

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19th February, 2013

Pronounced on: 10th April, 2013

+ **CRL.M.C. 3273/2011**

HIMA CHUGH

..... Petitioner

Through: Mr. Prashant Mendiratta with Mr. Jiten
Mehra, Advocate

Versus

PRITAM ASHOK SADAPHULE & ORS. Respondents

Through: Mr. Rakesh Taneja, Advocate for the
Respondents No.1, 2, 3, 4 & 6.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Petitioner invokes inherent powers of this Court under Section 482 of the Code of Criminal Procedure(Code) for setting aside of the order dated 24.12.2010 whereby a complaint under Section 29 of the Protection of Women from Domestic Violence Act 2005(D.V. Act) was dismissed by the learned Metropolitan Magistrate(“MM”) and the order dated 28.03.2011 whereby the Appeal preferred by the Petitioner was dismissed by the learned Additional Sessions Judge(ASJ).
2. The Petitioner got married to Respondent No.1 at Delhi on 05.03.2005. A week after the marriage, the Petitioner and the Respondent No.1 flew to U.K. It is important to note that the Petitioner was a resident of U.K. since the year 2000 and was working with Ubique Systems since

September, 2001. On the other hand, the First Respondent(husband) came to U.K. in the month of July, 2004 for gainful employment. It was a love marriage between the Petitioner and the First Respondent which took place at Delhi on 05.03.2005. The marriage was not attended by the parents of the First Respondent. I need not go into the reason for the other Respondents to be not a party of the wedding between the Petitioner and the First Respondent.

3. To understand the factual matrix, it would be appropriate to extract paras 8 to 10 of the order dated 24.12.2010 passed by the learned 'MM' hereunder:

“8. In the present matter, Proposed Respondent No. 2 to 6 are residents of Mumbai. As per averments in application, they were not present to attend the wedding of Applicant with Proposed Respondent No. 1 at Delhi. Further, Applicant left for U.K. just after two days of her marriage with Respondent No. 1. As per her own version, Applicant happened to first meet the proposed Respondent No. 2 and 3 on 21/05/2006 when they came to U.K. and stayed with Applicant and proposed Respondent No. 1 till 03/06/2006. Second time, in October 2006, when applicant went to Mumbai but was denied entry in their house by proposed Respondent No. 2 to 6. Applicant then stayed with Respondent No. 2 and 3 for the duration 16/06/2007 to 27/06/2007 in Mumbai. Accordingly, the proposed Respondent No. 2 to 6 cannot be taken to have resided together as family members in a joint family having domestic relationship with Applicant in a shared household. Respondent No. 4 to 6 have never resided even for a moment with Applicant Respondent No. 2 to 3 happened to visit applicant and her husband in U.K. for about 10 days and later

for another 10 days when Applicant visited them in India. There is no continuity in their residence. It was only a short visit which they had paid to their son settled in U.K. and cannot be taken to have been staying or residing there in any kind of domestic relationship with Applicant. Thus, holding that there has not been any domestic relationship of proposed Respondent No. 2 to 6 with Applicant as per submission of Applicant herself there is not occasion for issuance of notice to Respondent No. 2 to 6 to answer the averments in application moved in the present case.

9. Applicant and proposed Respondent No 1 have resided together in U.K. all the while after solemnization of their marriage in Delhi with short intermittent visits to Delhi, Mumbai and to other countries also. There is also a Non Molestation Order and Occupation Order dated 01/062010 issued by Hon'ble Brent Ford Country Court in favour of Applicant Hima Chug containing directions forbidding acts and ill conduct of Respondent Pritam Sadaphule enforce till 01/06/2012 at 4.00 PM filed on record. Applicant has now come back to India and presently residing with her parents in Delhi. The Saga of violence perpetrated in different ways on applicant by Respondent No. 1 has been detailed in the Application because of which, she was constrained to fly back to Delhi to her parents having lost the courage and perseverance to confront the unsurmountable conflicts. Now Applicant has invoked the jurisdiction of this court in Delhi seeking relief under the act.

10. Now coming to case of proposed Respondent No. 1 allegedly related to Applicant as her husband. It is an admitted case of Applicant that she was residing in U.K. since year 2000. Marriage of Applicant with Respondent No. 1 got solemnized on 05/03/2005 and both left for U.K. on 12/03/2005 to resume

their respective jobs. Applicant even took permanent residency of U.K. on 11/07/2005. Since then till late 2009, Applicant resided in U.K. along with Respondent No. 1 with her off an on occasional intermittent visits to India. That is to infer that Applicant resided in a shared household in a purported domestic relationship with the Respondent No. 1 outside India for all years since her marriage. Both Applicant and Respondent No. 1 were having respective employment sources outside India. They have only had short individual or joint visits to India residing here for a couple of days but not with any intention or purpose of residency here. Applicant, after having been victim of domestic violence, chose to return back to her parental home in late 2009 in India.”

4. The learned “MM” opined that the Petitioner was a permanent resident of U.K. (even before her wedding). The domestic relationship, domestic violence as well as shared household continued to be in U.K. The offence under Section 31 of the D.V. Act would arise only when any protection orders or interim protection order was violated by the First Respondent. Thus, the Court of the learned “MM” held that the Courts in India or for that matter in Delhi did not possess any jurisdiction to entertain a complaint under the D.V. Act. The complaint was accordingly dismissed. The Petitioner unsuccessfully challenged the order before the learned ASJ. The Appeal came to be dismissed by the learned ASJ by an order dated 28.03.2011.
5. It is urged by the learned counsel for the Petitioner that even if the Petitioner has a temporary residence within the jurisdiction of the Trial Court, it was obliged to entertain the complaint and could not have dismissed the same on the ground of jurisdiction. The learned “MM”

dismissed the complaint for want of jurisdiction on interpretation of Sections 27 and 28 of the D.V. Act. Sections 27 and 28 of the D.V. Act are extracted hereunder:

“27. Jurisdiction.- (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

28. Procedure.- (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub- section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub- section (2) of section 23.”

6. Thus, the Court of Judicial Magistrate of the First Class or the ‘MM’ within the local limits of which the aggrieved person permanently or temporarily resides or carries on business is competent to entertain the complaint under the provisions of D.V. Act. It is not in dispute that at the time of the filing of the complaint under the D.V. Act the Petitioner was

residing with her parents within the jurisdiction of the learned M.M. Of course, a non-molestation order was obtained by the Petitioner by approaching Brent Ford County Court under the Family Law Act, 1996. That by itself was not sufficient to exclude the jurisdiction of the learned ‘MM’ if she was otherwise possessed jurisdiction by virtue of Section 27 of the D.V. Act. The learned “MM” also erred in holding that the since the offence arising out of violation of the protection order cannot be tried in Delhi Courts, the learned “MM” will not have any jurisdiction is also without any substance. The object of enacting D.V. Act was to provide a remedy under the civil law to women who are sisters, widows, mothers, single woman in addition to a wife or a female living in a relationship in the nature of marriage. However, the protection order could be obtained only against a person who was in domestic relationship with the person aggrieved.

7. In *Mohit Yadav & Anr. v. State of A.P. & Ors.*, 2010 Cri.L.J. 3751 while dealing with the object and scope of the D.V. Act, it was observed by Andhra Pradesh High Court as under:

“21. The object of the Domestic Violence Act, 2005 is to provide for effective protection of the rights guaranteed under the Constitution, of women, who are victims of violence of any kind occurring within the family. The Act only confers right to remedy to the wives and women in, domestic relationship. A machinery is provided for achieving the said object, viz., it is the duty of a Police Officer, Protection Officer, Service Provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the Act, availability of services of Service Provider and Protection Officer, right to avail free legal services. Similarly, a Magistrate is under obligation to

fix the first date of hearing of the application ordinarily within three days of its receipt and shall endeavour to dispose of every application within sixty days of the first hearing. The Domestic Violence Act, 2005 provides for comprehensive and speedy relief within a set time frame. Where aggrieved person's right is invaded or destroyed or likely to be destroyed, the Domestic Violence Act, 2005 gives a remedy by interdict to protect it or damages for its loss, etc.

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28. 'Domestic Violence' is any act of physical, mental or sexual violence and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or had family or kinship ties or cohabit or dwell in the same house. It infringes the basic right to feel comfortable within the confines one's house to all domestic violence victims is not a home. A home where one can live without any fear or insecurity. It is with this in mind, the new Protection of Women from Domestic Violence Act was passed."

8. Thus, simply because the Petitioner returned to India either temporarily or permanently it will not disentitle her to invoke the provisions of the D.V. Act if she has a case on merits. Thus, dismissing the complaint for want of jurisdiction by the learned 'MM' and its approval by the learned ASJ was illegal and cannot be sustained.
9. But, at the same time, it has to be borne in mind that a protection order can be obtained only against a person who is in domestic relationship with the aggrieved person. To understand the same, it would be appropriate to have a look at the definition of domestic relationship and shared household as given in Sections 2(f) and 2(s) of the D.V. Act, which reads as under:

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(f) " domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

.....

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;”

10. Respondents No.2 to 6 are the relations of the Petitioner’s husband. In para 8 of the complaint, the Petitioner talks of visiting the house of Respondents No.2 to 4 for the first time on 21.05.2006. It is in dispute whether Respondent No.5 who is cousin of the Petitioner’s husband was residing with the Respondents No.2 to 4. Admittedly, Respondent No.6 was not even residing with the parents of the Respondent No.1. Apart from levelling the allegations of cruelty and not meeting the financial needs of the Petitioner by the Respondent No.1, the Petitioner alleged cruelty at the hands of the Respondents No.2 to 5. It has to be borne in mind that an aggrieved person can maintain a Petition under the D.V. Act only if he is in domestic relationship with the concerned person. In *K.*

Narasimhan v. Smt. Rohini Devanathan, 2010 Cri.L.J.2173, brother-in-law was arrayed as one of the Respondents in a Petition under the D.V. Act. The allegations against the brother-in-law were that when the Respondent (the wife) approached the Petitioner at Chennai, she was abused which according to the Petitioner was emotional abuse. The Karnataka High Court held that as per Sections 2(f) or 2(s) of the D.V. Act, when the Petitioner and Respondent never stayed together in the same household, the making of allegations against the shared household would not amount to domestic violence in the absence of domestic relationship and shared household as defined under the D.V. Act. The shared household as envisaged under Section 2(s) of the D.V. Act is a house where the aggrieved person stayed as a member of the family or a joint family. It will not include the casual visits of a daughter-in-law to the house of her father-in-law or brother-in-law. In *Harbans Lal Malik & Ors. v. Payal Malik*, 2010(3) LRC 177(DEL), a coordinate Bench of this Court while dealing with the definition of domestic relationship held as under:

“12. It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship.

The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there. The first respondent made by the wife in her complaint before the learned 'MM' in this case was husband with whom the wife had lived under the same roof in a shared household till 22nd August, 2008 in USA. She had not lived for last 7½ years with respondent No. 1 in India. Respondent No. 4 is Varun Malik who is brother of the husband. Under no circumstances it can be said that brother of husband, who was a major and independent, living separately from this husband and wife, had any kind of domestic relationship or moral or legal responsibility/obligations towards his brother's wife. He had not lived in domestic relationship with Payal Malik at any point of time. Merely because a person is brother of the husband he cannot be arrayed as a respondent, nor does an 'MM' gets authority over each and every relative of the husband, without going into the fact whether a domestic relationship or shared household was there between the aggrieved person and the respondent.

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14. The girl and the parents of the girl knew it very well that they had selected a person for marriage with whom the girl was going to live abroad and the matrimonial home and the shared household was going to be outside India. This act of marrying a person settled abroad is a voluntary act of the girl. If she had not intended to enjoy the fat salary which boys working abroad get and the material facilities available abroad, she could have refused to marry him and settled for a boy having moderate salary within India. After having chosen a person living abroad, putting the responsibility, after failure of marriage, on the shoulders on his parents and making them criminals in the eyes of law because matrimonial ties between the two could not last for long, does not sound either legally correct or morally correct. How can the parents of a boy who is working abroad, living abroad, an adult, free to take his own decisions, be arrayed as criminals or respondents if the marriage between him and his wife failed due to

any reason whatsoever after few years of marriage. If the sin committed by such parents of boy is that they facilitated the marriage, then this sin is equally committed by parents of the girl. If such marriage fails then parents of both bride and groom would have to share equal responsibility. The responsibility of parents of the groom cannot be more. Shelter of Indian culture and joint family cannot be taken to book only relatives of boy. A woman's shared household in India in such cases is also her parents' house where she lived before marriage and not her in-laws' house where she did not live after marriage.

15. When the shared household of husband and wife had not been in India for the last 08 years at any point of time, it is strange that the learned 'MM' did not even think it proper to discuss as to how the father or the brother of the boy could be made respondents in proceedings of domestic violence, after husband and wife had not been able to pull on together. In the present case, Mr. Harbans Lal Malik petitioner could not be said to have shared household with the respondent since the respondent had not lived in his house as a family member, in a joint family of which Harbans Lal Malik was the head.

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18. Thus, in order to constitute a family and domestic relationship it is necessary that the persons who constitute domestic relationship must be living together in the same house under one head. If they are living separate then they are not a family but they are relatives related by blood or consanguinity to each other. Where parents live separate from their son like any other relative, the family of son cannot include his parents. The parents can be included in the family of son only when they are dependent upon the son and/or are living along with the son in the same house. But when they are not dependent upon the son and they are living separate, the parents shall constitute a separate family and son, his wife and children shall constitute a separate family. There can be no domestic relationship of the wife of son with the parents when the parents are not living along with the son and there can be no domestic relationship of a wife with the parents of her husband

when son along with the wife is living abroad, maintaining a family there and children are born abroad. I, therefore consider that Harbans Lal Malik could not have been made as a respondent in a petition under Domestic Violence Act as he had no domestic relationship with aggrieved person even if this marriage between her and her husband was subsisting.”

11. In *Vijay Verma v. State*(NCT of Delhi), 2010(3) LRC 291(DEL), another coordinate Bench of this Court held that casual visits of a daughter-in-law to the house of father-in-law will not amount to living or lived together in a shared household for the purpose of domestic relationship. It was further observed that only the violence committed by the person while living in the shared house can constitute domestic violence for the purpose of D.V. Act. Paras 6 and 7 of the report are extracted hereunder:

“6. A perusal of this provision makes it clear that domestic relationship arises in respect of an aggrieved person if the aggrieved person had lived together with the respondent in a shared household. This living together can be either soon before filing of petition or 'at any point of time'. The problem arises with the meaning of phrase "at any point of time". Does that mean that living together at any stage in the past would give right to a person to become aggrieved person to claim domestic relationship? I consider that "at any point of time" under the Act only means where an aggrieved person has been continuously living in the shared household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property. However, "at any point of time" cannot be defined as "at any point of time in the past" whether the right to live survives or not. For example if there is a joint family where father has several sons with daughters-in-law living in a house and ultimately sons, one by one or together, decide that they should live separate with their own families and they establish separate household and start living with their respective families separately at different places; can it be said that wife of each of the sons can claim a right to live in the

house of father-in-law because at one point of time she along with her husband had lived in the shared household. If this meaning is given to the shared household then the whole purpose of Domestic Violence Act shall stand defeated. Where a family member leaves the shared household to establish his own household, and actually establishes his own household, he cannot claim to have a right to move an application under Section 12 of Protection of Women from Domestic Violence Act on the basis of domestic relationship. Domestic relationship comes to an end once the son along with his family moved out of the joint family and established his own household or when a daughter gets married and establishes her own household with her husband. Such son, daughter, daughter-in-law, son-in-law, if they have any right in the property say because of coparcenary or because of inheritance, such right can be claimed by an independent civil suit and an application under Protection of Women from Domestic Violence Act cannot be filed by a person who has established his separate household and ceased to have a domestic relationship. Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a shared household. Only a compelled or temporarily going out by aggrieved person shall fall in phrase 'at any point of time', say, wife has gone to her parents house or to a relative or some other female member has gone to live with her some relative, and, all her articles and belongings remain within the same household and she has not left the household permanently, the domestic relationship continues. However, where the living together has been given up and a separate household is established and belongings are removed, domestic relationship comes to an end and a relationship of being relatives of each other survives. This is very normal in families that a person whether, a male or a female attains self sufficiency after education or otherwise and takes a job lives in some other city or country, enjoys life there, settles home there. He cannot be said to have domestic relationship with the persons whom he left behind. His relationship that of a brother and sister, father and son, father and daughter, father and daughter-in-law etc survives but the domestic relationship of living in a joint household would not survive & comes to an end.

7. This meaning of domestic relationship has sense when we come to definition of domestic violence and the purpose of the Act. The purpose of the Act is to give remedy to the aggrieved persons against domestic violence. The domestic violence can take place only when one is living in shared household with the respondents. The acts of abuses, emotional or economic, physical or sexual, verbal or nonverbal if committed when one is living in the same shared household constitute domestic violence. However, such acts of violence can be committed even otherwise also when one is living separate. When such acts of violence take place when one is living separate, these may be punishable under different provisions of IPC or other penal laws, but, they cannot be covered under Domestic Violence Act. One has to make distinction between violence committed on a person living separate in a separate household and the violence committed on a person living in the shared household. Only violence committed by a person while living in the shared household can constitute domestic violence. A person may be threatening another person 100 miles away on telephone or by messages etc. This may amount to an offence under IPC, but, this cannot amount to domestic violence. Similarly, emotional blackmail, economic abuse and physical abuse can take place even when persons are living miles away. Such abuses are not covered under Domestic Violence Act but they are liable to be punished under Penal laws. Domestic Violence is a violence which is committed when parties are in domestic relationship, sharing same household and sharing all the household goods with an opportunity to commit violence.”

12. Thus, it cannot be said that the Respondents No.2 to 6 who are the father-in-law, brother-in-law and other near relations of the Respondent No.1 were in domestic relationship with the Petitioner. Thus, no protection order could be passed against them.

13. The Petition, therefore, has to be allowed so far as it concerns Respondent No.1 who admittedly was in domestic relationship being husband of the Petitioner. It would be a different matter whether on the basis of material on record, any protection order is required to be passed against him or not.
14. The Petition is accordingly allowed so far as it concerns the First Respondent.
15. Parties to appear before the learned 'MM' concerned on 10th May, 2013.
16. Trial Court Record be returned immediately.
17. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 10, 2013

pst