

IN THE COURT OF THE I ADDITIONAL CIVIL
JUDGE AND JMFC AT KARKALA

Present: - Smt. Geetha D., B.Sc., LL.B.,
I Addl. Civil Judge and JMFC, Karkala

Dated this the 06th day of October, 2025

Crl. Misc. Case No. 83/2023

Petitioner .. Smt. Pooja Ratnakar Patkar

-V/s-

Respondents .. Rohith R. Nayak & others.

**ORDER ON APPLICATION FILED BY THE
RESPONDENTS NO.2 TO 5 UNDER SECTION 239 OF
THE CODE OF CRIMINAL PROCEDURE,1973**

The counsel for respondent No.2 to 5 have filed the present application under Section 239 of Code of Criminal Procedure, 1973 praying to discharge the applicants/respondent No.2 to 5 from the case and dismiss the petition against them.

2. It is averred in the application that the applicants/ respondents 2 to 5 have been falsely implicated by the petitioner without any reasonable and sustainable grounds.

The petition is not maintainable against them. They are completely unconnected to the petition and are innocents of all the allegations made against them. The petitioner deliberately included them in her false petition, with a malafide intention to harass and humiliate them.

3. It is submitted by the respondents that, the applicants submit that to avoid repetition, the objections filed by them to the main petition may be read as part of this application. The petition is filed by the petitioner is not in compliance with the law and procedure laid down under the Protection of women from domestic violence Act 2005. The petition is liable to be dismissed as not maintainable under the said Act.

4. It is submitted by the respondents that, the applicants have not caused any domestic violence to the petitioner. They are not in domestic relationship with the petitioner. There is no shared household between the petitioner and the applicants. The allegations against them are palpably false and baseless. The allegations are vague and general in nature and not specific. There is no specific relief claimed against the

applicants. The petitioner is not entitled to any relief against the applicants. The applicants are not liable to the petitioner under the Domestic violence Act.

5. It is submitted by the respondents that, the petitioner is not an aggrieved person. She was not in domestic relationship with these respondents. There is no domestic incident as alleged by the petitioner. There is no complaint of domestic violence. There was no complaint of domestic violence to the concerned authority before filing the petition. There is no investigation report against these respondents by the concerned authority. There is no physical abuse, sexual abuse or verbal and emotional abuse by these respondents as alleged by the petitioner. The petitioner is not entitled any compensation or damages or monetary relief or any other relief or order against applicants under the said Act.

6. It is submitted by the respondents that, the inclusion of the respondents 2 to 5 is a deliberate pressure tactic played by the petitioner. It is also intended to fabricate a false case and torture, humiliate and defame them. They are responsible

and respected persons in the society. The respondent No.1 is a senior citizen, the respondent No.2 is a responsible home maker, the respondents 4 and 5 hold respectable positions in reputed institutions. The false case filed by the petitioner has caused serious damage to their social and professional life. Moreover there is absolutely no case against the applicants or any reasonable grounds either in the petition filed or in terms of evidence. In other words there is neither ground nor evidence against them to proceed under the Domestic violence Act. They have not committed any offence under the said Act. They cannot be held liable by the petitioner under any circumstances. There is not even a prima facie case against them, even at this stage. Therefore the continuation of the case against them will cause serious loss hardship, harassment and inconvenience to them. There is no triable case against them. There cannot be their persecution by the petitioner, before prosecution. Therefore they are liable to be released and discharged. With these, prayed to allow the application.

7. Per contra, the counsel for petitioner has filed objection. In the objection she has denied the averments of the

application and submitted that the applicants have filed a vague application to discharge them from the case and to dismiss the petition filed against them. They have not produced any documents or evidence to prove their innocence. Notice of the petition was also served to them to the address mentioned in the petition where the petitioner was last resided along with the respondents. The petitioner and the respondents were lived under same roof. The petitioner has suffered various domestic violence by the respondents and she has clearly stated in her petition. At this stage if the applicants were discharged it will be injustice to the petitioner. The applicants have filed their counter to the petition. At this stage the respondents cannot file discharge application. There is no grounds to discharge the applicants from the case and to dismiss the petition filed against them. The applicants have filed the above petition only to harass the petitioner. Therefore, prayed to dismiss the application.

8. This court perused the application and objection, the following points arises for the consideration of this court:

1. Whether the respondent No.2 to 5 deserves to be discharged from this case?

2. What order?

9. This court heard the learned counsel for the petitioner and respondents. The counsel for respondent No.2 to 5 has filed memo dated 09.09.2025 along with list of documents. Further, the counsel for respondent No.2 to 5 has filed memo stating that the petitioner in this case has obtained divorce from respondent No.1 of this case along with permanent maintenance in MC No. 68/2024 in the court of Hon'ble Senior Civil Judge and ACJM, Karkala on 15.04.2025 and submitted that the present petition is liable to be dismissed.

10. On perusal of application, objection and material placed on record this court answers the above said points as follows:

Point No.1: In the Negative

Point No.2: As per the final order for the
Following:

REASONS

11. **Point No.1:-** The petitioner has filed application under Sec.12(1) r/w Sec. 18 and 20 of the Protection of Women from Domestic Violence Act against the respondents. It is

pertinent to note that, in the instant case, the respondent no.1 is placed absent. At present the trial has not be commenced and it is in the preliminary stage of hearing. At this stage counsel for the Respondent no.2 to 5 has filed the present application u/s 239 of Crpc to discharge them from this case.

12. The Protection of Women form Domestic Violence Act, 2005 is a special enactment. As per sec. 28 of the Act, the instant case shall be governed by the provisions of the CRPC. The provision has an exception that court can lay down its own procedure for disposal of an application under sec 12 of the Act.

13. Let us interpret sec 239 of CRPC- 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 discharge the accused, and record his reasons for so doing.

14. On perusing the petition this court observed that the aggrieved person had made out prima facie case. Whether the other respondents were involved the domestic violence or not has to be decided only after the trial. As contemplated by counsel for respondent that the petitioner and respondent No.1 have dissolved their marriage and along with permanent maintenance in MC No. 68/2024 in the court of Hon'ble Senior Civil Judge and ACJM, Karkala on 15.04.2025 is concerned the same has to be brought on record.

The counsel for respondent No.2 to 5 have relied on Judgments passed by Hon'ble Supreme Court of India reported in 2) 2016(1) Kar. L.R. 287 (SC) between Krishna Bhattacharjee V. Sarathi Choudhury and another, it was held that, Once the decree of divorce is passed, the status of the parties becomes different, but that is not so when there is a decree for judicial separation-Distinction between a decree for divorce and decree of judicial separation in the former there is a severance of status and the parties do not remain as husband and wife-Whereas in the latter the relationship between husband and wife continues and

the legal relationship continues as it has not been snapped-Finding recorded by the Courts below which have been concurred by the High Court that the parties having been judicial separated the appellant wife has ceased to be an "aggrieved person" is wholly unsustainable. This finding is not applicable to fact of this case.

Further relied on Judgments passed by Hon'ble High Court of Gujarat reported in 1) 2010 CRI.L.J. 2462 between Jaydipsinh Prabhatsinh Jhala and others V. State of Gujarat and others, it was held that, (B) Protection of Women from Domestic Violence Act (43 of 2005), S. 12 - Proceedings under Act – Magistrate not bound to follow strictly procedure laid down under Criminal P.C. - Magistrate has power to recall summons or to drop proceedings against respondent if it is demonstrated that respondent had been wrongly or erroneously joined.

15. On backdrop of aforesaid case and by perusing the Sec. 239 of Cr.P.C. it is clear that, the said provision can be invoked

only on police report. In this case the petitioner has filed petition under Sec. 12 of the Domestic violence Act and no charges will be framed against the respondents. Therefore, this court considers that respondent No.2 to 5 cannot be discharged under the provision of Sec. 239 of Cr.P.C. Therefore, this court answers the above point in the '*Negative*'.

16. **Point No.2:-** Based on the aforesaid discussion and reasoning this court proceeds to pass the following:

ORDER

The application filed on behalf of respondent No.2 to 5 U/s. 239 of the Cr.P.C is hereby rejected.

Accused No.2 to 5 are directed to face trial for the offences punishable under Sec. 12(1) r/w Sec. 18 and 20 of Protection of Women from Domestic Violence Act.

The matter is posted for petitioner
evidence.

(Dictated to the Stenographer, typed by her, revised and
signed by me and then pronounced in the open court on this the
06th day of October, 2025)

I Addl. Civil Judge and J.M.F.C.,
Karkala