

MHAM160003482020



Order below Exh-19 in P.W.D.V. No. 11/20
Neha & anr. Vs. Shyam @ Mangesh & ors.

The respondent No.4 filed present application thereby prayed to discharge him from present proceeding.

02 - I have called say of applicants. The applicants filed their say at Exh.20 thereby requested to reject present application.

03 - Ld. Adv. N. P. Deshmukh for respondent No.4 contended that the applicants filed main application under Section 12 of Domestic Violence Act (for short 'D.V. Act') thereby seeking various reliefs. The respondent No.4 does not have relationship with the applicants. Thus, there is no domestic relationship in between respondent No.4 and applicants. Moreover, he contended that the respondent No.4 never resided with the applicants at any point of time. More so, there is no direct allegations against the respondent No.4 which attracts provision of D.V.Act. Thus, the respondent No.4 neither resided with applicants nor shared common household. Therefore, the applicants filed present application against respondent No.4 in order to harass him. With this, he prayed to allow present application. He relied upon

following authorities :-

1. Ashish Dixit Vs. State of U. P. and anr., Cri. Appeal No.43/2013 decided on 07/01/2013 wherein Hon'ble Apex Court held that wife can not implicate one and all in a Domestic Violence case.
2. Kamlesh Devi Vs. Jaipal & ors., Spl. Leave Petition (Cri) No. 34053/2019 decided on 04/10/2019 wherein Hon'ble Supreme Court held that mere vague allegation is not sufficient to bring the case within the Domestic Violence Act.

04 - Per contra, Ld. Adv. P. M. Thakare for the applicants submitted that the respondent No.4 is brother of respondent No.2. The respondent No.4 is residing with other respondents under same roof. The notice to respondent No.4 was served on the same address of the respondents. This fact clearly shows that the respondent No.4 is residing with other respondents. Ld. Adv. P. M. Thakare further submitted that the applicant No.1 filed an F.I.R. at P.S. Alandi in the year 2020 against the all respondents. Moreover, the respondent No.4 committed domestic violence against the applicant No.1. With this, he prayed to reject present application.

05 - Perused the application and say. Heard both sides at length. I have gone through record of present matter.

06 - Admittedly, the applicants filed present application against the respondents under Section 12 of D.V. Act thereby

sought various reliefs. The respondent No.4 filed present application for discharge him from present proceeding. Therefore, I find Section 2(f) and Section 2(s) of D. V. Act are relevant here. I reproduced said section as follows:-

Section 2(f) – *Domestic Relationship means a relationship between two persons who live or have, at any point of time, live together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are the family members living together as a joint family.*

Section 2(s) – *Shared Household means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned, 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 belonged to the joint family of which the respondent is member, irrespective of whether the respondent or the aggrieved person has any right, title, interest in the share household.*

07 - I considered above legal position. I have gone through aforesaid citations. The respondent No.4 contended that he does not have any relation with the applicants. The respondent No.4 further contended that he never shared common household with

the applicants. Therefore, he does not have any domestic relationship with applicants. Moreover, allegations against him are vague in nature. I considered these contentions. The applicants in their application mentioned that the respondent No.4 is brother of respondent No.2 and uncle-in-law of applicant No.1. This fact is not denied by the respondent No.4. Thus, it seems that the applicants and the respondent No.4 are having domestic relationship. Moreover, I have gone through averments of main application. The applicants in their application mentioned common address of respondents. In pursuance of which, the respondent No.4 appeared in present matter. Moreover, the applicants in their application alleged that the respondent No.4 was residing with other respondents in common household. The respondent No.4 was saying the applicant No.1 to have sexual relation with him for baby boy. The respondent No.4 threatened the applicant No.1 by saying that if she tell said thing to anyone then he will kill her. Thereupon, she lodged F.I.R. against the respondents. In support of these allegations, the applicants filed photocopy of F.I.R. No.48/2020. Perusal of it shows that the respondent No.4 is arrayed as a accused in said matter. From these averments, it is clear that the respondent No.4 shared household with the applicants. Section 2(f) and 2(s) do not prescribe definite time period for having domestic relationship and shared household. Therefore, it is limpid that the respondent No.4 shared household with the applicants. Moreover, it is crystal clear that there are

direct allegations which are in the nature of domestic violence against the respondent No.4. Therefore, I am of the opinion that presence of respondent No.4 is necessary to present matter. Hence, I humbly dis-agree with contentions of respondent No.4. Thus, facts of present case are different with aforesaid authorities. Therefore, the ratio laid down in Ashish (supra) and Kamlesh Devi (above) are not applicable in present matter.

08 - In view of aforesaid discussion, I am of the opinion that, present application is liable to be rejected. Resultantly, I pass following order.

Order

1. The application is rejected.
2. No order as to costs.

Date:- 07/09/2022

Place:- Nandgaon Kh.

(S. S. Gaikwad)
Judicial Magistrate First Class,
Nandgaon Khandeshwar,
Dist.Amravati.