



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION (ST) NO. 20553 OF 2024

Pragati Kapoor .. Petitioner  
**Versus**  
State Of Maharashtra And Anr. .. Respondents

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Mr. Tapan Thatte, for the Petitioner.

Mr. J. P. Yagnik, A.P.P., for the State/Respondent.

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**CORAM : BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ.**  
**DATED : 16<sup>th</sup> OCTOBER, 2024**

**P.C:-**

1. The Petitioner is the niece of Mr. Manishchandra Bihari Kapoor, the husband of the Respondent No.2, who are in a turbulent relationship since 2014. The Respondent No.2, amongst other proceedings, has also filed proceedings against Mr. Manishchandra Kapoor, under the provisions of the Protection of Women from Domestic Violence Act, 2005 ("the DV Act, 2005").

The Petitioner is not a party in the said proceedings.

2. The present Petition is filed by the Petitioner being

aggrieved by the registration of CR. No. 0752 of 2024 at Chaturshringi Police Station on 18.09.2024, by invoking Section 406 of the Indian Penal Code (“IPC”) and Section 31 and 32 of the DV Act, 2005, on the complaint at the instance of the Respondent No.2, the wife of the Petitioner’s uncle.

3. We have perused the FIR placed on record, which has arraigned Mr. Manishchandra Kapoor as well as the present Petitioner as accused, in the backdrop that on filing the proceedings before the learned Magistrate, Court No.9, Shivajinagar, Pune, a direction was issued for payment of maintenance of Rs.30,000/- per month for herself and Rs.7,500/- towards her son, till he attained majority. Accordingly from 2014 to August 2024 an amount of Rs.50,40,000/- was due and payable but it is the allegation of the Respondent No.2 that the same was not paid and thus the order passed by the Magistrate was violated.

In the complaint it was also alleged by her that on 05.04.2024, the Magistrate had restrained her husband to withdraw any amount from the ICICI Bank, but on 19.04.2024, he has transferred an amount of Rs.94,00,000/- and on 20.04.2024 he has transferred an amount of Rs.97,00,000/- in the account of the Petitioner, his niece, in the SBI Bank.

Alleging this to be the disobedience of the protective order passed by the Magistrate, she lodged the complaint which specifically alleged that the two accused persons acting in connivance has defeated the order directing payment of maintenance to her.

4. Perusal of Section 31 of the DV Act, 2005, would disclose that it is a provision contemplating penalty for breach of protection order by the Respondent and the "Respondent" is defined in the Act, in Section 2(q) to mean, any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

Definitely the Petitioner do not fall within the purview of "Respondent" and therefore we have failed to understand that how an offence could have been registered against him under Section 31 and 32 of the DV Act, 2005.

This is in addition to the fact that as far as the Section 32 is concerned, it is a procedural aspect, contemplating the nature of the offence under Section 31 and sub-Section 2 thereof contemplate that upon the sole testimony of the aggrieved person, the Court may conclude that an offence under Sub-Section 1 of Section 31 has been committed by him.

Further it is also alleged that when a direction was issued by the Magistrate to transfer the salary as well as the amount in the ICICI Bank in her account, on 14.06.2024 and 15.06.2024 some additional amount was also transferred in the account of the Petitioner.

5. In addition, Section 406 is also involved but we have failed to understand as to how it could be said that some money or valuable security was entrusted to the Petitioner, who has no connection with the dispute between husband and wife, which is pending for adjudication in DV Court.

6. Prima-facie, we are of the view that the registration of the FIR against the present Petitioner cannot be sustained as she is neither a Respondent as contemplated under Section 2(q) of the DV Act, 2005, nor she was entrusted with any amount, so as to attract the offence of criminal breach of trust.

7. Hence, while we issue notice to the Respondent No.2, we direct the Respondent No.1 not to proceed ahead with the investigation of the subject CR as against the Petitioner.

The notice is made returnable on 18.11.2024.

Humdast granted.

In addition, the notice is also permitted to be served through the private mode of service.

**(MANJUSHA DESHPANDE, J.)**

**(BHARATI DANGRE, J.)**