

Cri. M. A. No. 204/2019

Sulabha Vs. Santosh and ors.

CNR. No. MHPU-001542-2019

**ORDER BELOW EXH.11**  
**(Passed on 02/12/2022 )**

Present application is filed by respondent no. 5 praying for discharging her from the present proceedings. It is contended in the application that respondent no. 5 is sister-in-law of petitioner and from the perusal of the main application of petitioner, it becomes clear that petitioner and respondent no. 5 were never in a domestic relationship. It is submitted that respondent no. 5 is living with her husband since her marriage on 20/05/1994 at Hadapsar and no cause of action ever arose for petitioner to file the present application against present respondent no. 5. It is submitted that vague incidents are referred in the application to implicate respondent no. 5. It is submitted that, there was no domestic violence on petitioner from respondent no. 5 and therefore the present proceedings are not maintainable against respondent no. 5. They never stayed together in a shared household at any point of time and therefore it is submitted that proceeding against respondent no. 5 be dropped.

2. The petitioner contested this application by filing detailed reply at Exh. 16. She denied all the contentions made in the application by respondent no. 5 and submitted that respondent no. 5 is also a part of family of respondent no. 1 to 4. It is submitted that although respondent no. 5 is married and staying at her matrimonial house, she frequently visited respondent no. 1 to 4 and interferes in their family affairs which causes harassment to petitioner. It is also submitted that, respondent no. 5 instigated other respondents due to which they abused

and assaulted petitioner. The petitioner raised several allegations against respondent no. 5 in her reply from her marriage till year 2018. Hence, she submitted that there is no question of discharging respondent no. 5 as there are specific allegations against her regarding domestic violence against petitioner. Hence she prayed for rejection of present application.

3. Heard, Ld. Advocate for both the sides. The Ld. Advocate for respondent no. 5 submitted that the main petition filed by the petitioner shows that unnecessarily the name of respondent no. 5 is dragged in the proceedings. She pointed out that respondent no. 5 was married way before marriage of petitioner and respondent no. 1 and she is staying in her matrimonial home since then. Therefore, the necessary ingredients which would bring the petitioner in the category of aggrieved person, i.e. being in a domestic relationship with respondent and sharing the household, are not fulfilled so far as respondent no. 5 is concerned. She also referred the FIR filed by petitioner for offences punishable u/s. 498-A, 406, 323, 504, 506 of IPC wherein the respondent no. 5 was not made accused. Hence, it is prayed that the name of respondent no. 5 be deleted from the present proceedings.

4. On the other hand, the Ld. Advocate for petitioner submitted that, the requirement of residing with aggrieved person in the shared household is not necessary when the petitioner is able to show that respondent, who is residing separately, is also involved in the domestic violence with other respondents. The Ld. Advocate for petitioner also submitted that there is no provision in Protection Of Women From Domestic Violence Act, 2005 (for short DV Act) to discharge any

respondent from the proceedings. She pointed out that there are specific allegations made against respondent no. 5 in main petition and therefore the present application is liable to be rejected.

5. I have perused the petition and the documents filed by petitioner on record. The petition shows that main allegations of domestic violence are made against respondent no. 1 to 4. Although there is reference of name of respondent no. 5 at various places, there is no direct allegation against respondent no. 5 so far as any specific incident of domestic violence is concerned. The Ld. Advocate for respondent no. 5 correctly pointed out that the allegation against respondent no. 5 are vaguely stated in the petition. Moreover no relief is specifically claimed against respondent no. 5.

6. I have also gone through the copy of FIR filed by petitioner against respondent no. 1 to 4 on 23/11/2018 for offences punishable u/s. 498-A, 406, 323, 504, 506. The bare perusal of the said FIR shows that no allegations of any kind are made in it against respondent no. 5. Although, in her reply to the present application, petitioner has mentioned that respondent no. 5 played vital role in instigating other respondents to commit domestic violence on her, there is no allegation made in the above FIR even regarding such instigation by respondent no. 5.

7. The petitioner has submitted that respondent no. 5 was involved in the domestic violence since year 2011 to 2018. If such was the case, then the FIR filed in the month of November 2018 would have been filed against respondent no. 5 also alongwith other respondents. The

failure of mentioning the name of respondent no. 5 in the above FIR or making any allegations against her in the said FIR, shows that there is substance in the submission of respondent no. 5 that she was not concerned with alleged domestic violence on petitioner.

8. It is true that, person not residing in the shared household with aggrieved person may also commit acts of domestic violence on her. However, it has been laid down by Hon'ble Supreme Court in case of ***Satish Chander Ahuja Vs. Sneha Ahuja AIR 2020 SC 5397***, that living of the complainant woman in a household has to refer to a living with has some permanency. Mere fleeting or casual living shall not make a shared household and cannot come within the definition of shared household although it may give rise to some other offence. The petitioner admitted in her reply to the present application that respondent no. 5 never resided with petitioner in the shared household but she used to visit the house of petitioner. In such circumstances, the findings in the above case law show that respondent no. 5 cannot be said to be living with petitioner in the shared household.

9. Coming to the question of discharging respondent no. 5 from the present proceedings, it is true that there is no provision in the DV Act to discharge any respondent from the proceedings. However, Ld. Advocate for respondent no. 5 relied on case of ***Smt. Shubha Rana Vs. Priyanka Dhankar decided by Hon'ble District Court at Delhi on 25/01/2019*** in which the respondent against whom no relief was claimed in the petition, was deleted from the petition. The Ld. Advocate for respondent no. 5 also filed another order of similar nature passed by the Ld. JMFC Court at Pune.

10. I have carefully gone through both the above orders in the light of main petition. It indeed shows that no specific relief is claimed in the prayer clause against respondent no. 5. The decision of Hon'ble Supreme Court in case of **Satish Chander Ahuja**, *cited supra*, is squarely applicable to the present facts and circumstances and it is clear that respondent no. 5 never resided in the shared household with petitioner. Thus, the above discussion makes it clear that there would be no use in keeping the present proceedings pending against respondent no. 5. Therefore, it would be just and proper to delete her name from the present proceedings. Therefore, I proceed to pass following order in the interest of justice.

**ORDER**

1. Application is allowed.
2. Name of respondent no. 5 is hereby deleted from the present proceedings.
3. The petition shall now proceed only against respondent no. 1 to 4.

Rajgurunagar-Khed.  
Date- 02/12/2022

(R. D. Patange-Ingle)  
Judicial Magistrate First Class  
Rajgurunagar-Khed.

प्रमाणपत्र

मी अशी खात्री देतो की सदर पी. डी. एफ. फाईलमधील मजकूर मुळ

आदेशाप्रमाणे प्रत्येक शब्द बरोबर आहेत.

लघुलेखकाचे नाव आर व्ही बेलदार

न्यायालयाचे नाव लघुलेखक—निम्नश्रेणी

आर. डी. पतंगे—इंगळे

सह दिवाणी न्यायाधीश क. स्तर

— व न्यायदंडाधिकारी प्रथम वर्ग

राजगुरुनगर खेड

दिनांक — ०२/१२/२०२२

पिठासीन अधिकारी यांनी — ०२/१२/२०२२

सही केलेला दिनांक

आदेश अपलोड केल्याची

— ०२/१२/२०२२

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