

Bombay High Court

XXX And Ors vs ABC And Anr on 2 March, 2016

Bench: Dr. Shalini Phansalkar-Joshi

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.647 OF 2016

1. "XXX"  
Aged 33 years, Occ.: Business,  
R/at 4-1-316, Residency Road,  
Bank Street, Koti, Hyderabad-500001.

2. "YYY"  
Aged 68 years, Occ.: Business,  
R/at 4-1-316, Residency Road,  
Bank Street, Koti, Hyderabad-500001.

3. "ZZZ"  
Age 60 years, Occ.: Business,  
R/at 4-1-316, Residency Road,  
Bank Street, Koti, Hyderabad-500001.

Versus

1. "ABC"  
w/o. "XXX"  
Aged 28 years, Occ.: Business,  
R/at House No.17, Lawrence Colony,  
BT Kawade Road, Hadapsar,  
Pune - 411 013.

2. State of Maharashtra

Mr. Sanjay Bhojwani for the Petitioners

Ms. Flavia Agnes for Respondent No.1.

Mr. A.S.Shitole, APP, for Respondent No.2 - State.

CORAM :

DR. SHALINI

DATE

:

2ND MARCH

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith, by consent. Heard learned counsel for both the parties and the learned A.P.P.

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2. This Writ Petition is preferred by the husband and in-laws, Original Respondent Nos.1 to 3 in Criminal Miscellaneous Application No.731 of 2015 for quashing the proceedings initiated against them by Respondent No.1 herein in the Court of Judicial Magistrate, Cantonment Court, Pune, under the provisions of Section 12 of Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as "the D.V. Act").

3. Facts of the Petition can be stated as follows :-

Respondent No.1 is the wife of Petitioner No.1, their marriage having been solemnized on 18.02.2012 at St. Patrick's Cathedral, Pune. Petitioner Nos.2 & 3 are the parents of Petitioner No.1. After marriage, they were residing together for some days at Hyderabad. Thereafter, since last about one and half year, to be precise from 1 st July 2015, Respondent No.1 is residing at her maternal home in Pune along with her minor daughter Alyssa, born on 6th August 2013. Respondent No.1 herein had, thereafter, filed Misc. Cri. Appln.No.731 of 2015 before the trial Court under Section 12 of the D.V. Act, in which she has described in detail her marital life and the various incidents and the acts which had, according to her, compelled her to reside separately from the present Petitioners.

4. In the said Application, which is running into about more than 30 paragraphs and several pages, she has sought various reliefs, like the protection order under Section 18 of the D.V.Act restraining the present Petitioners from subjecting her to domestic violence and also for WP 647-16.doc 2 of 33 restraining present Petitioner No.1 from alienating or creating third party interests in the various properties owned by him. She has also sought the relief under Section 19 of the D.V. Act directing Petitioner No.1 to provide separate accommodation in the vicinity of her parent's house at Pune for her and the child to stay in. She has further sought relief under Section 20 of the D.V. Act directing Petitioner No.1 to pay a sum of Rs.1,50,000/- per month by way of maintenance to her and her daughter from the date of the Application. She has also sought the relief that she may be allowed to retain custody of her daughter. The said relief was sought as per the provisions of Section 21 of the D.V.Act. Ultimately, she has sought direction to Petitioner No.1 to pay her Rs.50,00,000/- towards compensation for the mental torture and emotional stress caused to her by the various acts of domestic violence committed on her by the Petitioners.

5. Along with the main Application, she had filed an Application under Section 22 of the D.V. Act seeking the relief directing the present Petitioner No.1 to pay an amount of Rs.50,00,000/- towards compensation and interim order to that effect during the pendency of the main Application.

6. Further, she had also filed an Application under Section 23 of the D.V.Act for interim reliefs which she has claimed as follows :-

"(a) The Respondent No.1 may be directed not to dispose of any of his assets or his interest in any of the business, WP 647-16.doc 3 of 33 including but not limited to (a) the Bungalow Property on Abids Road, Gun Foundry, Basheer Bagh, Hyderabad, Telengana 500 001, which he jointly owns with his

sisters Nisha and Shaila, and (b) the house at 4-1-316, Residency Road, Bank Street, Hyderabad 500 001, which he jointly owns with Respondent No 2 and 3; the business properties (c) P J Enterprises, 114/B Shop No 66, Ram Nagar, Dr.B.A.Road, Opp Rani Baug, Behind Pingara Restaurant, Byculia (East), Mumbai 400 027, (d) factory viz. JJ Pvt. Ltd., Plot No A-20, Road No 9, Nacharam, Near Industrial Development Authority, Hyderabad - 500 001, and (e) office of JJ Pvt. Ltd., 4-1- 324, Residency Road, Troop Bazaar, Koti, Hyderabad, Teleangana 500 001; (f) the cars owned by the Respondents at present: Mercedes (purchased in 2014 2015), Honda Civic, 8 seater Innova, Corolla, Hyundai I 10 Automatic, Maruti 800, and Tata Nano; (g) the jewellery/ornaments of the Applicant and her streedhan properties; one gold and diamond engagement ring worth approximately Rs.4.5 lacks, one silver and diamond ring worth approximately Rs.70,000/- and one gold wedding band worth approximately Rs.15,000/-; and

(h) jewellery items gifted to the daughter;

(b) The Respondent No 1 may kindly be directed to provide to the Applicant a three BHK fully air-conditioned Flat in the vicinity of her parents at Pune for her and the child to stay in,

(c) Respondent No.1 may kindly be directed to pay a sum of Rs.1,50,000/- (Rupees One Lac Fifty Thousand Only) per month to the Applicant by way of maintenance for her and the daughter, from the date of the present application,

(d) The Applicant may be allowed to retain the custody of the minor daughter namely Alyssa with her, WP 647-16.doc 4 of 33

(e) The Respondent may kindly be directed to pay an amount of Rs.50,00,000/- (Rupees Fifty Lacs Only) or such amount that may be decided by this Hon'ble Court towards interim compensation in respect of mental torture and emotional stress caused by the acts of domestic violence committed by the Respondents,

(f) Any other just and suitable order in the interest of justice may kindly be passed."

7. On the main Application filed before the trial Court, the trial Court was pleased to pass an order as follows :-

"(1) Heard learned advocate of the applicant. Perused application and the documents.

(2) The application prima facie discloses that, the applicant was subjected to Domestic violence by the non applicants.

(3) Issue notice to the non-applicants.

(4) Call for Domestic Incident report from the concerned protection officer on or before 15/09/2015."

8. Whereas on the interim application, the trial Court was pleased to pass an order as under :-

"The applicant is praying for ad interim injunction restraining the respondents from alienating or creating Third party interest on property and share of the respondents but there is no documents on record to show the ownership as alleged by the applicant.

Moreover,

there

appea

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circumstances compelling to pass ad-interim order against the respondents. Hence, it will be legal and proper to issue notice to the respondents. Hence the order.

Issue notice to the respondents as to why interim prayers should not be granted as prayed. Emergency process allowed, if any."

9. While challenging these orders and the initiation of these proceedings against the Petitioners by the trial Court under various provisions of the D.V. Act, submission of the learned counsel for the Petitioners is that, the impugned orders passed by the learned Magistrate are mechanical and stereo-typed as even bare perusal of the allegations made in the application filed before the trial Court under Section 12 of the D.V. Act does not make out any prima facie case of the domestic violence. It is urged that Respondent No.1 has hardly stayed in the house of Petitioners. Most of the part of her marital life, she has stayed in the house of her parents at Pune. Learned counsel for the Petitioners has read ad- verbatim various paras in the said Application and urged that at the most the allegations of domestic violence are against the Petitioner No.3, the mother-in-law, but even those allegations are also vague, general and omnibus in nature. They fail to make out any sort of cruelty, harassment or mental torture to the Respondent No.1. It is urged that on the basis of such general and vague allegations made against the Petitioner No.3 alone, the trial Court should not have initiated the proceedings.

10. Further, it is urged that as regards the Petitioner Nos.1 and 2, there WP 647-16.doc 6 of 33 are absolutely no allegations of, either the domestic violence or harassment or cruelty. Therefore, insofar as the Petitioner Nos.1 & 2 are concerned, it is clearly an abuse of the process of the Court to call upon them and also the Petitioner No.3 to undergo the entire ordeal of the court proceedings under the D.V. Act.

11. It is further urged that the Petitioner No.1 has already filed a Petition for divorce in the Family Court at Hyderabad. Therefore, if at all, the Respondent No.1 wants to claim any relief of maintenance, which is the main relief she is claiming in these proceedings, she could claim that relief in the proceedings pending before the Family Court.

12. It is further urged that in the present proceedings, she is not at all claiming even the interim relief of protection order for the alleged acts of domestic violence. It clearly implies and indicates that she was never subjected to any sort of domestic violence. All the reliefs claimed in the present case are only of monetary nature. She is either claiming to restrain the Petitioners from alienating their properties which is also again an interim relief claimed by her or she is claiming the relief of maintenance and compensation which are again in the nature of monetary claims. The applications filed before the Trial court are thus clearly an attempt to extract exorbitant monies from the Petitioners and thus a blatant abuse of the process of law.

13. As to her relief for separate accommodation, it is submitted that she WP 647-16.doc 7 of 33 is already having such accommodation. It is urged that the Respondent No.1 is also having her own source of income. She is an earning lady and therefore, in the first place, she cannot be entitled for any monetary relief of maintenance and if she is entitled as such, she could apply for the same in the proceedings before the Family Court. As regards maintenance to the child, it is submitted that the Petitioner No.1 is ready to pay certain amount for maintenance of the child despite the fact that the Petitioner No.1 is not given any access to the child though he has made efforts to that effect.

14. Thus, according to learned counsel for the Petitioners, when the averments made in the application filed before the trial Court, even if taken at their face value to be true, they are not making out any case for the issuance of any order under the provisions of the D.V. Act. Therefore, the proceedings initiated against the Petitioners are required to be quashed & set aside. An attempt is also made to submit that the alleged acts of domestic violence quoted and the averments made in the applications, even if remain uncontroverted, they do not spell out or make out the case of domestic violence.

15. Learned counsel for the Petitioners has in support of his submissions relied upon two authorities of the Apex Court to urge that even when some serious allegations than the allegations made in the present Complaint of the Respondent No.1 were made, the Apex Court thought it fit to quash the process issued against the accused under WP 647-16.doc 8 of 33 Section 498A of the Indian Penal Code. Thus, in sum and substance, submission of learned counsel for Petitioners is that this is a fit case where the process or notice issued to the Petitioners on the Application given by the Respondent No.1 before the trial Court, seeking various reliefs under the D.V. Act, is required to be quashed and set aside.

16. Per contra, learned counsel for Respondent No.1, at the outset itself, has taken serious objection to the maintainability of this Petition by submitting that the proceedings under the D.V. Act are not the proceedings for criminal prosecution. The reliefs which are given and claimed under the said Act are of Civil nature, that of maintenance, compensation, residence order and at the most, the protection order from the domestic violence. Here, in the present case, according to learned counsel for Respondent No.1, therefore, there is no question of quashing any process or proceedings at the threshold itself, without extending an opportunity to the Respondent No.1 to substantiate and prove the allegations which she has made in her Complaint/Application before the trial Court.

17. Further, it is urged by learned counsel for Respondent No.1 that the learned counsel for the Petitioners has read only selected or chosen paragraphs in the said Complaint/Application whereas perusal of the application in its entirety clearly makes out the case of of mental torture, economic, verbal, emotional and various other forms of domestic violence which are covered under the provisions of the D.V. Act. Learned counsel WP 647-16.doc 9 of 33 for the Respondent No.1 has also referred to those contents in the Complaint/Application pointing out to the humiliation, insult and emotional torture to which the Respondent No.1 was subjected, not only at the hands of the Petitioner No.3 against whom the allegations are made in detail but even as regards the Petitioner Nos.1 & 2. It is urged that the act of the Petitioner No.1 of not caring for Respondent No.1 or their child; not providing any sort of maintenance or any economic assistance to them, even when they are residing separately since last about more than a year, clearly amounts to economic abuse, which is also covered under the definition of the D.V.Act.

18. Lastly, it is urged by learned counsel for Respondent No.1 that some opportunity is required to be given to Respondent No.1 to prove the allegations and also to prove that these allegations are falling within the definition of "domestic violence".

19. Ultimately, it is submitted that, whether Respondent No.1 is claiming the monetary relief or other reliefs, it is her choice as to which forum she should approach. Petitioners or even this Court cannot dictate to her that she should seek those reliefs only in the Family Court or in any other alternate forum. When the legal remedy is provided to her under the D.V. Act, she is fully entitled and justified in seeking that remedy. This Court cannot shut her out by closing the doors of the Court on the ground that she can seek those monetary reliefs in the proceedings before the Family Court.

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20. Thus, according to learned counsel for the Respondent No.1, this entire Writ Petition is totally misconceived in the sense that the provisions of the D.V. Act do cover wide range of domestic acts of abuse and harassment than those contemplated in the criminal prosecution like for the offence punishable under Section 498A of the Indian Penal Code. Moreover, according to her, in criminal prosecution, the offence has to be proved beyond reasonable doubt whereas the proceedings under D.V. Act, being of Civil nature, providing for various Civil remedies, the Respondent No.1 can prove her case even on preponderance of probabilities. This distinction in the standard of proof is required to be borne in mind, coupled with the very object and spirit of the Domestic Violence Act. Thus, according to learned counsel for Respondent No.1, this Writ Petition, being devoid of any merit needs to be dismissed.

21. In my considered opinion, as, both, Learned counsel for the Petitioners and the Respondent No.1 have heavily relied upon the provisions of the Protection of Women from Domestic Violence Act, 2005, it would be useful to take a bird's eye view of the various provisions of the D.V. Act, including the very Object and Reasons of the said Act and also to look into the definition of the Domestic Violence and the nature of the remedies provided in the Act.

22. The Preamble of the Act, which succinctly contains the object of the Act, states that this is an Act to provide for more effective protection of WP 647-16.doc 11 of 33 the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

23. In the Statement of Objects and Reasons, it is laid down that, (1) Domestic violence is undoubtedly a human rights issue and serious deterrent to development of women. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

(2) The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498- A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

(3) It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

24. Thus, even a cursory glance to the first 3 Clauses of the Statement of Objects and Reasons of the D.V. Act makes it clear that the aim and WP 647-16.doc 12 of 33 object of the Act is to provide for a remedy under the civil law to the woman, who is subjected to domestic violence. The object of the Act is, therefore, not to punish the offender, who may be a husband or in-laws, but to protect the aggrieved woman and her rights by giving her some remedies under civil law.

25. In further Objects and Reasons, the Act seeks to provide for the rights of woman to secure housing; to reside in her matrimonial home or shared household. The further aim and object of the Act is laid down to empower the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence. The Act also aims to provide for appointment of Protection Officers and registration of NGOs as service providers for providing assistance to the aggrieved person for achieving her rights, as provided under the Act, with an object to achieve to all these aims.

26. The beauty of the Act lies in its definition of "Domestic Violence", which has been defined in the most widest possible terms to include not only the physical abuse but also all sorts of actual acts, like mental torture, sexual, verbal, emotional or economic abuse and even the threat and apprehension thereof.

27. Section 3 of the Act defines the domestic violence as follows :-

"3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or WP 647-16.doc 13 of 33 conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b);

or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person

28. Explanations I and II to Section 3 further elaborates as to what is physical, emotional, economic or verbal abuse. They are as under :

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

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(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling a or ridicule specially with regard to not having a child or a male child; and



(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to WP 647-16.doc 15 of 33 resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II -- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

29. Thus, even a cursory glance to this definition of domestic violence is sufficient to know that it covers not only physical abuse, meaning thereby acts constituting danger to life, bodily pain, harm or something injurious to the health and development of a woman, but also covers insults, ridicule, humiliation, name calling, which are termed as verbal and emotional abuse. It also covers economic abuse, that of deprivation of all or any economic or financial resources. Thus, 'Domestic Violence' which is defined under this Act, is not limited to the physical harassment or physical violence but it also extends much beyond that and it is with an intention to secure her right to live with dignity, which is guaranteed under Article 21 of the Constitution of India, as fundamental right.

30. In consonance with its aim and object, the remedies, therefore, which are provided to the aggrieved woman, who is defined to mean a woman subjected to any act of domestic violence, are also of civil nature. Under Section 12 of the Act, an aggrieved woman or a person can make WP 647-16.doc 16 of 33 an application seeking various reliefs which are laid down therein, including issuance of an order for payment of compensation or damages, without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent. Section 17 provides a remedy to secure her right to reside in the shared household and empowers the Magistrate to pass the order to protect her from eviction and exclusion from the shared household or any part of it, save in accordance with the

procedure established by law. Thus, Section 17 protects her right to residence in shared household whether or not she has any right, title or beneficial interest in the same, whereas, Section 18 empowers the Magistrate to pass the protection orders in favour of the aggrieved woman, for prohibiting the respondent from committing any act of domestic violence, as defined in Section 3 or aiding or abetting the commission of the acts of domestic violence. It also empowers the Magistrate under Clause 18(e) to prohibit the respondent from alienating any assets by laying down that;

18. Protection orders.--

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from--

(a) .....

(b) .....

(c) .....

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(d) .....

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) .....

(g) .....

31. As per Section 19 of the Act, the Magistrate, on being satisfied that domestic violence has taken place, may pass a residence order restraining the respondent from dispossessing her from the shared household or disturbing her possession therein. It also gives discretion to the Magistrate to direct the respondent to remove himself from the shared household and further restrain the respondent from alienating or disposing off the shared household. Section 19(f) further provides that Magistrate may direct the respondent to secure same level of alternate accommodation to her, as enjoyed by her in the shared household or pay rent for the same, if the circumstances so require.

32. Section 20 then deals with the monetary reliefs which are given to aggrieved woman under the Act, like directing the respondent to pay for the loss of earnings, the medical expenses, the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved

woman and for the maintenance to the aggrieved woman as well as her children. Section 21 protects her custody rights over the WP 647-16.doc 18 of 33 children whereas Section 22 deals with the compensation orders which Magistrate may pass on her Application directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

33. Section 23 empowers the Magistrate to grant interim and ex parte orders as deemed just and proper, on being satisfied that application prima facie discloses that respondent is committing or has committed or there is likelihood of his committing an act of domestic violence.

34. Thus, the perusal of the provisions of the D.V. Act makes it amply clear that this legislation aims to protect in all possible ways the rights of the woman, who alleges or claims that she is subjected or likely to be subjected to the acts of domestic violence, as defined under Section 3 of the Act and as stated above, Section 3 of the Act covers all sort of abuse; physical, mental, sexual, emotional, verbal, and economic.

35. In the light of these provisions of the Act, one has to appreciate the allegations made in the Complaint/Application filed by the Respondent No.1 before the trial Court to know whether she has made out any prima facie case.

36. At the outset itself it has to be stated that to call her application filed under Section 12 of the Act as a complaint may be misnomer as it is an WP 647-16.doc 19 of 33 application seeking various civil remedies provided to her under the Act. It is a civil proceeding, though filed in the Court of the Magistrate dealing with criminal cases. Hence, there cannot be a question of quashing the process or proceedings as such.

37. Coming to the Contents Application, in para 1, Respondent No.1 has stated about her marriage and relationship with the present Petitioners. In para 2 of the Application, she has stated that the present Petitioners have treated her with utmost physical as well as mental and matrimonial cruelty right from the very beginning of the marriage. She has further stated that the entire expenses of the marriage were borne by her parents. The present Petitioners refused to contribute or share any expenses stating that they did not need to do so as they would look after the Respondent No.1 for the rest of her life. Then she has also elaborately stated as to how she had to leave her studies in the USA to get married on the ground that she did not need to work. However, after the marriage, Petitioner No.1 refused to help Respondent No.1 to repay the student loan and to pay her LIC premiums and instead he told her to get her father to pay the premiums and student loan.

38. In para 3 of her application, she has stated as to how the present Petitioner No.3 ridiculed her when she made enquiry with her about a beauty parlour. In para 4 of the Application, she has stated that there was a separate menu for Petitioner No.1 which she was prevented from eating and how Petitioner No.3 ordered that she should eat vegetarian food only.

WP 647-16.doc 20 of 33 In para 5 of the Application, she has stated that the Petitioner No.3 asked her what her parents had given her as dowry; when she told that her parents had given her a studio

apartment, Petitioner No.3 told her to ask her parents to get it up-graded to one or two bed room apartment. Further, she has stated that the Petitioner No.3 warned her not to touch the fridge which was given to Petitioner No.3 by her parents. She has also stated that she was not overweight nor had any medical problem but Petitioner No.3 used to compel her to have vegetarian food only.

39. In para 5 of the Application, she has further stated that Petitioner Nos.2 and 3 used to insult her by saying that the honeymoon phase of her and Petitioner No.1 was over and so they need to wake up by specific time in the morning. She has also stated as to how she and the Petitioner No.1 were not allowed to lock the room from inside and the Petitioner No.3 would barge into their room unannounced.

40. In para 6 of the Application, the Respondent No.1 has stated how Petitioner No.3 used to insult her by stating that what she was bringing for the Petitioner No.1 to wear, did not look nice on him and thus, Petitioner No.3 used to insult and mentally harass her for everything and Petitioner No.1 used to support Petitioner No.3. She has also narrated the incident as to when she had prepared brownies for desserts and when the guests complimented Respondent No.1, Petitioner No.3 stated that the maid had prepared the brownies. In this para, Respondent No.1 has also stated that when she was bedridden with gastroenteritis, Petitioner No.3 neither WP 647-16.doc 21 of 33 provided any medical help to her, nor offered any different meal for her, considering that she could not eat a regular diet. In para 7 of the Application, she has stated about how she was compelled to sit by the pool even though she was not keeping well on that particular day.

41. In para 8 of the Application, she has stated that Petitioner No.3 told her to stop her various classes of cooking and foreign language on the ground that it was wasting fuel to travel to the classes everyday. In para 9 of the Application, she has stated about the incident which had happened while they were staying at Taj-Fort Aguada at Goa where even Petitioner No.2 and her father had to intervene and in their presence she narrated about the interference of Petitioner No.3 in her personal affairs and the insults she had been suffering in the house.

42. In para 11 of the Application, she has disclosed about how the Petitioner No.1 became very secretive and refused to share details of the business or his finances with her. She has also stated about the incident that has happened in the 2nd week of October, 2012 when Petitioner No.3 continued her harassment by insulting her on the ground that the Petitioner No.1 was treating Petitioner Nos.2 and 3 badly and he had never behaved like this before the marriage; therefore, Respondent No.1 is a burden for the family. She has also averred that Petitioner No.3 used to taunt her by saying that Petitioner No.1 had better proposals than the Respondent No.1, the girls who were more educated, wealthy and slim. In para 12 of the Application, she has stated about her pregnancy and WP 647-16.doc 22 of 33 Petitioner No.3 continuously asking her to get a sonography done to determine sex of the foetus. She has stated in this para that during her pregnancy, she had to look after herself; the Petitioner No.1 did not support her though she was advised bed rest, none of the Petitioners offered her any food or help; instead she was told to prepare her own meals. As a result of it, she was undernourished and therefore, was put on saline when she came to Pune to stay with her parents.

43. In para 13 of the Application, Respondent No.1 has stated about the incident in April, 2013 when she was criticized by Petitioner No.3 on her sense of dressing and humiliated and embarrassed by alleging that she was not well turned up for meeting with the sister of the Petitioner No.3.

44. In para 14 of the Application, she has elaborated on the aspect about the food which was being served to her and how she was restrained from eating spicy food. In this para, she has also deposed about the incident when she made sweets for Christmas. However, sister of the Petitioner No.1 refused to accept the same and Petitioner No.1 was witness to the same but refused to support Respondent No.1.

45. In para 15 of the Application, she has stated that in March, 2014, Petitioner No.1 argued with her on petty issues and he booked ticket for her and her daughter on a flight from Hyderabad to Pune and told her to leave the house.

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46. In further paras of the Application also, Respondent No.1 has given various details of the incidents in which according to her, the Petitioner No.3 was nasty, rude and insulting to her and her parents.

47. In para 23 of the Application, she has stated that on account of this conduct of the Petitioners, she was under considerable stress. As per averments in para 24 of the Application, her debit card was cut off by Petitioner No.1 without informing her and he ignored all the attempts made by her to contact him. As a result of it, she felt very humiliated and hurt.

48. In para 26 of the Application, she has stated that once she had SKYPE session with Petitioner No.1 and in that session Petitioner No.1 was very aggressive with her and threatened her that he would end their marriage within a period of ten days, if she did not return by the 2 nd birthday of their daughter, though according to her, the counsellor has insisted her that they should live separately from his parents for their marriage to work.

49. In para 28 of the Application, she has stated that "she was suffering constant domestic violence, as referred above, at the hands of the Petitioners. Petitioner No.1 supported Petitioner Nos.2 & 3 to harass and insult her. They have been subjecting her to mental, emotional, social, matrimonial and financial cruelty. She had made all the efforts to work the marriage but it was of no use".

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50. In the same para of the Application, she has also stated as to how on several times she was reprimanded for using the car. She has also stated as to how she was always forced to sit near seat of one Mr. Swaroop on dining table though she was not conversant with Mr. Swaroop and she was never treated a part of the Petitioners' family. She has also stated about Petitioner No.1 wanting to divorce her for the reason that the Petitioner Nos.2 & 3 did not want her in the family. Ultimately, she has stated about how she and her daughter are not being provided with any amount for their

living expenses.

51. Needless to state that, if the averments made in her Application filed before the trial Court are perused, then at this prima facie stage, those averments even if, may not be touching the aspect of physical abuse but they do fall in the ambit of verbal, emotional and economic abuse, as contemplated under the definition of 'domestic violence' as given under Section 3 of the D.V.Act. At this stage, therefore, it cannot be said that there is absolutely no case made out for initiation of these proceedings under the D.V.Act. As stated above, the D.V.Act not only covers in its ambit physical abuse or apprehension thereof, but also other forms of abuses of emotional and verbal nature, like insult, ridicule, humiliation or economic abuses like depriving her of any economic or financial resources. The allegations which are quoted in detail above, do show that there are sufficient averments in each and every para of the Application about various acts and omissions on the part of the Petitioners, which Respondent No.1 considered as insult, ridicule, WP 647-16.doc 25 of 33 humiliation and deprivation of the economic and financial resources. Therefore, at this prima facie stage, it cannot be said that her Application was not at all maintainable or there are no allegations of domestic violence, as required under the provisions of the D.V.Act. As to whether she will be able to prove them or not is entirely a different matter, as it can be decided only at the stage of final hearing when respective parties are given an opportunity to lead the evidence and to substantiate their case. At this stage, when this Court is exercising its jurisdiction under Section 482 of the Code of Criminal Procedure Code or under Article 227 of the Constitution of India, this Court has only to go by the averments made in the Application filed before the trial Court and those averments in the Application are sufficient to make out case for initiation of proceedings.

52. It also cannot be accepted that the allegations made against Petitioner No.3 are only of general, vague and omnibus nature. There are specific instances, specific words and specific conduct of the Petitioner No.3, given in detail in the Application. Therefore, it will not be possible to call those allegations as vague, general and omnibus in nature. Even as regards Petitioner No.1, there are more than sufficient averments made in the Application as to how his conduct has also amounted to economic abuse due to his act of cutting of her Debit Card, by depriving her from living expenses of her daughter and also of humiliation. As to the case against Petitioner No.2, according to Respondent No.1, there are some incidents in which Petitioner No.2 had also taken part. Therefore, sofar as the averments, as they stand in the WP 647-16.doc 26 of 33 Application are concerned, they make out a prima facie for initiation of the proceedings.

53. Now, coming to the submission that in the Application for interim relief, Respondent No.1 has not asked for any protection order, which indicates that there was no domestic violence to her. In the considered opinion of this Court, the necessity of seeking protection order would have been there, if it was a case of physical abuse or physical cruelty. Then in such situation, she would have asked for it. However, the case of Respondent No.1 is mainly and mostly of verbal, emotional and economic abuses. In such situation, immediate protection order might not have been necessary, especially, as at the time of filing application, she was residing separately from the Petitioners in a different city. Therefore, merely because she has not sought such protection order, it cannot be said that there was no domestic violence at all. At the cost of repetition, it has to be stated that domestic violence under the D.V. Act does not include only physical abuse but also economic, emotional and

verbal abuse. In view of such economic, emotional and verbal abuse as she is already residing separate from the Petitioners, she may not be in the immediate need of protection order.

54. As regards the submission that the Respondent No.1 has sought mostly and only monetary reliefs at interim level, which she could have sought in the proceedings pending in the Family Court at Hyderabad, it is pointed out by the learned counsel for the Respondent No.1 that the WP 647-16.doc 27 of 33 proceedings before the Family Court are filed subsequent to this Application for domestic violence filed in the trial Court and therefore, when Respondent No.1 filed this Application as family court proceedings were not pending, that forum was not available to her. Section 26 of the D.V. Act, which provides for concurrent jurisdiction to the Civil Court, Family Court and Criminal Court, where any legal proceeding in between the parties are pending as to the reliefs available under Sections 18 to 22 of the D.V. Act is only an enabling provision and not to be invoked to compel the aggrieved woman to choose a particular forum only. The D.V. Act is enacted to protect her rights and interests and not to create hindrances in her path of seeking protection of her rights.

55. Moreover and most importantly, it was and is for Respondent No.1, the aggrieved woman to decide which forum to approach for seeking redress of her grievances. It is totally her discretion. She may choose to apply for maintenance under the matrimonial litigation in the Family Court or she may seek relief of maintenance independently under Section 125 of the Code of Criminal Procedure or she may seek necessary relief of maintenance under the D.V. Act. All the three avenues are made open to her by the legislation and it is entirely for her to decide which forum to approach. It is her choice and her discretion as to which forum she should choose. As her proceedings are maintainable in this forum, she cannot be restrained from doing so. It also cannot be said that her proceedings are required to be quashed and set aside as she might have some alternate remedy for maintenance under the Family Court proceedings.

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56. It has also to be kept in mind that the D.V. Act is enacted to provide quick and effective remedy to the aggrieved woman. Section 12 of the Act provides that the first date of hearing shall not ordinarily be beyond three days from the receipt of the application by the Court and Section 12(5) further mandates that the Magistrate shall endeavour to dispose of every application made under this Section within a period of sixty days from the date of its first hearing. Hence, shutting the doors of this forum, specially created for her to get her grievances redressed as early as possible, in a more effective way, is rendering the very object of the D.V. Act nugatory and frustrated.

57. Moreover, in the present case, proceedings before the Family Court are initiated by the Petitioner No.1 husband subsequent to Respondent No.1 filing of this application under the D.V. Act. It is not that Respondent No.1, the wife, has initiated two simultaneous proceedings at two different forums situated at two different places and the States, only with an intention to harass the Petitioners. Proceedings for divorce are filed by the Petitioner husband in Family Court at Hyderabad, whereas, Respondent No.1 is residing at maternal house in Pune with her daughter of one and half year. Hence, calling upon her to go to Hyderabad to seek redressal of her grievances and to get amount of maintenance, will act against the very object of the D.V. Act. The object of the

Legislature behind granting jurisdiction to Magistrate is to ensure that the said Court is available at every small Taluka place, where woman resides so as to WP 647-16.doc 29 of 33 provide her easy access to Courts, unlike Family Courts which are presently at the district places only. The object of Legislature also in granting concurrent jurisdictions to all the three Courts - Civil Court, Family Court and Magistrate Court was to enable her to seek remedy in the pending proceedings and not to confine her to one forum, which may not be convenient to her and which husband has chosen or to drive her away from the forum chosen by her to the one chosen by her husband subsequently and which may not be convenient to her at all, as in the instant case. It is as good as taking away the rights given to her by the Legislature.

58. It is pertinent to note that, despite the availability of existing forums like Family Courts and Civil Courts for an aggrieved woman to seek the reliefs of injunction or maintenance, the Legislature has taken a conscious decision in its wisdom to provide her one more forum of the Court of the Magistrate so as to provide her efficacious and quick remedy. The Court cannot take away by its decision what is given to her by the Legislature.

59. As regards the submission advanced by learned counsel for Petitioners that Respondent No.1 is earning an income and therefore, she cannot be entitled for maintenance and hence, her Application to that effect is not tenable; needless to say that this contention can be considered only by the trial Court while deciding her application and not by this Court in Writ Petition as it involves disputed questions of facts.

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60. Even, as regards the contention that relations between Petitioner Nos.1 to 3 and the Respondent No.1 are cordial even now and in support of which her E-mails are produced, it has to be stated that the said aspect will also have to be considered by the trial Court at the time of granting or refusing relief to her as claimed by her but this Court cannot go into this issue, as the allegations made in the Application are making out the essential ingredients of domestic violence. On the same ground, submission advanced that out of total matrimonial period of 10460 days, Respondent No.1 has stayed at her matrimonial home only for a period of 919 days, again it is a matter of factual appreciation and not to be considered by this Court at this prima facie stage.

61. Now, coming to the authorities relied upon by learned counsel for the Petitioners, that of Pritam Ashok Sadaphule and others vs. State of Maharashtra and another, Cri.Appeal No.487 of 2015, and Swapnil and Others vs. State of Madhya Pradesh, Cri.Appeal No.1144 of 2014. The issue raised for consideration in these authorities before the Supreme Court was about the quashing of proceedings and charges framed against the appellants under Section 498A, 506 Part II of the Indian Penal Code (45 of 1860) and Section 4 of the Dowry Prohibition Act, 1961. Needless to say that the provisions of Sections 498A, 506 Part II of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961 deal with the criminal liability which is required to be proved beyond reasonable doubt. The present proceedings are under D.V. Act and they pertain to remedies under the Civil law which are to be proved on the WP 647-16.doc 31 of 33 preponderance of probabilities. They do not attract any criminal or penal liability. For the purpose of 498A of the IPC, standard of cruelty or the proof



cruelty, which is required to be proved being totally different, same standard or proof of domestic violence cannot be made applicable to the proceedings under the D.V. Act.

62. As regards the Judgment of Division Bench of this Court in Vikrant Sudhakar Ambhore & Ors vs. Varsha Vikrant Ambhore reported in 2014 ALL MR (Cri) 2826, relied upon by learned counsel for the Petitioners, on the facts of the said case, it was found that there were no averments made in the complaint which could make out any offence as the only allegation was about the demand made by the Accused/husband and In-laws. Hence, as it was found that there was no pleading about the harassment or harm or injury or anything which endangered her to coerce her to fulfill the demand, it was held that the proceedings initiated under Section 12 of the D.V. Act are required to be quashed and set aside. As the said decision pertains to the particular facts of the case, where there were no necessary averments as such, that decision cannot be made applicable to the instant case as in the instant case, there are sufficient averments making out the essential ingredients of the verbal, emotional and economic abuse, which fall in the definition of domestic violence as given in Section 3 of the Act.

63. To sum up, therefore, it has to be held that challenge to the proceedings filed before the trial Court cannot be entertained.

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64. However, before concluding, it has to be stated that both the Petitioner No.1 and the Respondent No.1 are young and having a small daughter of less than one and half years age only. Respondent No.1, who is personally present, states that she is ready to go for counselling before the Trial Court. In view thereof, it is expected that the trial Court will make the services of counselling, as laid down under Section 14 of the D.V. Act, available to both the parties and further make all the efforts, as may be necessary, for amicable reconciliation between the parties.

65. It is submitted by learned counsel for Petitioners that the matter is kept in the trial Court tomorrow. Learned counsel for the Respondent No.1 states that she will not press for any order tomorrow and will allow it to be adjourned to 21.03.2016.

66. It is hoped and expected that the trial Court will proceed with the matter as expeditiously as possible.

67. At this stage, it is also made clear that all the observations made herein above as to merits of the case are made only for the purpose of deciding this Writ Petition and the trial Court is not to be influenced or swayed by them.

68. Writ Petition is dismissed with above directions. Rule is discharged.

(DR. S

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