IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH : NAGPUR

Criminal Revision Application No. 146 of 2017

Applicants : 1) Prashant son of Manmohanji Laddha, aged about 36 years, Occ: Business

2) Smt Leelabai wd/o Manmohanji Laddha, aged Major, Occ: Household

Both residents of In front of Mayor's Bungalow, University Road, Amravati

Versus

Respondents: 1) Sau Madhuri w/o Prashant Laddha, aged about 34 years, Occ: Household

2) Ku Vidhi d/o Prashant Laddha, aged about 9 years, Occ: Student

3) Ku Ekta d/o Prashant Laddha, aged about 3 years, Student

Respondents no. 2 and 3 being minor, through respondent no. 1 natural guardian-mother

All residents of c/o Shri Satyanarayan Champalal Taori, Near Hotel Harmony, Gandhibag, Nagpur

At present, c/o Suresh Madhukar Rathi, Hardware Shop, Main Road, Ward No. 9, Saunsar, District Chindwara, MP

Shri R. D. Wakode, Advocate for applicants
Shri B. N. Mohta, Advocate for respondents

Coram : S. B. Shukre, J

Dated : 6th April 2018

Oral Judgment

1. Heard learned counsel for the parties. Admit. Heard forthwith by consent of parties.

2. This revision application questions the legality and correctness of the order dated 27.10.2016 passed by the learned Principal District Judge, Nagpur in Criminal Appeal No. 297 of 2015, upsetting the order dated 28.10.2014 passed by the learned Judicial Magistrate, FC, Nagpur in Misc. Criminal Application No. 3538 of 2014. The learned Magistrate has held that the Court at Nagpur has no jurisdiction to try the petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the "D.V. Act").

3. Shri Wakode, learned counsel for the applicants submits that the impugned order is patently illegal and perverse and whereas Shri Mohta, learned counsel for the respondents submits that it is perfectly legal and proper. Shri Mohta submits that in any case, the learned Magistrate could not have dismissed the petition on the preliminary objection, without giving any opportunity to the parties to lead evidence. In support, he places his reliance upon the cases of **Vijay Sudhakar Patil**

v. Asha Vijay Patil reported in *2015 (1) Mh. L. J. 431*; **Ramesh a/o Mohanlal Bhgutada, Advocate & anr v. State of Maharashtra** reported in *2011 (6) Mh. L. J. 167* and **Vikas Rastogee v. State of U. P. & anr** reported in *II (2014) DMC 470 (All)*.

4. The learned Magistrate while allowing the application vide order dated 28.10.2015 has given elaborate reasons to support the finding about the non-maintainability of the petition under the D. V. Act while holding that he had no territorial jurisdiction to try the petition under Section 12 of the D.V. Act. Learned Magistrate has taken into consideration the admissions given by the non-applicant no. 1 in her application filed under Section 125 Cr. P. C. (Criminal Application No. 62 of 2014) before the Court at Saunsar, the admissions given by the non-applicant no. 1 in the First Information Report lodged by her against the applicants on 8.12.2014 at Police Station, Saunsar and the other facts which are matter of record and not in dispute. These facts show that non-applicant no. 1 has admitted just about one month before filing of the application on 20.10.2014 and also two months thereafter that she has been residing at her parental place at Saunsar since August 2014.

5. Learned Magistrate has also noted the fact that although non-applicant no. 1 showed her address in Section 12 of the D. V. Act

petition as c/o Shri Satyanarayan Champalal Taori, near Hotel Harmony, Gandhibag, Nagpur, she did not file even an affidavit of Satyanarayan Taori to show that she is a temporary resident of Nagpur. In the application under Section 12 of the D.V. Act, there is only a passing reference made by the respondent that she along with her children has been residing presently at Nagpur in the house of her brother on the address mentioned in the cause title. This application has been filed on 20.10.2014. But, just a month before, she filed application under Section 125 Cr. P. C. before the Saunsar Court wherein she asserted that she was residing at Saunsar since August 2014. Even in the First Information Report that was lodged by her on 8.12.2014, about one and half months after Section 12 D. V. Act application at Police Station, Saunsar, the non-applicant no. 1 stated that she has been residing at Saunsar. Not only this, but in her evidence recorded in the proceedings under Section 125 Cr. P. C. before the Saunsar Court subsequent to the filing of the present application also, the non-applicant no. 1 admitted that she was residing at Saunsar. In the backdrop of these admissions, it was necessary for the non-applicant no. 1 to have clarified as to when did she leave Saunsar and come to Nagpur for residing at Nagpur temporarily. She also needed to have stated the relevant dates in this regard. If some of the admissions pertained to a period which was after filing of this application, an affidavit of brother, giving relevant details placed on record by the

applicant would have gone a long way to clarify her stand in the matter. But, she did not file on record the affidavit of her brother Satyanarayan Taori.

6. Learned counsel for the non-applicants submits that the non-applicant no. 1 was never called upon to lead any evidence in this regard. I must say, nothing prevented non-applicant to at least file on record an affidavit giving her explanation/clarification in the matter. It is not enough for non-applicant no. 1 to just make a bald statement, as she has in her application, that presently, she has been residing at Nagpur in the house of her brother when she admits in other proceedings that she resides at Saunsar. She could have boosted her statement of her Nagpur residence by something relevant or at least an affidavit of Satyanarayan Taori. But, she did not submit any such additional material or affidavit before the Court. These facts have been duly taken note of by learned Magistrate when he passed the order dismissing application under Section 12 of the D. V. Act.

7. But these facts, relevant as they are, have been completely ignored by the learned Principal District Judge. The learned Principal District Judge has also not considered the reasons given by the learned Magistrate in the order passed by her. It is the requirement of Section 27

of the D. V. Act that in order to confer territorial jurisdiction upon a Judicial Magistrate, First Class, there has to be at least a temporary residence within the territorial jurisdiction of his Court. The admissions given by non-applicant no. 1 could show that she was all the while residing at Saunsar and coupled with that fact, she has failed to explain as to how and in what manner, she assumed her temporary residence at Nagpur. The learned Principal District Judge, however, reasoned that pursuing of some cases at Nagpur itself amounted to temporary residence at Nagpur, which is fallacious to say the least. Pursuing of some cases from a place cannot be equated with temporary residence at that place. Temporary residence requires residence at a place on continuing basis in pursuit of some activity or want or need which may be economic, educational, financial, cultural, social and the like which comes to an end when the goal or purpose is achieved. The period or such residence would vary depending upon the purpose for which it is taken. But, such residence cannot be a residence created just to confer territorial jurisdiction upon a Magistrate of a place or otherwise, it would be easy for a woman well equipped with resources to go to a far away place, set up a temporary residence there just to file a case and file a case to get the pleasure of seeing husband or person in domestic relationship being put to travails of long travels and high expenses. So, to my mind, in the context of Section 27 of the D. V. Act, temporary residence means a

residence set up or acquired in the ordinary course of human affairs and is not a residence set up with an intention to file a case and confer jurisdiction upon the magistrate. This is the meaning, plainly and naturally, conveyed by combined reading of key words used in Section 27 of the D. V. Act, which are "resides or carries on business or is emloyed".

8. In the cases relied upon by learned counsel for the non-applicants, it has been held that the preliminary objection regarding lack of territorial jurisdiction cannot be decided unless the parties are called upon to place on record evidence. There can be no doubt about the principle enunciated by these cases. But, this is not the case wherein the learned Magistrate has dismissed the application without there being on record proved facts. Ultimately, proof of facts is all that matters and facts can be proved by admissions, just as they can be by oral evidence. Here, facts stood proved because of admissions, though there was no oral evidence led by the parties. It appears to me that not tendering of oral evidence was the choice of the parties. Learned Magistrate has also noted the fact that the non-applicant no. 1 did not submit any affidavit of her brother in support of her claim that she was temporarily residing at Nagpur, thereby indicating an opportunity already available was wasted by her. Therefore, I do not think that any assistance could be sought by the learned counsel for the respondents from the cases cited before me.

9. In the facts and circumstances noted above, I am of the view that the impugned order is manifestly illegal and perverse and the order of the learned Magistrate is legal and correct calling for no interference therein.

10. In the result, the application is allowed. The impugned order is quashed and set aside and the order of learned Magistrate is confirmed. Liberty is, however, granted to file fresh application under Section 12 of the D. V. Act before the proper forum.

S. B. Shukre, J

joshi