalli Village, Tarikere Taluk, Chikkamagaluru District.

(Reptd. By : Sri D.C.P., Advocate.)

Vs.

RESPONDENT/S :

- 1) Manjunathachari S/o Muraharachar, aged 42 years,
- 2) Rathnamma W/o Muraharachar, aged 60 years,
- 3) Sushipama D/o Muraharachar, aged 35 years,

All are R/o #109 Vaishnavi Nagar, Kengeri Check Post, Baba Sahebara

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Palya, 8th Cross, Near Panchamukhi Temple, Bengaluru-60.

(R.1 : By Sri K.N.L., Advocate.

R.3 : Party in person)

ORDER ON APPLICATION FILED U/S 239 OF Cr.P.C.

The respondent No.3 has filed this application u/s 239 of Cr.P.C., with a prayer be pleased to discharge the respondent No.3 in the above matter.

2. It is stated in the application that, the petitioner has filed the above petition/complaint against her and other respondents under the provisions of Protection of Woman from Domestic Violence Act. It is further submitted that, the respondent No.3 is the innocent of the aforesaid proceedings initiated by the petitioner. The respondent No.1 is the husband of petitioner, and respondent No.3 is the sister of respondent No.1. It is further submitted that, the petitioner has lodged the complaint before the Protection Officer in Form

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No.1 and in clause 4 of the said Form No.1, the petitioner has mentioned the name of the respondent No.3 alleging that she is also harassed the petitioner. It is further submitted that, after marriage, the respondent No.1 and petitioner were resided together, but the respondent No.3 was residing separately. It is further submitted that, the petitioner having grudge against the respondent No.3, she has deliberately made respondent No.3 as a party to the above proceedings only with an intention to harass the respondent No.3. It is further submitted that the respondent No.3 never stayed in the shared household and therefore on this ground also, the respondent No.3 is liable to be discharged from the above proceedings. Hence, this petition.

3. The copy of the application was served to the other side. The petitioner has filed the detailed objections and resisted the application filed by the respondent No.3 and

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interalia contended that, the application filed by the respondent No.3 is not maintainable either in law or on facts, the same is liable to be dismissed in limine. It is further contended that, the respondent No.3 is the own sister of respondent No.1, the respondent No.2 is the mother of respondents No.1 and 3. Now the respondent No.2 is no more. It is further contended that, after marriage of the petitioner with the respondent No.1, she lived with the petitioner in the house of respondent No.1 situated at Kengeri at Bengaluru for a period of 8 days. It is further contended that, prior to the marriage of the petitioner, the respondents No.1 to 3 lived together in the house of the respondent No.1. After marriage also, the respondents No.2 and 3 are lived with the respondent No.1 in his house. After marriage, the respondents gave torture to the petitioner. Therefore, she has lodged the complaint against the respondents No.1 to 3 before Kengeri Police Station at Bengaluru. Thereafter, the petitioner

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has given complaint against the respondents No.1 to 3 before CDPO office. On the basis of report submitted by the CDPO, this court registered the above matter as Crl.Misc. No.449/2016 and thereafter this court has issued notice to the respondents. In pursuance of the notice, the respondents have appeared before this court and filed detailed objections to the petition and further contended that in the above matter the evidence of petitioner is partly concluded. It is further contended that the respondent No.3 has not produced any iota of document to show that she is residing separately from the respondent No.1. For considering all these grounds, the petitioner prays for to reject the application filed by the respondent No.3 with exemplary cost.

4. Heard arguments of both sides and perused the materials on record.

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5. The points that arise for consideration are :

- 1) Whether the application filed by the respondent No.3 u/s 239 of Cr.P.C., is deserved to be allowed?
- 2) What Order?

6. Findings on the above said points are as follows:-

Point No.1 : In the Negative,

Point No.2 : As per the final Order,

for the following:

REASONS

7. **POINT NO.1** : On perusal of the materials placed on record, admittedly the petitioner has filed the above complaint/petition against the respondents as per the relief sought under the provisions of Protection of Woman from Domestic Violence Act, 2005. When the matter is set down for respondents evidence, at this stage, the respondent No.3 filed the application u/s 239 of Cr.P.C., to discharge the respondent No.3 from the above case/proceedings. It is the urge of the respondent No.3 that she has never resided with

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the shared household of the respondent No.1 after the marriage of the petitioner with the respondent No.1. The petitioner has filed this petition against the respondent No.3 only to harass the respondent No.3 and also to give trouble from the hands of this court. Therefore, the respondent No.3 prays for to discharge her in the above proceedings initiated by the petitioner. It is the urge of the petitioner that, the respondent No.3 is also harassed the petitioner and at this stage, the contentions taken by both parties cannot be adjudicated, it needs full fledged trial.

8. At this juncture, I would like to refer Section 239 of Cr.P.C., which reads as follows :

“When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall

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discharge the accused, and record his reasons for so doing.”

On perusal of the aforesaid provision, the said provision is clearly applicable to the warrant cases. It is very pertinent to note that, the proceedings under Protection of Woman from Domestic Violence Act, 2005 is a quasi in civil in nature. However, admittedly this complaint/application filed by the petitioner against the respondents as per the provisions of Protection of Woman from Domestic Violence Act, 2005. It is very significant to note that under the provisions of Protection of Woman from Domestic Violence Act, 2005, there is provision for to discharge the respondents. Moreover, the remedy available for the respondent No.3 is elsewhere, but not in the present case on hand. To substantiate the contention of the respondent No.3, she has relied upon the decision rendered by the Hon'ble High Court of Madhya Pradesh in the case of **Rameshchandra Sharma and others**

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Vs. Smt.Meena dated 07.01.2020. On careful perusal of the ratio laid down in the aforesaid decision, same is not applicable to the present case on hand at this stage. The application filed by the respondent No.3 is devoid of merits. For considering all these reasons, I answer Point No.1 in the Negative.

9. **POINT NO.2** : In view of my findings on Point No.1, I proceed to pass the following :

ORDER

The application filed by the respondent No.3
u/s 239 of Cr.P.C., is hereby rejected on cost of
Rs.300/-.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in the open court, on this the 30th day of July 2022.)

sd/-
(**SHIVAKUMAR.R.**)
ADDL. CIVIL JUDGE AND
J.M.F.C., TARIKERE.