

**IN THE COURT OF ADDL. CHIEF METROPOLITAN MAGISTRATE,
31ST COURT, VIKHROLI, MUMBAI.**

C.C. No.151-DV-2019

Order Below Exhi-10

1. The respondent No.2 submitted this application and sought a relief of discharge from this case. According to her, she never stayed with the petitioner at her caption address, she is residing separately at 8th floor, Satya Vijay Society, opp. Ganpati Mandir, Samata colony, Naydu colony, Panta-Nagar, Ghatkoper (E) Mumbai-75. Further, there is no specific allegations against her in the complaint, she has made party to this proceeding just to harass herself and other respondents.

2. She is married in the year 2004 and residing with her husband and two children. The petitioner never resided with her nor shared any domestic relationship. Therefore, she submitted this application and sought said relief.

3. The petitioner submitted her reply at Exhi-11. She submitted that, the law ie The Protection of Women from Domestic violence Act,2005 (here-in-after discussed as “D.V.Act” for convenience) is basically a beneficial legislation which is primarily civil in nature, there is no provision in the said act for discharge of the party as provided in criminal procedure code. The complainant duly mentioned the specific instances of the domestic violence committed by respondents No-2, without trial, it would not proper to discharge the respondent No-2, with this, she prayed for rejection of application.

4. Heard both side. I have carefully gone through the material placed before me and given anxious consideration to the submission of both side. The counsel for Res. No-2 argued as per the contents of her application. Ld counsel for complainant also argued the same and relied on a Judgments reported in (1) *Parag Vasat Mewadav V/s. State of Gujarath in Cri. M.A./11623/2012 dt.5.03.2012* 9 of Hon'ble Gujarath High Court (2) *Rahul Bhargava Vs. State (Nct) of Delhi High Court in Crl. M.C.2304/2016 and Crl. M.A. No.9669/16 & 15253.2017.* (3) *Dr. Anurag Gupta Vs. Ms. Swati Mishra, in Crl. Appeal No.22/15 dt. 15-02-2016 of Hon'ble Delhi District Court.* (4) *Mr. Prashant Pandit Salve Vs. Mrs. Suvarna Prashant Salve in Cri. Writ Petition No.3069 of 2015 dt. 11.7.2016 of Hon'ble Bombay High Court* (5) *Mr. Abinash Jain Vs. State of Punjab & Anr., in Crl. Misc No. M33855 of 2013 and* (6) *Raosaheb Pandharinath Kamble & Ors. Vs. Shaila Raosaheb Kamble & Ors., Crl.W.P. 143 of 2010 dt. 20.4.2010 of Hon'ble Bombay High Court.*

5. Perusal of the record, it transpired that, the petitioner submitted complaint case against three respondents including the Res. no-2 ie her sister-in-law. She alleged that, these respondents provided domestic violence against her. Sec 3 of D.V.Act described the definition of domestic violence as under:-

Section 3 in The Protection of Women from Domestic Violence Act, 2005

3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a

view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. *Explanation I.*—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

6. In view of above definition, a physical, verbal harassment

amounts to Domestic violence. If we carefully gone through the cited authorities, it appears that, the gist of all these cited authorities is that, in Domestic Violence cases, unless and until an opportunity to lead evidence is given to the complainant, respondent is not entitled for deletion of his/her name. The nature of this proceeding is quasi civil. Therefore, strict pleading as required in criminal cases are not required. Further, the proceeding is not criminal case, therefore, provision of discharge the respondent is not applicable. At this stage, without recording evidence of both side, it would not be proper to appreciate the pleading of the parties. Therefore, I am accepting the submission of counsel for complainant that, application is not tenable. Hence, it is required to be rejected, it is rejected.

(A. A. Ghaniwale)

Date:- 14/02/2020

Addl. Chief Metropolitan Magistrate
31st Court, Vikhroli, Mumbai.