

MHKO050036892022

**Order below Exh.12 in PWDVA No.115/2022**

**Prerana Abhishek Bangunde Vs.  
Abhishek Vishvanath Bangunde  
CNR No.MHKO050036892022**

The instant application is filed by non-applicants no.2 to 5 praying for grant of discharge from the instant proceeding filed by the applicant under the Protection of Women From Domestic Violence Act.

2. Perused the application and reply filed over the same. Heard respective counsels appearing for both the sides.

3. It is the contention of the non-applicants no.2 to 5 that, non-applicant no.2,3 are father-in-law, mother-in-law, non-applicant no.4 is the sister-in-law and non-applicant no.5 is the brother-in-law. According to them, the applicant never stayed with the non-applicants no.2 to 5 and hence the proceeding under Protection of Women form Domestic Violence Act is not tenable against them. According to them, non-applicants no.2 to 3 are having medical ailments and they cannot travel. The allegations leveled by the applicant are not cogent enough. Hence, the non-applicants no.2 to 5 pray for grant of discharge.

4. The applicant has filed reply to the instant application below Exh.17 and has denied in toto the entire averments made in the application. The applicant has submitted that non-applicants no.2 to 5 also subjected her to the acts of domestic violence and prime role was attributed to them. The applicant accordingly prays for rejection of the instant application.

5. Heard learned counsel for the non-applicants no.2 to 5 along with learned counsel for the applicant. Learned counsel for the

non-applicants no.2 to 5 submit that the non-applicants no.2 to 5 never stayed with the applicant and hence they are entitled to be discharged from the instant proceeding. He has placed his reliance upon following rulings:-

- A] Smt. Meenakshi Jatav & Ors Vs. Dr. Seema Sehar & Ors. reported in 2013 Cri.L.J. 3164.
- B] C. Chandramohan & Anr. Vs. Varsha & Anr. reported in 2014 CJ(Mad) 18.
- C] Swati Mishra Vs. Leena Gupta & Anr. In Cri. Rev. P. 553/2015 decided on 03/12/2015.
- D] Smt. Shubha Rana Vs. Smt. Priyanka Dhankar in CA No.72/17 decided on 25/01/2019.
- E] Shradha W/O Sumit Fogla Vs. Narayanprasad S/O Bhagwandas Fogla in Criminal Writ Petition No.814 of 2022 decided on 02/04/2023.

6. Per contra, learned counsel for the applicant submits that whether the non-applicants no.2 to 5 have resided in a shared household or not is a matter of evidence and cannot be decided at this juncture. He accordingly prays for rejection of the instant application. He has placed his reliance upon following rulings :-

- A] Rashmi Mehrotra & Anr. Vs. Manvi Sheth & Anr. reported in AIROnline 2024 BOM 179.
- B] Ali Hamid Daruwala Vs. Nahida Rishad Cooper & Ors. reported in AIR Online 2023 BOM 2344.

7. I have carefully gone through the record. The marriage between applicant and her husband appears to have been taken place on 24/12/2020. The applicant in her main application below Exh.1 has

averred in detail the role attributed to non-applicants no.2 to 4. There is prime role attributed to non-applicants no.2 to 4. The applicant has categorically stated the acts amounting to domestic violence done by non-applicants no.2 to 4. Thus, it cannot be said that the allegations leveled by the applicant are baseless. On the contrary, the definition of domestic violence is very broad and has to be interpreted exhaustively. At this juncture, the contentions raised by the non-applicants no.2 to 4 cannot be considered at all. The same is a matter of trial and can be decided after grating opportunity to the parties to lead evidence.

8. Another ground raised by the non-applicants are that the applicant and non-applicant no.1 never stayed with them and hence they are liable to be discharged. I have given my thoughtful consideration to the said argument. However, in my view, whether there was shared household or not or whether the applicant was in a domestic relationship with non-applicants no. 2 to 4 or not is a question of fact which has to be decided during the course of evidence and cannot be dealt at this juncture. My view regarding the same is fortified by judgment of Hon'ble Bombay High Court in case of **Ali Hamid Daruwala** (cited *supra*). Thus, in view of the instant ruling which is of parent High Court, all the rulings cited by non-applicants no. 2 to 5 (**Smt. Meenakshi Jatav & Ors, C. Chandramohan & Anr., Swati Mishra, Smt. Shubha Rana, Shradha W/O Sumit Fogla**) are not applicable to the case at hand.

9. Thus, the grounds mentioned in the instant application by non-applicants no. 2 to 4 are totally baseless and they are not entitled for grant of discharge. However, it is come to the notice of this court that at the time of marriage of applicant with the non-applicant no.1,

the non-applicant no.5 was only 16 years of age. The non-applicant no.5 has filed on record bonafide certificate of D. Y. Patil International University. The same clearly shows that the date of birth of non-applicant no.5 is 08/04/2004. Thus, admittedly in the year 2020 when the marriage of applicant took place and the alleged incidents of domestic violence took place, the non-applicant no.5 was only 16 years of age. Hence, it would not be just and proper to continue proceeding against non-applicant no.5 as on the date of incidents, he was admittedly a minor. Continuing the proceeding against him would amount to abuse of process of law. Hence, he is entitled to be discharged. Accordingly, considering all the above aspects, I proceed to pass the following order :-

**ORDER**

1. Application at Exh.12 stands partly allowed.
2. Non-applicant no.5 is hereby discharged from the instant proceeding on account of he being a minor at the time of marriage of the applicant.
3. Prayer of non-applicants no.2 to 4 regarding grant of discharge is hereby rejected.
4. Applicant is directed to delete the name of non- applicant no.5 from the instant proceeding and carry out necessary amendment by next date. The applicant is also directed to file on record amended copy of the application.
5. No order as to costs.

(Dictated and Pronounced in Open Court)

Date :- 06/04/2024.  
Ichalkaranji.

( S. A. Ingley)  
Judicial Magistrate First Class.  
Court No.2 Ichalkaranji.

## CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Orders are same, word to word, as per the original Judgment / Order.

|                         |                                                                       |
|-------------------------|-----------------------------------------------------------------------|
| Name of stenographer    | Shri. R. D. Jadhav                                                    |
| Name of Court           | S. A. Ingley<br>2 <sup>nd</sup> Jt. C.J.J.D & J.M.F.C., Ichalkaranji. |
| Date of Dictation       | 06/04/2024                                                            |
| Order signed by P.O. on | 06/04/2024                                                            |
| Order uploaded on       | 06/04/2024                                                            |