

**ORDER BELOW APPLICATION FILED BY RESPONDENTS
NO. 2 AND 3 FOR THEIR DISCHARGE**

Read the application, say of the applicant at Exh. 12.

Heard Ld. Counsels for both the parties.

2. The learned counsel for the respondent has relied upon the decisions in the case of -

- **K. Narasimhan V/s. Smt. Rohini Devanathan 2011 ALL MR (Cri) JOURNAL 17 of Karnataka High Court,**
- **Anoop & Ors. V/s. Vani Shree 2015 ALL MR (Cri) Journal 351 of Punjab & Haryana High Court and**
- **Kailash Chandra Agarwal & Anr V/s. State of U.P. & Ors. 2014 ALL MR (Cri) 4134 of Supreme Court.** I have gone through the decisions cited by the learned counsel for the respondents no. 2 and 3.

3. It reveals that the respondents no. 2 and 3 have made this application for their discharge. It is their submission that the applicant after a few months of marriage left matrimonial home of husband and in-laws and came back to Mumbai at her parents house. Thereafter respondent no. 1 came to Mumbai after leaving his mother and elder brother i.e. respondents no. 2 and 3 and started living with his wife nearby his in-laws house. Since beginning the applicant did not like life style of U.P. and not ready to adjust in joint family and after marriage she started quarreling with husband and in-laws. She was not interested in any work. She used to get up late in the morning and not willing to help mother-in-law and sister-in-law. After shifting to Mumbai, she was not willing to stay in joint family. She was not allowing the respondents to visit her home. She started staying

separately from respondents no. 2 and 3 and other family members. These respondents never interfered in the matrimonial life of the applicant and respondent no. 1. They never forced her to follow the custom and traditions, nor allowed her husband to share family responsibility. Since beginning she behaved like a distant relative. They further narrated the story occurred in Mumbai, which leads that the applicant was non co-operative with them. They stated that the address proof of Ration Card, Aadhar Card, election card, electricity bill of respondent no. 2 goes to show that they never lived in shared house and were not in domestic relation with the applicant. They are not having any domestic relation with the applicant, never shared the house and family relation with the applicant as joint family and therefore, they are not liable to prosecute in the present case. Hence, prayed for discharge.

4. The applicant strongly objected for the same and submitted that since beginning she was subjected to domestic violence by the respondents and the same has been narrated in the application. Whatever stated by the applicant are the facts in issue, on the basis of it, it cannot be said that the respondents are not in domestic relation with the applicant. Therefore, prayed to reject the application.

5. Ld. Counsel for the respondent submitted that as respondent no. 1 is not traceable, with an intention to trace him these respondents were made party to the application. They were not in domestic relation with the applicant nor shared house with her, therefore, they cannot be made as a party to the present proceeding. She further argued that if the address proof of the respondents is compared with address of the applicant, it shows that they are different

and prima-facie helps to prove that respondents no. 2 and 3 are not in domestic relations with the applicant

6. Ld. Counsel for the applicant objected for the same and submitted that on the basis of averments made in the application, arguments advanced by the learned counsel for the respondents for comparing the address proof so as to ascertain whether they were in domestic relation or not cannot be considered.

7. If minutely considered the submissions made by ld. Counsel for the applicant, averments made in the application filed u/sec. 12 of the Protection of Women from Domestic Violence Act and the contents of the present application and even though considered the arguments advanced by ld. Counsel for the respondent to be true and taken into consideration, at this stage, by no stretch of imagination it can be said that the respondents no. 2 and 3 were not in domestic relation with the applicant, because if they are not in domestic relation with the applicant, there was no reason for respondents no. 2 and 3 to know, narrate the facts which are within their knowledge with regard to the behaviour of the applicant. That is the reason as they were aware of the facts and having knowledge with regard to the behaviour of the applicant. That is the reason they made allegations with regard to non co-operation, allegations of misbehaviour and non performing duties by the applicant, prima-facie which goes to show that the respondents are in domestic relationship with the applicant.

8. I do not want to go into detail or discuss the facts as to whether there exists domestic violence at the hands of the respondents or not because the court is dealing with the application for dropping them from proceeding on the ground that they are not in domestic

relationship and never shared house as they are residing differently and at different places. Even though if considered the arguments advanced by the ld. Counsel for the respondent that respondent no. 2 and 3 have not committed any domestic violence, but considering the allegations made by the applicant, the same is required to be proved as to whether they committed any domestic violence or not, whether they resided together, as these are the facts in issue. The same can be decided after full fledged hearing.

9. Considering all these aspects as discussed above, on the basis of documents produced by the respondent one cannot come to the conclusion and find out that the respondents are in domestic relation or not. The issue raised by the respondents relates to the facts in issue which requires full fledged hearing. The cited supra decisions are not applicable as facts differ. Therefore, I am of the view that the application is devoid of merits and required to be rejected. Therefore, rejected.

Date : 02/12/2019

(R.M. Nerlikar)
Addl. Chief Metropolitan Magistrate
4th Court, Girgaon, Mumbai