

CNRMHAH1900 0451 2023

Order below Exh. 26 in D.V.M.A. 14/2023

1. Respondents no. 1 to 4 have filed instant application to delete the name of respondent no. 5 from complaint filed by complainant under Protection of Women from Domestic Violence Act, 2005(hereinafter referred to as PWDV Act for the sake of convenience).
2. Say of complainant was invited on instant application. Learned Advocate of complainant has filed say overleaf of instant application. In his say learned advocate of the complainant has submitted that this application is filed unnecessarily by the Respondents. Hence, application may be rejected.
3. I have heard arguments advanced by Learned Advocate of respondents and learned advocate of the complainant at considerable length. They have made submissions according to their respective contentions in the application and say.
4. From perusal of instant application, say filed by complainant and from rival arguments, following points arise for my determination and i record my findings thereto as under-

Sr. No.	Point	Finding
1	Does the complaint disclose that complainant and respondent no. 5 lived in a shared household within meaning of section 2(s) of Protection of Women from Domestic Violence Act ?	..No
2	Does the complaint disclose that the relationship between complainant and respondent no.5 was a domestic relationship within meaning of section 2(f) of Protection of Women from Domestic Violence Act ?	..No

3	Does the complaint disclose role of respondent no. 5 to array her as respondent within meaning of section 2(q) of Protection of Women from Domestic Violence Act ?	..No
4	What Order	Application allowed.

As to point no. 1 to 3

5. Points no. 1 to 3 are interlinked with each other and are thus taken up together for discussion in order to avoid repetition.

6. Learned Advocate of respondents advanced an argument that respondent no. 5 is a minor. Complainant cannot file main application against a minor. Hence, the name of the minor ought to be deleted from the main application and application may be allowed.

7. On the other hand, learned advocate of Complainant argued that application is moved only with the intention to harass the Complainant and to prolong this matter. Hence, it may be rejected.

8. For the purpose of this application it is necessary to peruse relevant definitions under PWDV Act, 2005. From bare reading of section 2(q) P.W.D.V Act, 2005, the essential elements are as follows -

The respondent means :-

- 1. Any Adult male person,***
- 2. who is or has been,***
- 3. In a Domestic relationship,***
- 4. Such a Domestic relationship should be of the person aggrieved with such respondent, and***
- 5. Some relief also must have been sought by the person aggrieved***

against such respondent. Provided that, an aggrieved wife or female living in relationship in the nature of marriage may also file complaint against a relative of husband or a male partner, as the case may be.

Section 2(s) P.W.D.V. Act, 2005, the essential elements of definition of shared household can be carved out as follows-

Shared household means :-

- 1. A household,*
- 2. Where a person aggrieved lives or has lived,*
- 3. In a Domestic relationship, either singly or with the respondent.*

Section 2(f) P.W.D.V. Act, 2005, the essential elements of definition of domestic relationship can be carved out as follows-

Domestic relationship means

- 1. relationship between two persons who live or have, at any point of time, lived together in a shared household,*
- 2. 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.*

9. Here at this juncture it is pertinent to note that it is well settled proposition of law that in a proceeding under D.V. Act, the Magistrate is not taking cognizance of any offence but it is only dealing with an application for civil reliefs. It is also well settled proposition of law that under Protection of Women from Domestic Violence Act only those persons can be made respondents who satisfy definition of section 2(q) of P.W.D.V Act which provides that a complaint can be filed any person who is an adult male who is

or has been in a domestic relationship with the aggrieved person against whom aggrieved person as sought any relief under this Act. Here, it is pertinent to note that, *expression “female” has not been used in the proviso to sec 2(q) but, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead it is provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. Thus, no restrictive meaning has been given to the expression “relative”, nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. It is clear that the legislature never intended to exclude female relatives of husband or male partner from the ambit of a complaint that can be made under P.W.D.V Act, 2005.* Further in order to fix a liability upon a respondent, respondent must be a person who is or has been in a domestic relationship with the aggrieved person and a person is said to be in a domestic relationship when two persons live or at any point of time lived in a shared household.

10. From perusal of complaint, it is evident that complainant wife and respondent no. 1 husband are married since the year 2019. The Complaint does not disclose that complainant wife is residing or was residing or resided in a joint family with her husband i.e. respondent no. 1 and respondent no. 5. From perusal of the complaint in entirety, it prima facie appears that there is a vague allegation that relative of respondent no. 1-husband that is respondent no. 5 threw complainant out of the house. It prima facie appears that it is vaguely alleged against respondent no.5 without attributing any specific role of respondent no.5 in the incidents of domestic violence mentioned in the complaint.

11. Here at this juncture I rely on the authority of *Hon’ble Madras*

High Court in Dr P Pathmanathan Vs. V Monica dtd. 18/01/2021 in Cri. Pet. N. 28458/2019 and other petitions. In this authority Hon'ble Madras High Court has referred to various judgments and authorities and issued directions in regard to section 12 of D.V Act. I refer to relevant directions no.vi and x in this authority which are as follows :-

vi "It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under section 12 of the Act. As pointed out by this court in Vijaya Bhaskar (cited supra), there should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the matrimonial relationships, the Magistrate must set out reasons that have impelled them to issue notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate.

x The Magistrate must take note that practice of mechanically issuing notices to the respondents named in the application has been deprecated by this court nearly a decade ago in Vijaya Bhaskar (cited supra). Precedents are meant to be followed and not forgotten, and the Magistrates would therefore do well to examine the applications at the threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for grant of reliefs under chapter IV of D.V Act."

12. Now coming to the question whether this Court can entertain this application, I refer to the authority of ***Hon'ble Madras High Court in Ram Mohan Vs. Harika Raju dtd. 08/07/2022 in Cr P No.2089/2022 and CMP no.10752 and 10755 of 2022*** in which it is observed that

“in the authority of Kanureddy, Hon'ble Supreme Court upheld the order of Magistrate purportedly exercising powers under Order VI Rule 17 of CPC to permit the amendment of an application under section 12 of the D.V Act. Taking a cue, therefrom it would be open to any of the respondents at any stage of the proceedings to apply to the Magistrate to have their names deleted from the array of respondents if they have been improperly joined as parties. For this purpose, the Magistrate can draw sustenance from the power under Order I Rule 10 (2) of CPC. A judicious use of this power would ensure that proceedings under the D.V Act do not generate into a weapon of harassment and would prevent the process of the court from the abuse by joining all and sundry as parties to the lis”.

13. From the above discussion the question is not as to whether respondent no. 5 is involved in this matter or not, the correct question would be as to whether reliefs claimed by complainant can be granted against respondent no.5 under the Act or not. In my view only those persons should be allowed to stand in the queue of respondents who can make out or redress the grievance of the complainant under the Act. In this case as discussed above from the averments in this complaint, there is no specific role is attributed to respondent nos. 5 in the incidents of domestic violence

mentioned by the complainant in instant application. Thus, relying upon the authorities mentioned above I am of the view that the name of respondent no. 5 should be deleted at the outset to avoid unnecessarily impleading her in this proceeding. In result I proceed to pass following order.

ORDER

1. Application below Exh. 26 is allowed.
2. Both the sides to take note and proceed with the matter.
3. Amendment i.e. deletion of names of respondent no.5 to be carried out by the complainant within 14 days.
4. No order as to cost.

Date-14.10.2024

Place- Shevgaon

(Smt.S.U.Jaguste)

J.M.F.C, Shevgaon