

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 164 OF 2017

1] Bhushan S/o Bhimrao Deshmukh
aged about 40 years, Occ - Management
Officer at Peoples Co-op. Bank

2] Bhimrao S/o Uttamrao Deshmukh
aged adult, Occ – retired

3] Shalini W/o Bhimrao Deshmukh
aged adult, Occ – housewife

4] Sau. Sangita Nikhil Deshmukh @
Sangita D/o Bhimrao Deshmukh,
aged adult, Occ – housewife,

All R/o Annasaheb patil Nagar, Behind
Gujral Petrol Pump, Jalgaon

.. Applicants

Versus

Sau. Nilesa Bhushan Deshmukh,
aged about 35 years, Occ – teacher,
R/o C/o Manish Vasanttrao Deshmukh,
Opp. M.S.E.B. Office, Gorakshan Road,
Akola, Tq and Distt. Akola

.. Respondent

Mr. S. A. Mohta, Advocate for applicants.

CORAM : MANISH PITALE, J.

DATED : 09/08/2021

ORAL JUDGMENT

This application is listed at Sr.No.209 in the final
hearing board for today. A specific note was given at the top of the

cause list stating that no adjournment would be granted on any ground in the matters listed at Sr. No.201 to 210.

(2) When the application was called out for hearing in the pre-lunch session, the learned counsel for the applicants appeared and argued at length. The sole respondent has been served and is represented through counsel, although none appeared for the sole respondent. The application was then kept in post lunch session at 2.30p.m. but, none appeared on behalf of the sole respondent. As noted above, the learned counsel for the applicants was heard finally.

(3) By this application, the applicants have sought quashing of criminal proceedings bearing Miscellaneous Criminal Case No.778 of 2016, filed by the sole respondent under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as '**D.V. Act**'). The applicants have also prayed for setting aside the orders passed by the Court of Judicial Magistrate First Class, Akola, issuing notice in the application filed by the respondent herein and also rejecting an application filed by the applicants for dismissal of the criminal proceedings, on the ground

that such proceedings were an abuse of the process of law. The applicant No.1 got married with the sole respondent on 13/03/2011 at Akola. Soon after the marriage, there was matrimonial discord between the two, as a consequence of which, the applicant No.1 file a proceeding for divorce on the ground of cruelty. The said petition filed for divorce was decreed by the Family Court at Akola on 16/09/2014, after rendering findings to the effect that the respondent had indeed inflicted cruelty on the applicant No.1. It is relevant to mention here that the Family Court, by the very same judgment and order had also rejected an application for restitution of conjugal rights filed by the respondent. Aggrieved by the said common judgment and order of the Family Court, the respondent filed Family Court Appeal Nos.7 of 2015 and 08 of 2015 before this Court. By judgment and order dated 10/08/2015, this Court dismissed both the appeals and confirmed the judgment and order passed by the Family Court. The said judgment of this Court was then challenged before the Hon'ble Supreme Court. On 15/02/2016, the Special Leave Petition stood dismissed, as a consequence of which, the divorce decree was confirmed and the dismissal of the application for restitution of conjugal rights was also confirmed. It is after the aforesaid proceedings had reached upto the

Hon'ble Supreme Court and terminated in favour of the applicant No.1, that on 15/05/2016, the respondent filed an application under Sections 12 to 23 of the D.V. Act before the Court of the Magistrate, seeking various reliefs including monthly maintenance, compensation, residence order and other monetary benefits. The respondent made allegations similar to those made in the proceedings pertaining to the divorce decree and the application for restitution of conjugal rights and thereafter, claimed that the applicant No.1 had treated her with cruelty, by performing a second marriage. The respondent also stated that she had filed a complaint against the applicant No.1 for offence under Section 494 of the Indian Penal Code (IPC).

(4) In this application, on 17/05/2016, the Court of Magistrate issued notice to the applicants. The applicants herein filed an application for dismissing the proceeding on the ground of **tenability**. It was submitted that the respondent was not entitled to invoke the provision of the D.V. Act in the backdrop of the earlier round of litigation between the parties. By the order dated 01/12/2016, the Magistrate rejected the application. Aggrieved by the same, the applicants have approached this Court seeking not only

setting aside the said orders, but also quashing of the entire proceedings.

(5) On 14/03/2017, this Court issued notice in the present application and granted interim stay to the further proceedings pending before the Magistrate. On 28/06/2017, this Court granted **Rule**, after hearing of the learned counsel for the rival parties and the interim order was continued.

(6) Mr.S.A.Mohta, learned counsel appearing for the applicants submitted that the proceedings initiated by the respondent under the provisions of the D.V. Act were not tenable, in view of the contents of the application itself filed on behalf of the respondent under the provisions of the D.V. Act. It was submitted that the very same facts and incidents that were referred to and relied upon in the earlier set of proceedings pertaining to the divorce decree and rejection of the application for restitution of conjugal rights, were relied upon in the said application filed on 15/05/2016, three months after the Hon'ble Supreme Court had confirmed the findings rendered in favour of applicant No.1 in the aforesaid earlier proceedings. It was

further submitted that such a course of action was not open to the respondent and the subsequent incident on which the respondent sought to rely i.e. the applicant No.1 performing a second marriage, could not be an incident for which the respondent could invoke provisions of the D.V. Act. It was submitted that the relief sought in the application were not maintainable at all in the facts and circumstances of the present case.

(7) As noted above, none has appeared on behalf of the respondent.

(8) Having heard the learned counsel for the applicants. This Court has perused the documents filed along with this application. There can be no dispute about the fact that divorce decree granted in the present case has been confirmed upto the Hon'ble Supreme Court and the rejection of the application for restitution of conjugal rights filed by the respondent also stood confirmed. The contentions raised on behalf of the applicant No.1 on the ground of cruelty were accepted by all the Courts and hence the said findings have attained finality.

(9) The question is, in the face of such findings rendered by the Family Court and confirmed by this Court and the Hon'ble Supreme Court, whether the respondent is entitled to rely upon incidents pertaining to the same time period and relatable to the allegations and contentions raised in the aforesaid round of litigation, to claim that she had suffered domestic violence at the hands of the applicants, as defined under the D.V. Act. The other question that arises for consideration is, as to whether the act of the applicant No.1, performing a second marriage after the grant of divorce decree can be said to be an act of domestic violence under the provisions of the D.V. Act. A related question is, as to whether the proceeding initiated by respondent under the provisions of the D.V. Act can be said to be an abuse of the process of law.

(10) In order to answer the said questions, it would be appropriate to peruse the contents of the application filed on behalf of the respondent under Sections 12 to 23 of the D.V. Act. A perusal of the same would show that the respondent has indeed raised the very issues and contentions that she had relied upon during the initial round of litigation pertaining to the divorce petition filed by the

applicant No.1 and the application for restitution of conjugal rights filed by the respondent. It cannot be disputed that such contentions pertaining to incidents alleged by the respondent had been considered and decided by the Family Court and that the findings had attained finality upto the Hon'ble Supreme Court. Therefore, the respondent cannot be permitted to reiterate the same by filing application under the provisions of the D.V. Act, three months after the Hon'ble Supreme Court dismissed her Special Leave Petition and confirmed the findings rendered by the Family Court and this Court on identical issues.

(11) Insofar as the second marriage performed by the applicant No.1, after grant of divorce decree is concerned, the contention of the respondent that this amounted to domestic violence cannot be accepted. Section 3 of the D.V. Act defines 'domestic violence' in an elaborate manner and it refers to physical abuse, sexual abuse, verbal abuse, emotional abuse, and economic abuse. This is in the context of a domestic relationship shared between the aggrieved person and the respondent.

(12) In the present case, the fact that the Family Court

granted divorce on the ground of cruelty cannot be denied. Merely because the applicant No.1 performing a second marriage cannot come within the definition of domestic violence under Section 3 of the D.V. Act. Although, it may be said that the respondent could have claimed that there had been a domestic relationship between the parties, for the reason that the applicant No.1 and respondent were married at a point in time, but the said fact in itself would not be enough for the respondent to initiate the said proceedings under the provisions of the D.V. Act, much after the divorce proceedings had attained finality and findings had been rendered against her.

(13) Chronology of events of the present case does indicate that the respondent sought to invoke the provisions of the D.V. Act after the proceedings concerning the divorce decree had attained finality upto the Supreme Court. It was not as if the respondent had initiated a proceeding under the D.V. Act during the course of the matrimonial discord between the parties. It is after the respondent suffered adverse orders in the proceedings concerning the divorce petition and the application for restitution of conjugal rights, which stood confirmed right upto the Hon'ble Supreme Court, that she

turned around and sought to invoke the provisions of the D.V. Act. This demonstrates that the manner in which the proceedings were sought to be initiated under the provisions of the D.V. Act was nothing but an abuse of process of law. The respondent could not be permitted to keep the applicants engaged in litigation in this form, when the requirements of the D.V. Act, on the face of it, did not appear to be satisfied.

(14) In any case, the respondent appeared to be interested in initiating and continuing such proceedings as a tool of harassment against the applicants. The prayers pertaining to monthly maintenance, compensation, residence order etc. have all been made in the backdrop of such allegations, which are nothing but a repetition of the contentions raised in the earlier round of litigation. Therefore, this Court is of the considered opinion that continuance of further proceedings in such a matter would amount to permitting abuse of the process of law. The same cannot be permitted. The Magistrate failed to appreciate this aspect of the matter while passing the impugned orders and therefore, the impugned orders also deserved to be interfered with.

(15) In view of the above, the application is allowed.

(16) Miscellaneous Criminal Case No. 778 of 2016 is quashed. Consequently, the impugned orders dated 17/05/2016 and 01/12/2016, are also set aside.

[MANISH PITALE J.]

KOLME/P.A.