2024:BHC-AS:7359

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (ST.) NO.18350 OF 2023

] ...Petitioner.

Versus

1.]

2. State of Maharashtra] ...Respondents.

Mr. Satyavrat Joshi a/w. Ms.Anselay Andrew and Mr.Punit Jain, for the Petitioner.
Mr. Subodh Desai, a/w. Ms.Preeti Gada, for the Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.
Reserved on : FEBRUARY 08, 2024
Pronounced on : FEBRUARY 14, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

2. The present Writ Petition takes exception to the order dated 16th September, 2023 passed by the Sessions Court in Criminal Appeal No.690 of 2022, allowing the Appeal and setting aside the order dated 18th October, 2022 passed by the Metropolitan Magistrate, 40th Court at Girgaon, Mumbai in C.C.No.37/DV/ 2022 dismissing the D.V application as against the present Petitioner.

3. The facts of the case are that the Respondent No.1 had filed an Application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "D.V. Act"), bearing C.C.No.37/DV/2022, claiming reliefs under Sections 17, 18, 20 and 22 of the D.V. Act. In the said application, the Respondent No 1 has impleaded her husband, her mother in law, her unmarried brother in law and the present Petitioner who is the married sister in law.

4. The cause title of the Application would indicate that the Respondent No 1's husband, mother and brother are residing at "Siddesh Jyoti Tower" which is the shared-household whereas the address of the present Petitioner is shown of her matrimonial

house i.e. Room No.3, Ground floor, Doctor's Quarters Building. The Metropolitan Magistrate before proceeding further called upon the Respondent No.1 to satisfy on the point of maintainability of the Application under the D.V. Act against the present Petitioner. The Metropolitan Magistrate considered the definition of the 'Respondent' under Section 2(q) and held that the Petitioner though relative of the Respondent No.1 is residing separately with her own family and was not in "domestic relationship" as the Petitioner and the Respondent No.1 never lived together in the shared household together. The Metropolitan Magistrate by the order dated 18th October, 2022, dismissed the Application against the Petitioner and issued notice only to the Respondent Nos.1 to 3 in the said Application.

5. As against the order dismissing the Application against the Petitioner, Criminal Appeal No.690 of 2022 was filed by the Respondent No.1 herein, which came to be allowed and the order of the Metropolitan Magistrate dated 18th October, 2022 was quashed and set aside.

6. The Sessions Court relied upon the decision of the Apex

Court in the case of ***Prabha Tyagi v. Kamlesh Devi*** reported in ***(2022) 8 SCC 90*** and the decision of this Court (Aurangabad Bench) in ***Ali Hamid Daruwala v. Mrs.Nahid Rishad Cooper & Ors.*** passed in Criminal Revision Application No.171 of 2022. The Sessions Court held that the pleadings in the Application filed by the Respondent No.1 would indicate that the Petitioner had indulged in acts of domestic violence and as to whether the Petitioner and the Respondent No.1 have domestic relationship or not is the question of fact which can be decided at the time of trial when the parties lead their evidence in support of their case.

7. Heard Mr. Satyavrat Joshi, learned counsel for the Petitioner and Mr. Subodh Desai, learned counsel for the Respondent No.1.

8. Mr. Joshi, learned counsel for the Petitioner would submit that it is the specific case of the Respondent No.1 in the D.V. application that the Petitioner is the married sister-in-law of the Applicant, who was married on 20th June, 2021 prior to the marriage of the Respondent No.1 on 20th November, 2021. He submits that considering the admitted position of the Petitioner

residing in her matrimonial house, there was no domestic relationship between the parties within the meaning of Section 2(f) of the D.V. Act, as the parties did not live or even in the past had lived together in the shared household. Pointing out to the pleadings in the application, he submits that the allegations made therein are general allegations without any specific act attributed to the Petitioner. He submits that the allegation is that the Petitioner used to spend her whole day at the shared household as her matrimonial house was nearby and her mother-in-law had expired. He submits that the said allegation could not be constituted subsisting domestic relationship.

9. He submits that the Sessions Court without noticing the facts in the case of ***Prabha Tyagi*** (supra) have held that it is not necessary for the aggrieved person, to have actually resided or lived with those persons, against whom the allegations are levelled at the time of seeking relief. He would further submit that the case of ***Ali Hamid Daruwala*** (supra) is distinguishable on facts. In support, he relies upon the following decisions:

(i) ***Bharti Anand v. Sushant Anand and Ors. reported in 2022 SCC OnLine Del 1191***;

(ii) ***Decision of this Court dated 23rd August, 2021 passed in in Criminal Application (APL) No.434 of 2021 (Nagpur Bench) in Anil s/o. Baburao Salway and Ors. vs. Pooja Wd/o Swapnil Salway***

(iii) ***Decision of this Court dated 18th July, 2023 passed in Criminal Application No.312 of 2023 (Aurangabad Bench) in Dhananjay Mohan Zombade and Ors. vs. Gojarbai Mohan Zombade and Ors.***

10. *Per contra*, Mr. Desai, learned counsel for the Respondent No.1 would submit that the Petitioner has been arraigned in the application as specific acts constituting domestic violence has been pleaded. He submits that the proceedings are not malafide which is borne out from the fact that the other sister in law of the Respondent No.1 has not been made a party and neither the present Petitioner's husband. He tenders across the bar a chart setting out the allegations made in the various paragraphs of the application and would urge that the allegations are not general in nature. He submits that it is the specific pleading that the Petitioner used to spend her entire day in the shared household. In support, he relies upon the following decisions;

(i) ***Prabha Tyagi v. Kamlesh Devi, reported in (2022) 8 SCC 90;***

(ii) *Decision of this Court dated 1st February, 2024 passed in Crim. Revision Application No.270 of 2023 (Principal Seat) in Rashmi Mehrotra and Anr. v. Manvi Sheth and Anr.*

(iii) *Decision of this Court dated 28th February, 2023 passed in Criminal Revision Application No.171 of 2022 (Aurangabad Bench) in Mr.Ali Hamid Daruwala vs. Mrs.Nahid Rishad Cooper & Ors.*

11. Considered the submissions and perused the record.

12. The issue presented for consideration is whether the Petitioner who is the married sister in law of the aggrieved person and admittedly residing in her own matrimonial house can be stated to be in a domestic relationship within the meaning of Section 2 (f) of the D.V. Act particularly when the marriage of the Petitioner has taken place prior to the marriage of the Respondent No.1. While deciding the above issue the incidental issue to be decided is whether the allegation in the application that the Petitioner used to spend her whole day in the shared household is sufficient to constitute domestic relationship between the aggrieved person and the Petitioner.

13. The relationship between the parties interse is not disputed neither the factum of the Petitioner's marriage being

solemnised prior to the marriage of the Respondent No 1. The separate residence of the Petitioner at her matrimonial house is also borne out from the address of the Petitioner given in the domestic violence application which is different from the address of the shared household.

14. For consideration of the issues noted above, it would be profitable to refer to the definitions of *'aggrieved person'*, '*domestic relationship*', *'respondent'* and '*shared household",* as provided in Section 2(a), 2(f), 2(q) and 2(s) of the D.V. Act, which reads thus:

> *2. Definitions.-* In this Act, unless the context otherwise requires -
>
> *(a)* **"aggrieved person"** means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
>
> *(f)* **"domestic relationship"** means 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;
>
> *(q)* **"respondent"** means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

> *(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 house hold 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;

15. Plain reading of the above provisions reveals that for being arrayed as 'Respondent' in an application under Section 12 of the D.V. Act, the person has to be in a domestic relationship with the 'aggrieved person' and against whom the aggrieved person has sought any relief under this Act. The term "domestic relationship" occupies prominence while construing whether the party is an aggrieved person and as to whether the other party can be arrayed as Respondent in D.V. Application. The *sine qua non* for existence of "domestic relationship" is living *in praesenti* or in the past in a shared household as defined under Section 2 (s) of D.V. Act.

16. The facts of the instant case makes it evident that the Petitioner and the Respondent No 1 never resided together in the shared household i.e. the matrimonial house of the Respondent

No.1 at "Siddesh Jyoti Tower". To salvage the situation, given the above noted admitted position, Mr. Desai would contend that the decision of Apex Court in ***Prabha Tyagi*** (supra) as well as the decision in ***Rashmi Mehrotra*** (supra) has held that it was not mandatory for the aggrieved person to have actually resided with those persons against whom the allegations have been levelled. I am unable to subscribe to the reading of the decision of the Apex Court as desired by Mr.Desai. The decision in the case of ***Prabha Tyagi*** (supra) is being read by Mr. Desai dehors the facts of that case which are completely distinguishable.

17. In that case, the Apex Court was considering the case of the aggrieved person, who was the daughter-in-law of the Respondents, and whose husband had expired. The contention of the in-laws was that the aggrieved person had stayed for only one night after the marriage at the ancestral house and was thereafter residing separately with her husband and as such, there was no domestic relationship between the aggrieved person and the Respondents. In that context, the Apex Court noted the provisions of Section 17(1) of the D.V. Act, which confers rights on every

woman in a domestic relationship to reside in the shared household which is not restricted to actual residence and while answering the issue has held that as the aggrieved woman being the daughter-in-law had a right to reside in the shared household despite the death of her husband in the road accident the right to reside will be construed as a subsisting domestic relationship owing to her marriage and she being the daughter-in-law has right to reside in the shared household.

18. The Issue No.(ii) framed and answered by the Apex Court reads thus:

> "*(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levelled at the point of commission of violence".*
>
> *It is held that it is not mandatory for the aggrieved person to have actually lived or resided with those persons against whom the allegations have been levelled at the time of seeking relief.*

19. Mr. Desai, while pointing out the Issue No.(ii) as answered by the Apex Court has restricted the reading only to the answer without noticing the reasoning adopted by the Apex Court

and that the Apex Court has held in facts of that case that the appellant had right to reside in the shared household and being a victim of domestic violence could enforce her right to live or reside in the shared household and to seek relief under the D.V. Act irrespective of whether she actually lived in the shared household.

20. The law laid down by the Apex Court in ***Prabha Tyagi*** (supra) will not assist the case of Respondent No 1 as the Petitioner is the married sister-in-law residing in her own matrimonial house and it cannot be said that the right of the aggrieved person to reside in the shared household would constitute a subsisting domestic relationship with the Petitioner. It would have been a different matter if the Petitioner was unmarried and was residing in the shared household in which case considering the right to reside conferred by Section 17(1) of the D.V. Act, the aggrieved person could have been said to be in subsisting domestic relationship with the Petitioner even if the parties had never resided together in the shared household. It is the right of the aggrieved person to reside in the shared household which constitutes domestic relationship between the aggrieved

person and persons residing in the shared household. However, such are not the facts in the instant case as Petitioner is residing separately in her matrimonial house.

21. I have had also an occasion to deal with the issue of "shared household" and "domestic relationship" in the case of ***Rashmi Mehrotra and Anr.*** (supra) which has also been relied upon by Mr.Desai to contend that a view has been taken by this Court that even if, there is no actual residence in the matrimonial house, the domestic relationship is established if there is right to reside.

22. The facts in the case of ***Rashmi Mehrotra and Anr.*** (supra) are distinguishable as in that case the in-laws were residing at a premises known as Viceroy premises and the aggrieved person and her husband were residing in another premises named as Gundecha premises. In that case the Gundecha premises were referred to as shared household and the contention was that as the parties never resided together at Gundecha premises there was no domestic relationship. In facts of that case, I have taken a view relying upon the decision in the case of ***Prabha Tyagi*** (supra) that as the aggrieved person had right to reside in Viceroy premises

which was the shared household in view of Section 17(1) of the D.V. Act, there was subsisting domestic relationship. In that case reliance was also placed in the decision of the learned Single Judge of this Court in ***Aditya Anand Varma v. State of Maharashtra*** reported in ***(2022) All MR (Cri) 2317***. Mr. Desai, would point out the said decision noted in the case of ***Rashmi Mehrotra and Anr.*** (supra) and would contend that even in that case the Respondent No.2 therein had not resided in the matrimonial house and the learned Single Judge have held that the Respondent no.2 was in domestic relationship. The facts of that case are completely distinguishable as the Respondent No.2 therein was the aggrieved person, who had a right to reside in the matrimonial house. It was in that context that the learned Single Judge held that though not actually residing the Respondent No.2 was in domestic relationship. I am afraid the submission of Mr. Desai is based on incorrect reading of the above two decisions.

23. Now coming to the pleadings in the application, it is pleaded by the Respondent No 1 that the Petitioner was spending her whole day in the shared household. The said pleading finds

place in the paragraph describing the interse relationship between the aggrieved person and the Respondents. The other pleading is that the Petitioner everyday used to come to the shared household at 2:00 p.m. and leave at around 8:00 p.m. The marriage of the Respondent No.1 was solemnized on 20th November, 2021 and has claimed to be dispossessed on 30th January, 2022. The pleadings as regards the visits of the Petitioner do not indicate an element of permanency sufficient enough to constitute domestic relationship even if it is accepted that the Petitioner was spending her entire day in the shared household.

24. Apart from the above, even if the allegations in the application are perused, as summarized in the chart tendered by Mr. Desai, there is no individual act attributed to the Petitioner. General sweeping allegations are made against the Petitioner collectively with the other Respondents and there is no specific incident *qua* the Petitioner. The only pleading qua the Petitioner individually is that the Petitioner every day used to come to their house by 2:00 p.m. and then she used to leave at around 8:00 p.m. and she used to pack food for her husband and her family

members from their home. Considering the pleadings in the application it cannot be said that the Petitioner has subjected the Respondent No.1 to any act of domestic violence as contemplated under Section 3 of the D.V. Act. Pertinently, the reliefs in the application except as regards protection orders are sought against the husband of the Respondent No 1 which reads thus:

> "a. The **Protection Order under Section 18** of the Protection of Women from Domestic Violence Act may be passed restraining the Respondents from committing any act of domestic violence to the Applicant.
>
> b. The **Order under Section 20** of the said Act may be passed against the Respondent No.1 directing him to pay to the Applicant the sum of Rs.1,00,000/- per month towards her maintenance.
>
> c. The **Order under Section 17** of the said Act may be passed directing the Respondent No.1 to pay the sum of Rs.75,000/- per month to the Applicant towards the monthly rent of alternate accommodation.
>
> d. The **Compensation order under Section 22** may be passed against the Respondents No.1 directing him to pay the sum of Rs.3,00,00,000/- (Rupees Three Crore Only) as compensation to the Applicant."

25. As regards the decision in the case of ***Ali Hamid Daruwala***

(supra), in that the case the Applicant, who was discharged was the full blood brother of the husband and the same contention was raised that the Applicant was not in the domestic relationship with the complainant as he never resided or stayed in the shared household and that he was residing at some other address. As per my reading of the decision, learned Single Judge of this Court in that case has not laid down as an absolute proposition of law that despite the brother-in-law not residing in the shared household, there was a domestic relationship. The learned Single Judge in that case considered the averments in the application and held that such a question would only be decided on full-fledged hearing of the matter.

26. It will be beneficial to refer to the decision of of this Court **(Aurangabad Bench) in Criminal Application No.4281 of 1999 (Avinash s/o. Rangnath Bhokare vs. State of Maharashtra and Ors)**, where in the learned Single Judge was considering an application under Section 482 of the Code of Criminal Procedure, 1973, filed by the Applicant which included the married sister-in-law and has held that it would be sheer abuse of process of law

that merely because they sometimes visited their parental house, they were sharing the household with the aggrieved person within the meaning of Section 2(f) of the D.V. Act so as to constitute a domestic relationship as defined under Section 2(f) of the D.V. Act.

27. In view of the discussion above, in my view, there was no subsisting domestic relationship between the Petitioner and the Respondent No 1 and the Petitioner could not have been arrayed as Respondent in the D.V. application. The mere visits of the Petitioner to the shared household being devoid of any permanency is not sufficient and adequate to constitute residence in shared household. Even otherwise considering the pleadings in the applications read with the reliefs, there is no case of domestic violence made out qua the Petitioner.

28. Consequently, the Petition succeeds. The impugned order dated 16th September, 2023 passed in Criminal Appeal No.690 of 2022, is hereby quashed and set aside and the order of the Metropolitan Magistrate dated 18th October, 2022 passed in C.C.No.37/DV/2022 is revived. Rules is made absolute.

(Sharmila U. Deshmukh, J.)