

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION NO. 7485 of 2015
(FOR MAINTENANCE)**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

PRAGNESHBHAI KIRITBHAI PARMAR & ORS.

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR YOGESHKUMAR A RATANPARA for the Applicant(s) No. 1,2,3,4

HCLS COMMITTEE(4998) for the Respondent(s) No. 2

MR PV PATADIYA(5924) for the Respondent(s) No. 2

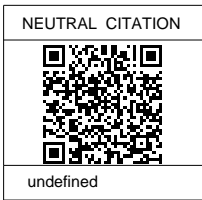
MR DHAWAN JAYSWAL APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 06/05/2024

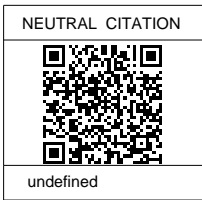
ORAL JUDGMENT

1. By way of present petition under Articles 226 and 227 of the Constitution of India, under Section 482 of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as "CrPC" for short" and under the provision of the Protection of Women against Domestic Violence Act, 2005 (hereinafter after referred as "Violence Act" for short) , the petitioners have prayed for quashing and setting



aside the impugned complaint/ proceedings being Criminal Misc. Application No.1792/2014 filed by the responded no.2 herein before the court of the learned Judicial Magistrate, 3rd Court, Vadodara as well as issuance of the summons by an order dated 24.06.2024 passed by the learned Judicial Magistrate, 3rd Court, Vadodara and all other consequential proceedings arising out of the said complaint.

2. The brief facts leading to the filing of the present petition are as under,
 - 2.1 The petitioner no.1 and the respondent no.2 got married on 09.05.2004 as per Hindu rites and rituals and out of said wedlock, they have been blessed with two daughters viz., Honey and Hetvi.
 - 2.2 However after the marriage, disputes were cropped up between the husband and wife and the family members of the petition no.1 had tried to resolve it but the efforts made by them had gone into vein.
 - 2.3 Ultimately, the petitioner no.1 and the respondent no.2 have decided to get separated from each other and accordingly on 28.02.2010, the marriage between them got dissolved by reducing it into writing on certain terms and conditions, copy of which is produced at Annexure-B to this petition. As per the said agreement executed between the parties, the petitioner no.1 agreed to

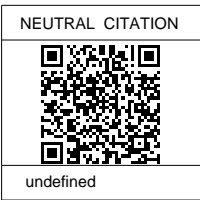


pay permanent alimony to the respondent no.2 and his daughters and it was also assured by the responded no.2 that she will not file any criminal and/or civil proceedings before any court concerned and at that time, the custody of both minor daughters were handed over to the responded no.2 and in case of second marriage by the respondent no.2, the custody of minor daughters will be given to the petitioner no.1.

2.4 Thereafter on 09.11.2012, the petitioner no.1 and the respondent no.2 entered into a divorce deed on the stamp paper of Rs.100/- and at the time of execution of said deed, it was specific condition mentioned in the said deed to the effect that so far as the right of permanent maintenance is concerned, the petitioner no.1 will transfer his own house in favour of the respondent no.2 and his minor daughters, copy of said divorce deed is produced at Annexure-C.

2.5 As per the terms and conditions agreed between the parties, the petitioner no.1 had transferred his own house situated at B/15, Sayaji Township, Vadodara in favour of the respondent no.2 and his minor daughters by way of executing registered sale deed dated 20.11.2012, copy of said registered sale deed is produced at Annexure-D.

2.6 To the utter shock and surprise of the

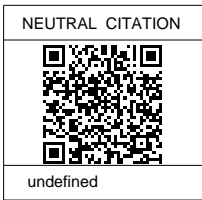


petitioners, the respondent no.2 filed Criminal Misc. Application No.104/2013 under Section 125 of the CrPC before the learned Family Court, Vadodara inter alia praying for maintenance from the petitioner no.1 Not only that, the respondent no.2 also filed impugned complaint being Criminal Misc. Application No.1792/2014 under Sections 17, 18, 19, 20 and 22 of the Violence Act inter alia seeking several prayers.

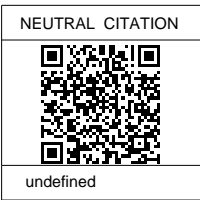
2.7 Thereafter the proceedings pending before the learned Family Judge, Vadodara were proceeded further and after hearing the parties, learned Family Judge, by an order dated 12.08.2014, granted interim maintenance of Rs.3,000/- per month to minor daughters and relief prayed in favour of the respondent no.2 for the grant of maintenance has been rejected.

2.8 Thereafter amicable settlement has been arrived at by and between the parties and in pursuance thereto, the petitioner no.1 had issued cheque for an amount of Rs.3,00,000/- in favour of the responded no.2 on 27.02.2015, which was honoured on deposit of the same.

2.9 In the meantime, by an order dated 24.06.2014, the learned Magistrate issued summons upon the petitioners, which led to filing of the present petition.

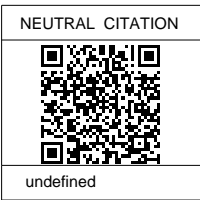


- 2.10 On filing of this petition, by an order dated 16.12.2015, the Coordinate Bench of this Court issued notice and granted ad-interim relief in terms of Para No.8(b) and thereby the proceedings pending before the court of learned Magistrate have been stayed.
3. Heard learned advocate, Yogeshwarkumar Ratanpara for the petitions, learned APP Mr. Dhawan Jayswal for the responded no.1 – State of Gujarat and learned advocate, Mr. P.V. Patadiya for the responded no.2.
4. Learned advocate, Mr. Ratanpara submitted that the impugned complaint filed by the respondent no.2 is nothing but a great misuse and abuse of process if law and same is filed just to harass the petitioners. Learned advocate submitted that it is an admitted position of fact that the petitioner no.1 and the respondent no.2 got married and, thereafter, both have separated by executing an agreement and, thereafter, by executing divorce deed, copies of which are produced on record and as per the understanding between the parties, the petitioner no.1 has transferred his own house in favour of the respondent no.1 by way of registered sale deed and she is in possession thereof. Learned advocate further submitted that the matter has reached upto the Hon'ble Supreme Court and after that as on today, the petitioner no.1 has already paid total amount of Rs.11,00,000/- (Rs.3,00,000/- paid on 27.02.2015 through cheque +



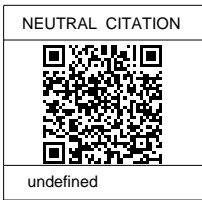
Rs.8,55,000/- paid in the month of February, 2024 towards maintenance) to the respondent no.2 and thus, nothing remains to be paid to the respondent no.2. Learned advocate further submitted that in the facts of the case, the reliefs sought for in the impugned complaint do not survive in view of the fact that the petitioner no.1 has already given his own house to the responded no.2 by way of executing registered sale deed in her favour and at the time of execution of said sale deed, possession thereof has also been handed over to her and in pursuance thereto, as on date, she is residing in the said house and not only that, the petitioner has also paid entire amount towards the maintenance. Learned advocate submitted that in fact, the petitioner nos.2 to 3 are no way connected with the matrimonial life of the petitioner no.1 and the respondent no.2 nor with their day-to-day life and despite that, they have been wrongly joined as accused in the aforesaid proceedings just to pressurize the petitioner no.1. It is, therefore, urged that considering the above facts, the impugned complaint may be quashed and set aside as it is nothing but an abuse of process of law and is filed just to harass the petitioners.

5. Learned APP Mr. Jayswal appearing for the respondent – State of Gujarat has opposed the present application with vehemence and submitted that this petition may be rejected in view of the



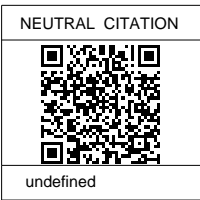
averments and allegations leveled in the impugned complaint.

6. Learned advocate, Mr. Patadiya appearing for the respondent no.2 has opposed the present application with a vehement and submitted that the petitioners are not entitled to claim any relief as prayed for because as there was harassment upon the respondent no.2 by the petitioners, the impugned complaint was filed narrating the entire facts of the case and after considering the averments and allegations leveled in the impugned complaint, the learned Magistrate issued process and, hence, this Court may not interfere with the same. Learned advocate has referred to the affidavit in reply filed on behalf of the respondent no.2 and submitted that entire facts of the case have been mentioned in the said reply. It is, therefore, urged that the present petition may be rejected.
7. Having heard learned advocates appearing for the parties and having considering the submissions canvassed by learned advocate for the applicants, the only question that falls for my consideration is whether the proceedings initiated by the wife under the Violence Act against the husband and the relatives of the husband should be quashed.
8. It is found out that the marriage between the petitioner no.1 and the respondent no.2 was solemnized as per Hindu rites and rituals, out of said wedlock, they have been blessed with two

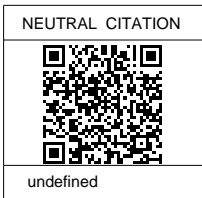


daughters, however later on, some disputes cropped up and it was not possible for them to reside together and, hence, an agreement came to be executed between the parties on certain terms and conditions as mentioned herein and, thereafter, divorce deed was also executed between the parties and as per the terms and conditions mutually agreed between the parties, the petitioner no.1 has fulfilled his obligation by transferring the house in the name of the respondent no.2 by way of registered sale deed and as on date, the respondent no.2 along with minor daughters is residing there, however thereafter for the reasons best known, the respondent no.2 filed one application under Section 125 of the CrPC and second application under the Violence Act and in connection with the application under Section 125 of the CrPC, settlement has been arrived at and amount of Rs.3,00,000/- was paid to the respondent no.2 and in connection with the application filed under the Violence Act, process has been issued, against which, the present petition has been filed challenging the same.

9. At this stage, what is sought by the respondent no.2 in the impugned complaint is required to be taken into consideration. On perusal of the impugned complaint, it transfers that the respondent no.2 has prayed for accommodation being her legal right; handing over stridhan; maintenance of Rs.5,000/- per month towards for

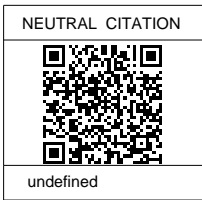


daily expenses; monthly expenses of Rs.25,000/- for minor daughters to meet with the medical expenses; an amount of Rs.20,00,000/- towards mental and physical harassment as also Rs.25,000/- towards maintenance for herself and for minor daughters to meet with monthly expenses. Therefore from the reliefs as claimed by the respondent no.2, it is clear that the petitioner no.1 has already fulfilled his obligations by making payment of entire outstanding amount of maintenance as also by providing accommodation to the respondent no.2 by executing registered sale deed, wherein the respondent no.2 is residing along with two minor daughters and thus, the averments and allegations leveled against the petitioners do not have legs to stand. Over and above that, it is found out from the record that the petitioners nos.2 to 4 have no concerned with the matrimonial life of the petitioner no.1 and the respondent no.2 and from the facts narrated hereinabove, it is found out that they have been roped in the impugned complaint just to pressurize the petitioner no.1 with an oblique motive. I have also considered the allegations leveled in the impugned FIR and found that except bald allegations, no specific allegations are leveled against the petitioners, which constitute the offence under the Violence Act. Further in the present case, the contents of the complaint suggest that there is over implication of the



relatives of the husband (i.e. the petitioner nos.2 to 4) and they are unnecessarily roped in the same in order to settle her score with the husband. Therefore, the present petition deserves to be allowed.

10. It is settled law that for considering the petition under Section 482 of the Code, it is necessary to consider as to whether the allegations in the complaint prima facie make out a case or not and the Court is not to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in trial. It is also well settled that though the High Court possesses inherent powers under Section 482 of the Code, these powers are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. The Supreme Court, time and again, has observed that extraordinary power should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence as alleged. If the averments taken on their face do not constitute the ingredients necessary for the



offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code. A court exercising its inherent jurisdiction must examine if on their face, the averments made in the complaint constitute the ingredients necessary for the offence. Therefore on plain reading the contents of the FIR and considering the facts as narrated hereinabove, it is found out that the averments taken on their face do not constitute the ingredients necessary for the offence and, hence, the proceedings against the petitioners are required to be terminated.

11. Sections 17 to 22 of the Violence Act provides for various rights available to aggrieved person as also Authority of the Magistrate to pass various orders. For convenience the said provisions run thus :-

"17. Right to reside in a shared household.

- (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic



relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.]

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) committing any act of domestic violence;]

[(b) aiding or abetting in the commission of acts of domestic violence;]

[(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;]

[(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or



electronic or telephonic contact;]

[(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) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;]

[(g) committing any other act as specified in the protection order.]

19. Residence orders.

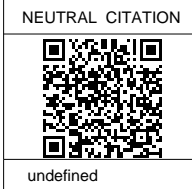
(1) While disposing of an application under sub-sec. (1) of Sec. 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order

[(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;]

[(b) directing the respondent to remove



- himself from the shared household;]
- [(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;]
- [(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;]
- [(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or]
- [(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require :- Provided that no order under clause (b) shall be passed against any person who is a woman.]
- [(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.]
- [(3) The Magistrate may require from the respondent to execute a bond, with or



without sureties, for preventing the commission of domestic violence.]

[(4) An order under sub-sec. (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.]

[(5) While passing an order under sub-sec. (1), sub-sec. (2) or sub-sec. (3), the Court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.]

[(6) While making an order under sub-sec. (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.]

[(7) The Magistrate may direct the officer incharge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.]

[(8) The Magistrate may direct the respondent to return to the possession



of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.]

[20. Monetary reliefs. (1) While disposing of an application under sub-sec. (1) of Sec. 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the 'domestic violence' and such relief may include, but not limited to,

[(a) the loss of earnings;]

[(b) the medical expenses;]

[(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and]

[(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.]

[(2) The monetary relief granted under this Section shall be adequate, fair and reasonable and consistent with the standard of living to which the



aggrieved person is accustomed.]

[(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.]

[(4) The Magistrate shall send a copy of the order for monetary relief made under Sub-Section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.]

[(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-sec. (1).]

[(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-sec. (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.]

[21. Custody orders. Notwithstanding anything



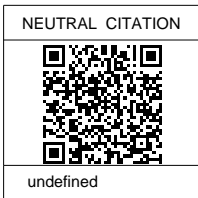
contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:-

[Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.]

[22. Compensation orders. In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order 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 that respondent.]

[23. Power to grant interim and ex parte orders.
(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

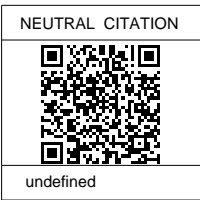
[(2) If the Magistrate is satisfied that an



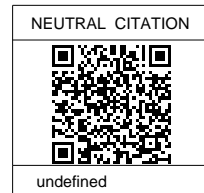
application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Sec. 18, Section 19, Sec. 20, Sec. 21 or, as the case may be, Sec. 22 against the respondent." (emphasis supplied)]

12. In view of the aforesaid provisions of law, a bare perusal of the contents of the impugned complaint filed under the provisions of the Violence Act reveals that vague and general allegations are made against the petitioners, out of which, the petitioner nos.2 to 4 are the close relatives of her husband. At this stage, I would like to refer to the judgment of the Apex Court in the case of **Geeta Mehrotra & Ors. Vs. State of U.P & Ors.**, reported in (2012) 10 SCC 741, wherein it has been observed as under,

"24. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given

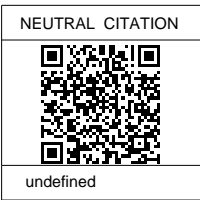


case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire



family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding."

13. It is required to be noted at this stage that just as every piece of legislation has its advantages, many women have unfortunately misused the provisions of this Act to drag, torture and harass their husbands, in-laws and relatives in an unnecessary legal battle to vent their personal vendetta and stake a claim in the properties belonging to the husband and the in-laws. It is one of the most lethal weapons which women can use against men to extort money, and harass a man. The recent judgments passed by the different High Courts, including the Apex Court have sagaciously abrogated the misuse of the provisions of the law by several women whilst passing some remarkable judgments on the same. It is indeed a welcome change to witness that in the 21st century when most women are educated, well qualified and independent financially, the Courts have circumspect fully lifted the veil to separate the vulnerable women as against women of dubious characters who toy and misuse the law. Considering the above aspect coupled with the facts of the present case, it is clear that in the present case, admittedly the petitioner no.1 has fulfilled



his all obligations by making payment of entire outstanding dues and also providing accommodation to the respondent no.2 and minor daughters as agreed between the parties and despite that, the impugned complaint has been filed against the petitioners with oblique motive. Not only that, an application under Section 125 of the CrPC has also been filed, wherein settlement has been arrived at on payment of payment and the said fact is supported by the documents produced on record. Thus considering the above facts of the case, continuation of proceedings against the petitioners are nothing but a gross abuse and misuse of law and same may not be permitted to be continued. Therefore also, the present petition is required to be allowed and the proceedings are required to be terminated.

14. In the result, the present petition is allowed. The impugned complaint/ proceedings being Criminal Misc. Application No.1792/2014 filed by the responded no.2 herein before the court of the learned Judicial Magistrate, 3rd Court, Vadodara under the provision of the Protection of Women against Domestic Violence Act, 2005 are is hereby quashed and set aside. All consequential proceedings pursuant thereto stand terminated. Rule is made absolute. Direct service is permitted.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam