

ORDER BELOW EXH.11
(Passed on dated 24th February, 2021)

1. It is an application furnished by respondent No.6 to 8 whereas they sought dismissal of proceeding against them instituted under Protection of Women From Domestic Violence Act 2005. (hereinafter referred as D.V. Act)

2. It is contended that, petitioner falsely arrayed these respondents in the present proceeding. There is no specific allegations attributed to them. They were not in domestic relationship with petitioner nor live at any point of time with petitioner in share household. In short, no prima facie complaint under section 12 of the Act maintainable against them. Hence, they sought for dismissal of complaint. Petitioner furnished her reply at Exh.12 wherein she stated that, aforesaid respondents involved in commission of domestic violence against her. She has disclosed relevant facts in respect of domestic violence from respondents. She urged for rejection of prayer for dismissal of complaint.

3. Perused application and reply thereon. Heard Ld. Counsel for both the sides at sufficient length.

4. Ld. Counsel for petitioner argued that, complaint reflects act of domestic violence by these respondents against petitioner. Petitioner produced sufficient material to made out strong prima facie case against petitioner. Pleadings in the complaint indicative of respondents has subjected the petitioner to domestic violence while they were leading domestic relationship with her. He sought rejection of plea of discharge. On the other hand, learned counsel for respondents advanced argument that, petitioner failed to averred requisite material in order to constitute act of domestic violence against petitioner by respondents. Complaint itself does not contain any iota to subject said respondents to face aforesaid proceeding. Hence, he asked for dismissal of complaint.

5. At the outset, it will apt to mention that, in order to invoke provisions of D.V. Act, the person against whom proceeding has been initiated ought to live or has been live at any point of time with aggrieved person in shared house hold. Further,

he must be live in domestic relationship with aggrieved person.

6. Perusal of complaint, it appears that, petitioner has not put forth narration to show that, she was living in shared house hold with present respondents. There is no specific allegations cited against the respondents. It is pertinent to mention that, these respondents are residents of different addresses from that of petitioner while she was living with respondent No.1. In short, complaint does not reflect that, these petitioners are living or were at any point of time live together with petitioner in shared house hold. Said respondents alleged to instigate respondent No.1 to cause domestic violence to petitioner. However, the complaint has not contained any material to assert as to how these respondents instigated respondent No.1 as alleged. Mere statement in respect of instigation will not enable to array the respondents but there ought to be some narration to infer such instigation. Petitioner alleged that, respondent No.7 tender opinion that, petitioner is unable to conceive pregnancy owing to medical infirmity. Apart from said statement, there is nothing mentioned in the petition to demonstrate domestic violence on the part of respondent No.7. Petitioner herself assert in the complaint that, respondent No.7 is medical practitioner and she had been to her for medical check up and treatment. Being medical practitioner it is obvious to tender certain opinion to patient. Mere on that basis, it can not be said that, said respondent committed act of domestic violence against petitioner.

Respondents placed reliance upon following authorities

1. Om Prakash Sygel Vs. Shimla Gurkh, Cri.Misc.No.M-24058/2014, Madhyapradesh High Court.
2. Bhupendra Singh Mehra Vs. State N.C.T. of Delhi, Cri.M.C.No.1766 & 1773/2010.
3. Dimple Khanna Vs. Anita Advani, Cri. Writ Petition No.4196/2012.

I have gone through aforesaid authorities wherein Hon'ble Lordship held that, only violence committed by person while living in shared house hold can constitute domestic violence. In order to constitute act of domestic violence

petitioner ought to establish domestic relationship with respondent.

As discussed earlier, complaint of petitioner does not reveal that, she was living in shared house hold with respondents. Further, allegation levelled in complaint are vague in nature. Those are not capable to attribute act of domestic violence to respondents. It appears that, present respondents made party merely because they are relatives of respondent No.1 i.e. husband of petitioner. Considering the fact that, complaint does not carry any iota to proceed further against respondents under D.V. Act, it will not sustainable to constraint these respondents to face the proceeding. Hence, proceeding against said respondents is liable to be dismissed.

Hence, following order.

ORDER

- 1 Application is allowed.
- 2 Proceeding against respondent No.6 Kamar Rizwi, 7. Mubashara Khan and 8. Shanna Khan Joje Faizal Khan stands dismissed.

Katol.
Dt. 24/02/2021.

(Anup R. Abhyankar)
Judicial Magistrate First Class,
Katol.

CERTIFICATE

I affirm that, the contents of order are word to word, as per original order.

C.D.Gahukar
Stenographer (Grade III)

Case argued on	:	24/02/2021
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