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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.595 OF 2021

Vanisha Vincent Rodrigues

Age : 23 years, Occ. : Service,
Residing at : 58/C-24, Dharti CHS,
SVP Nagar, MHADA, Four Bungalows,
Andheri (West), Mumbai – 400 053

.... Petitioner
(Ori. Respondent No.2)

Vs.

1. Jyoti Vincent Rodrigues,
Age : 49 years, Indian Inhabitant
Occ. : Tuition Teacher,
Residing at : Flat No. 405,
MHADA No. 25,
Opp. S.M. Shetty College,
Powai, Mumbai – 400 076

2. State of Maharashtra
Through Ld. Public Prosecutor,
P.W.D. Building,
Bombay High Court, Mumbai

.... Respondents

Ms. Kenny V. Thakkar for Petitioner.

Mr. M. Moses for Respondent No.1.

Mr. Deepak Thakre, P.P. a/w Mr. J.P. Yagnik, APP for State.

**Coram : S.S. SHINDE AND
MANISH PITALE, JJ.**

JUDGMENT RESERVED ON : 08.04.2021

JUDGMENT PRONOUNCED ON : 20.04.2021

JUDGMENT (PER MANISH PITALE J.) :

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

2. A daughter is before this Court seeking quashing of proceedings initiated by her mother under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “DV Act”), claiming that she is facing the ire of her mother due to matrimonial discord between her mother and her father. According to the Petitioner, she has been unnecessarily dragged into the said proceedings pending before the Court of Magistrate and that this is having a detrimental effect on her career as also her prospects of studying abroad.

3. The Respondent No.1 is the mother of the Petitioner herein. She has filed an application under Sections 12, 18, 19, 20 and 22 of D.V. Act before the Court of Metropolitan Magistrate at Andheri, Mumbai against her husband i.e. the father of the Petitioner

herein, as also the Petitioner. It is stated in the said application filed before the Magistrate that there is matrimonial discord between Respondent No.1 and her husband. The Respondent No. 1 has raised various grievances against her husband and on that basis, she has sought relief in the form of protection order, monetary relief, residence order and order for grant of compensation. Although the Petitioner is arrayed as Respondent No. 2 in the said application, there is only one allegation made against her in the entire application filed by Respondent No. 1.

4. An interim order was passed by the learned Magistrate thereby issuing certain directions against husband of Respondent No.1. The said order has been challenged by way of appeal by him alongwith the Petitioner before the Sessions Court.

5. The Petitioner has filed the present petition stating that the proceedings under the D.V. Act were initiated by her mother i.e. by Respondent No. 1 in the year 2018, when the Petitioner was in

the final year of her Engineering course. The Petitioner has submitted that she has completed her Engineering course and she plans to undertake further studies in Australia, for which she has already initiated the process. According to the Petitioner, in the application and forms that are required to be filled while seeking Visa before the Australian authorities, a declaration is to be given regarding pendency of criminal cases against the Applicant. Pendency of the said proceeding initiated under the D.V. Act by her mother are creating hurdles for the Petitioner to successfully seek Visa in order to visit Australia for undertaking higher studies. In these circumstances, the Petitioner has filed the present writ petition seeking quashing of the said proceedings pending before the Magistrate under the DV Act, insofar as she is concerned.

6. On 14th December, 2020, this Court issued notice in the writ petition and granted interim stay of further proceedings in the DV Case bearing No.245 of 2018, pending before the Court of Magistrate. The Respondent No. 1 entered appearance through

counsel and filed reply to the writ petition. In the reply placed on record before this Court, the said Respondent reiterated her grievances against her husband and she repeated the allegation made against the Petitioner, which was stated before the Magistrate in the application filed under the DV Act. Apart from this, said Respondent claimed that the Petitioner was not required to go abroad for studies and that this was only an excuse given by her to escape facing the proceedings pending before the Magistrate. The Respondent No.1 further stated that the Petitioner was interested in food blogging and that she had already completed her education in India. There are certain statements made about the character of the Petitioner and that she allegedly has many boyfriends. On this basis, the Respondent sought dismissal of the writ petition.

7. Ms. Kenny Thakkar, learned counsel appearing for the Petitioner submitted that the proceeding under the DV Act was initiated against the husband of Respondent No.1 and that the Petitioner was unnecessarily made a party. It was submitted that only because the Petitioner continued to stay with her father that

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Respondent No.1. had joined the Petitioner as a party to the said proceedings. There was only one allegation made in the application before the Magistrate against the Petitioner, which was general in nature, and the anger of the Respondent No.1 was mainly directed against her husband. It was further submitted that perusal of the reliefs sought in the application before the Magistrate under the provisions of D.V. Act, were all maintainable only against her husband and therefore the said proceeding did not deserve to be continued qua the Petitioner. The urgency of the matter was emphasized upon by the learned counsel for the Petitioner by stating that the course which the Petitioner desires to join in a University of Australia, was likely to commence in the month of May, 2021 and that therefore, the proceeding pending before the Magistrate was required to be quashed at the earliest, so that the Petitioner would apply for Visa and go to Australia to join the course of higher studies. The learned counsel appearing for the Petitioner invited our attention to the application filed before the Magistrate, as also the affidavit in evidence of Respondent No.1, to reiterate that there was

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no substance in the pending proceedings, atleast insofar as the Petitioner is concerned.

8. On the other hand, Mr. Moses, learned counsel appearing for Respondent No.1 submitted that the specific allegation regarding assault was made in the application filed before the Magistrate, as well as the affidavit in evidence. It was submitted that the application filed under the D.V. Act before the Magistrate was maintainable because the Petitioner was clearly covered under the definition of “Respondent” as defined in Section 2(q) of the D.V. Act. On this basis, it was submitted that the prayer in the writ petition did not deserve to be granted.

9. We have heard the learned counsel appearing for the rival parties and perused the material on record. The statement of the objects and reasons for which the D.V. Act was enacted, states that since the phenomena of domestic violence is widely prevalent and specific law was required to provide remedy to aggrieved women for ensuring their protection, reliefs pertaining to protection

from physical and economic abuse, as also shared household and adequate compensation were required to be provided for. It is in this backdrop that the D.V. Act was enacted. Section 2(a) defines an “aggrieved person” under the DV Act as a 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. Section 2(q) defines “Respondent” to mean 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 DV Act. Proviso to Section 2(q) states that such aggrieved person may also file a complaint against a relative of the husband or the male partner.

10. Considering the aforesaid provisions, the intent of the DV Act is to ensure that a woman who faces abuse at the hands of her husband or a male partner has an avenue to raise her grievance against such person and also any relative of such person. Ordinarily, this would include the relatives on the side of the husband or male partner. In the present case, it is contended on behalf of Respondent

No. 1 that the word relative used in proviso to Section 2(q) of the D.V. Act would cover the Petitioner also. It is significant that the Petitioner is the daughter of the Respondent No. 1 herself and yet she is raising a grievance against her, alongwith raising grievance against her husband, who is the father of the Petitioner.

11. Before dealing with the application filed by Respondent No. 1 under the provisions of D.V. Act, it would be relevant to refer to a Full Bench judgment of this Court in the case of Nandkishor Pralhad Vyavhare Vs. Sou. Mangala w/o Pratap Bansar, (judgment and order dated 3rd May, 2018) passed in Criminal Application (APL) No. 579 of 2011. In the said judgment, the Full Bench of this Court framed two questions for consideration, firstly as to whether the proceedings under the D.V. Act are in the nature of criminal proceedings and secondly as to whether this Court could exercise its power under Section 482 of the Cr.P.C. in respect of proceedings under the D.V. Act. The Full Bench of this Court in the aforesaid judgment answered both the questions in affirmative, therefore, it

becomes clear that we can entertain and examine the contentions raised on behalf of the Petitioner in the instant writ petition.

12. A perusal of the application filed by the Respondent No.1 under the D.V. Act before the Magistrate would show that the entire grievance is raised against her own husband i.e. father of the Petitioner. It is only at one place in paragraph (m) of the application that an allegation is made against the Petitioner that on the husband of Respondent No.1 (father of the Petitioner) instigating the Petitioner, she allegedly assaulted the Respondent No.1. This allegation is repeated in similar words in the affidavit of evidence filed before the Magistrate by Respondent No.1.

13. Except the aforesaid allegation, all allegations in the application as well as affidavit in evidence filed by Respondent No.1 before the Magistrate raise grievances only against the husband of Respondent No.1. It appears from the tenor of the said application and affidavit in evidence that the relationship between Respondent No. 1 and her husband is extremely bitter.

14. The material on record indicates that the Petitioner continued to live with her father i.e. husband of Respondent No.1 and this was perhaps a reason why she added the Petitioner as party to the proceedings initiated under the DV Act. None of the reliefs sought by Respondent No. 1 in the said proceedings are against the Petitioner, although the Petitioner is specifically added as a Respondent in the said proceedings. The Respondent No. 1 has specifically sought a protection order from the Magistrate, further seeking monetary relief to the tune of Rs.80,000/- per month, a residence order, to provide either rental accommodation or to purchase property for her, apart from seeking compensation to the tune of Rs.85.00 Lacs. All these reliefs are clearly relatable to the husband of Respondent No. 1, particularly when allegations have been made and grievances have been raised by Respondent No. 1 against her husband.

15. Therefore, it appears that the single allegation made against the Petitioner is an exaggeration and it has arisen out of

anger of Respondent No.1 against the Petitioner, as she continued to reside with her father, i.e. the husband of Respondent No.1. The material on record indicates that the bitterness in the matrimonial relationship between Respondent No.1 and her husband has spilled over to the children, particularly against the Petitioner herein. This has resulted in the said exaggerated statement and single allegation levelled against the Petitioner about the alleged assault on Respondent No.1.

16. The material on record also indicates that although initially the younger daughter had accompanied Respondent No.1, but thereafter the Respondent No. 1 could not keep the younger daughter with her, as a result of which she is now raising her grievance before the Magistrate, on her own.

17. It appears that due to these circumstances, Respondent No.1 has developed bitterness and anger, not only against her husband but her daughter i.e. the Petitioner also. This is evident from the tenor of the affidavit in reply filed before this Court wherein she has reiterated the allegation of assault and added that such

incident did occur, including hot water allegedly poured on her foot by the Petitioner. A photograph is annexed to the reply. It is significant that the said allegation and the photograph placed before this Court are materials sought to be placed on record for the first time by Respondent No.1 before this Court. Neither the application before the Magistrate nor the affidavit in evidence of Respondent No. 1 placed before the Magistrate refers to such pouring of hot water on the foot of Respondent No.1 and there is no reference to the said photographs. We refrain from commenting on the same because there is nothing to indicate the veracity of such allegation or genuineness of the said photograph. But, the tenor of the reply does show that the Respondent No.1 is not positively disposed towards her own daughter i.e. the Petitioner and it is for this reason that she has levelled allegations against her own daughter pertaining to her character and other such things. We do not wish to comment upon the same. But, it is evident that the Petitioner is caught in the crossfire of acrimony and matrimonial discord between Respondent No. 1 and her husband, who is the father of the Petitioner herein.

18. The other significant aspect of the present case is that the Petitioner, having completed her graduation in engineering, is now looking forward to join higher studies abroad. In this connection, the pendency of the aforesaid proceedings under the DV Act before the Magistrate is creating hurdles for her to obtain Visa for Australia, so as to join course of higher studies. The Petitioner is a young lady, who has just graduated and her future depends upon how she is able to improve her educational qualifications and develop her personality. It is only in the interest of justice, that this aspect of the matter is also taken into consideration. It is surprising that her own mother is hell-bent upon creating obstructions in her progress. This is evident from the reply affidavit filed by Respondent No. 1 before this Court, wherein it is stated that it is not necessary for the Petitioner to go abroad for higher education and that the said ground is being raised only as an excuse to avoid legal proceedings initiated by Respondent No.1. We find that the allegation levelled by the Respondent No.1 against the Petitioner are exaggerated and her anger and bitterness arising from matrimonial discord with her

husband, is leading to serious impediment in the progress of her own daughter i.e. the Petitioner.

19. We are also of the opinion that the allegations seem to be made in a fit of anger and they could be said to be improbable in the peculiar facts and circumstances of the case. In the case of **State of Haryana and Others vs. Bhajan Lal and Others**, reported in **1992 Supp (1) Supreme Court Cases, 335**, the Hon'ble Supreme Court has identified certain categories as illustrations wherein this Court would exercise jurisdiction to quash the proceedings. In the said judgment, it has been held as follows :

“102. “In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustrations wherein such power could be exercised either to prevent abuse of the process of any court or otherwise

to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

- (4) Where, the allegations in FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the

accused and with a view to spite him due to private and personal grudge.”

20. We are of the opinion that the facts and circumstances of the present case and the material brought to our notice show that the allegations levelled by Respondent No.1 against the Petitioner, borne out of matrimonial discord with her husband, can be said to be inherently improbable and therefore, they fall in Category-5 laid down in the above quoted portion of the judgment of the Hon’ble Supreme Court. Hence, this is a fit case to exercise jurisdiction to quash the proceedings initiated by Respondent No. 1 under the D.V. Act, insofar as they pertain to the Petitioner.

21. In view of above, the Writ Petition is allowed in terms of prayer clause (a), which reads as follows :

(a) This Hon’ble Court be pleased to invoke and exercise its constitutional powers under Article 226 of the Constitution of India r/w its inherent powers u/s 482 of the Cr.P.C. and be

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pleased to quash the DV case bearing No. 245 of 2018 pending before the 66th Court of the learned Magistrate at Andheri, Mumbai, insofar as it is filed against the present Petitioner.

22. Rule made absolute in above terms.

(MANISH PITALE, J.)

(S.S. SHINDE J.)