



CNR No:- GANG020020722021

Cri. Case No:-PWDVA/17/2021/E

APPEARANCE;

Learned Advocate N. Divkar for the applicant.

Learned Advocate A. Nanodkar for the respondents no.3 to 4.

ORDER on Exhibit D-3

(Delivered on this 11th day of the month of April, 2022)

This is an application for preliminary objections to maintainability and for dropping respondents no.3 and 4 from the present proceedings.

2. It is the case of the respondents no.3 and 4 that the relationship between the respondent no.3 and 4 is that

of husband and wife and the applicant is the widow of the late brother of the respondent no.3. The said late brother expired on 06.01.2010. The respondents no.3 and 4 reside at Taleigao but not at the shared household at Carambolim. As such, there is no domestic relationship between the applicant and the respondents no.3 and 4. Further, it is submitted that the applicant has filed a false and malicious complaint against the respondents no.3 and 4 and that there is no cause of action made out to file the present proceedings against these respondents. Hence, by way of the present application it is prayed that the respondents no.3 and 4 be deleted from the present proceeding as the same is not maintainable.

3. Say of the applicant is endorsed on the present application.

4. Heard the Ld. Adv. N. Divkar for the applicant, and Ld. Adv. A. Nanodkar for the respondents no.3 and 4. Perused records. Considered the written arguments of the respondents no.3 and 4 at Exhibit D-5.

5. It is seen that this Court is empowered to drop proceedings against a respondent if there are no allegations to proceed further. Such power is discretionary, to be invoked in appropriate circumstances, which justify it. Thus, this Court is not bound to drop every such proceeding where the respondent alone opines that there are no allegations against him. This power needs to be exercised with due care and circumspection and unless it is pointed out on admitted or undisputed facts or on application of law on admitted facts that the proceedings against such a respondent are not maintainable, such power would not be exercised.

6. It is stated by the respondents no.3 and 4 in their written arguments at Exhibit D-5 that they reside at Taleigao and not at the alleged shared household (Carambolim). Therefore, there is no domestic relationship between the applicant and the respondents no.3 and 4. So also, they have resided at Taleigao since the beginning and there was no common/shared household.

7. In the present case, it is undisputed that the applicant is the sister-in-law of the respondents no.3 and 4. The respondents no.3 and 4 have stated that they stay at Taleigao and not in the shared household or not in a joint family set up.

8. On perusal of records, it is seen that the applicant itself did not state a common address with that of the other respondents. Moreover, it is the applicants case that these respondents used to visit the matrimonial house of the applicant and subject her to the alleged acts of domestic violence.

9. According to section 2(f) of the DV Act defines domestic relationship as a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Family is understood as a group of people related either by consanguinity or affinity. In the

present case, the relationship of the applicant with the respondents no.3 and 4 is that of sister-in-law, which appears to be in capacity of family members (by affinity). Such a relation as family members does not appear close knit as the respondents live in a nuclear family unit.

10. Section 2(s) of the DV Act provides for shared household. It reads as;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the

aggrieved person has any right, title or interest in the shared household.

11. On perusal of records, it does not appear that the applicant even lived in a domestic relationship with these respondents, that too, in one common house premises.

12. Thus, it cannot be said that the applicant had a domestic relationship with these respondents, within the scope of Section 2(f) and section 2(s) of the DV Act.

13. In such circumstances, the applicant cannot be termed as a 'aggrieved person' who was in a domestic relationship with the respondent though she alleges to have been subjected to domestic violence at their instance. As such, these respondents, not being in a domestic relationship with the applicant (aggrieved person) does not fall within the ambit of Section 2(q) of the DV Act which defines respondent.

Hence, I pass the following;

ORDER

- a. The application is allowed.
- b. The respondents no.3 and 4 are hereby dropped from the present proceedings.
- c. Copy of the order to be given to the parties free of cost.

Pronounced in the Open Court.

Panaji- Goa
Date:11.04.2021.

(Pooja S. Desai)
J.M.F.C., 'E' Court,
Panaji-Goa.

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