

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

% **Reserved on : 05.12.2019**
Pronounced on : 01.06.2020

+ **CRL.REV.P. 558/2015**

AMANPREET SANDHU

..... Petitioner

Through: Mr. Vaibhav Gaggar, Adv. with Ms.
Sumedha Dang, Adv.

versus

U.K. SHANDILYA & ORS

..... Respondents

Through: Mr. N. Prabhakar, Adv. with Ms.
Soumya Das, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

CRL.M.A.12895/2015

This is an application for condonation of delay in filing the present criminal revision petition. Heard. In the facts and circumstances as mentioned in the application, the application is allowed and the delay in filing the present criminal revision petition is condoned. The application is disposed of accordingly.

CRL.REV.P. 558/2015

1. The present criminal revision petition under Sections 397 and 401 of the Code of Criminal Procedure, 1973 has been filed by the petitioner

against the impugned order dated 03-01-2015 passed by the Ld. ASJ-02, (East) Spl. Judge (NDPS), Karkardooma Courts, Delhi in Crl.(A) No. 26/14 with the prayer to call for the records of the Additional Sessions Judge-02 (East), Special Judge (NDPS), Karkardooma Courts, Delhi and set aside the order dated 03.01.2015 passed by the Additional Sessions Judge in Crl. (A) No. 26/14.

2. In brief, the facts of the case are that the petitioner was married to the son of respondents No. 1 and 2 on 30.11.2007, and a male child was born from this wedlock. The petitioner resided with the respondents No. 1 and 2 till July, 2008 and in August, 2008, the petitioner and her husband (respondent No. 3 herein) shifted in a separate house at S Block, Greater Kailash and in between they also moved to Gurgaon. On 16.10.2012, the petitioner shifted to B-166, Mount Kailash, East of Kailash. The petitioner and her husband (respondent No. 3 herein) in October 2010, took up a house adjacent to the house of the respondents No. 1 and 2 in which the renovation was started six months later and petitioner never moved in the house of the respondent No. 1 and 2. According to the petitioner, after the birth of the child she had temporarily shifted in a new house B-166 and thereafter went on to live with her parents. She stayed with her parents from 01-08-2012 to 16-10-2012 and on 16.10.2012 she shifted to B-166, Mount Kailash, East of Kailash where she lived with her husband (respondent No. 3 herein).

3. According to the petitioner, she had difficulties in living with her husband (respondent No. 3 herein) and in her complaint she had mentioned several incidents referring to the occasional conduct of the mother of her

husband i.e. respondent No. 2 herein who is her mother-in-law. It is alleged against respondent No. 1 in her complaint by the petitioner that he had started writing mails to her parents making false complaints against her and also mentioned an alleged threat given to her by him stating that he could make their life hell being a lawyer. It is further alleged against him that on one occasion he came with respondent No. 2 and 3 and they all asked to take the child of the parties with them for the night.

4. It is averred that in October, 2012, the petitioner returned to her matrimonial home to find that the wall between the houses B-121 and B-166 was broken down to make it a common household, where the kitchen, utilities and household helps were common. It is further averred that the petitioner was forced to leave her matrimonial home in August 2013 on account of physical and mental abuses by respondent No. 3 as well as from respondent No. 1 and 2.

5. It is further averred that thereafter respondent No. 3 filed an HMA petition bearing No. 1212 U/s 13 (1) (ia). Thereafter the petitioner filed proceedings U/s 12, 17, 18, 19, 20 and 21 of the Protection of Women from Domestic Violence Act against the respondents. On 11.09.2014, the respondents preferred CM(M) No. 4194 of 2014 and CM(M) No. 4195/2014 before this court assailing the order dated 29.05.2014 and 26.08.2014 but the said petitions were withdrawn. Thereafter, respondents No. 1 and 2 filed criminal appeal bearing No. 26 of 2014 assailing the orders dated 29.05.2014 and 26.08.2014. The Ld. ASJ vide order dated 03.01.2015

allowed the appeal of the respondents No. 1 and 2 and set aside the orders dated 29.05.2014 and 26.08.2014 passed by the Ld. M.M.

6. I have heard the Ld. counsel for the parties and perused the records of the case.

7. The petitioner herein had preferred a complaint U/s 12 of the D.V. Act against the respondents herein in which the Ld. MM passed the orders dated 29.05.2014 and 26.08.2014 against which the respondent No. 1 and 2 herein had preferred Crl. appeal bearing No. 26/14 in the Court of Ld. ASJ-02, (East) Spl. Judge (NDPS), Karkardooma Courts, Delhi, who vide order dated 03.01.2015 allowed the appeal of the respondents No. 1 and 2 herein. Aggrieved from this order dated 03.01.2015, the petitioner herein has preferred the present Crl. revision petition.

8. It is argued by the Ld. counsel for the petitioner that the petitioner was not given due hearing by the court below. It is further argued that the Ld. ASJ entertained time barred appeal of the respondents No. 1 and 2 without there being any explanation to the inordinate delay of 87 days. It is further argued that the Ld. ASJ failed to appreciate that two house bearing No. B-121 and B-166 whose connecting wall was broken was a common household of the petitioner and the respondents. It is further argued that the Ld. ASJ had not appreciated the allegations of harassment made by the petitioner in her initial complaint. It is further argued that the Ld. ASJ had erred in concluding that two houses i.e. B-121 and B-166 Mount Kailash cannot be termed as shared household as per the provisions of Section 2 (s) of the Domestic Violence Act.

9. On the other hand, it is urged by the Ld. counsel for the respondents that there was no domestic relation/shared household as the allegation of making the dowry demand by respondent No. 2 from the petitioner's mother is prior to the marriage. He further argued that as per the complaint of the petitioner, it appears that she was under stress/strain because of the marital discord between respondent No. 1 and 2. It is further submitted that the allegations are about the alleged abnormal environment at the residence of respondent No. 1 and 2 which according to the petitioner was highly suffocative and oppressive for her. It is further argued that because of it, the petitioner took a decision in July 2008 and she alongwith respondent No. 3 shifted to a separate household. It is further argued that the petitioner has herself in her complaint mentioned about the affirmative and positive side of respondent No. 2 when she came to the rescue of the petitioner when she had a fight with respondent No. 3 (her husband). It is further argued that fair hearing was granted to the petitioner in the complaint case No. 81V of 2014. It is further argued that respondents No. 1 and 2 were never responsible for the marital discord between petitioner and respondent No. 3 who had a separate house of their own at B-166, Mount Kailash. It is further submitted that the two houses were never combined to make a common household as alleged by the petitioner. It is further argued that the petitioner has herself admitted that she had a separate house of her own with respondent No. 3. It is submitted that there is no infirmity in the impugned order.

10. As far as the contention of the counsel for the petitioner that the delay of 87 days has been wrongly condoned by the Ld. ASJ while admitting the

criminal appeal No. 26/14, filed by the respondent No. 1 and 2, the perusal of the impugned order shows that Ld. ASJ has after due application of mind condoned the delay and has also opined that as far as possible the disputes should be decided on merits. So, the Ld. ASJ has not committed any error in condoning the delay and hearing the appeal on merits. The respondent No. 1 and 2 are the father-in-law and mother-in-law respectively of the petitioner. The petitioner in her complaint has mentioned that after the birth of the child she has temporarily shifted to a new house bearing No. B-166 and thereafter went on to live with her parents. She further states that the child was born on 01-07-2012 and she stayed with her parents from 1-08-2012 to 16-10-2012. On 16.10.2012, she shifted to B-166, Mount Kailash, East of Kailash where she lived with her husband.

11. From the perusal of the complaint of the petitioner, it appears that the allegations are totally vague and there are no specific allegations against the respondent No. 1 and 2 who are her parents in law. The perusal of the complaint revealed about her difficulties living with her husband, with references to the incidents about the conduct of respondent No. 2 i.e. mother-in-law, here and there in the complaint and they being not specific. Rather, it has come in the complaint that even respondent No. 2 on one occasion came to her rescue when she was being harassed by her husband (respondent No. 3).

12. As far as respondent No. 1 is concerned, who is the father-in-law of the petitioner, it is alleged against him that he started writing mails to her parents making false complaints against her and in the complaint she

referred to alleged threat given to her father by respondent No. 1 that he being a lawyer would make his life hell. It is alleged in the complaint that respondent No. 1 had once come to her parent's house with respondent No. 2 and 3 and they asked to take the child out for the night. The allegations as leveled against respondent No. 1 in the complaint by no stretch of imagination can be said to be harassment of any sort. The perusal of the complaint further shows that the petitioner rather had a soft corner for respondent No. 1 (her father-in-law) as he was not being treated properly by respondent No. 2, her mother-in-law as there was some marital discord between respondents No. 1 and 2. The complaint further reveals that respondent No. 1 even used to provide homeopathy treatment to her husband which helped him. So from sensible and meaningful reading of the initial complaint filed by the petitioner, it cannot be said that any domestic violence as alleged was caused by the respondents to her.

13. The question now arises, is, as to whether, there was any domestic relation between the petitioner and the respondents No. 1 and 2, since the petitioner started living separately from the respondents No. 1 and 2. The petitioner having left the matrimonial home has not been disputed by her, rather her stand is that at the instance of respondents No. 1 and 2, she and respondent No. 3 had taken a house adjoining to house of respondent No. 1 and 2, where she started living. According to the petitioner, the acts of domestic violence on the part of the respondents, continued in that separate house as well. The record reveals that the petitioner has not even mentioned what specific domestic violence was committed by respondent No. 1 her

father-in-law, when according to her he was not on talking terms with respondent No. 3, her husband. According to the petitioner, respondent No. 1 was also not aware that they had shifted to Gurgaon. According to the petitioner, she alongwith respondent No 3 lived in house No. B-166 which is adjacent to house No. B-121 and according to the petitioner when she returned to her matrimonial home in October 2012 as she has left for her parents house in August 2012 with her child Sumer on account of manipulation by the respondents, she found that the wall between the two houses was broken out to make it a common household, where the kitchen, utilities and household helps were common. According to the petitioner both the houses were having common ingress and egress but the perusal of the initial complaint filed by the petitioner shows that no such averment were made therein, rather it has been stated that she with her husband i.e. respondent No. 3 resided separately from the respondent No. 1 and 2 since August 2008. Therefore, it was then that she stopped sharing the common household with respondent No. 1 and 2. It cannot be said that living in an adjacent house to respondent No. 1 and 2, makes the house of respondent No 1 and 2 a shared household for the purposes of DV Act.

14. It is evident from the complaint that the petitioner was not sharing the household with the respondent No. 1 and 2 for a long time and she was living with respondent No. 3, her husband separately. As far as, house No. B-166 is concerned, it cannot be said that it became the shared household as the respondents No 1 and 2 were living separately in house No. B-121. It is

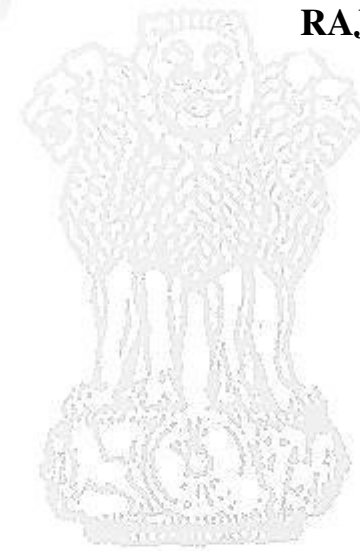
also not the case of the petitioner that respondent No. 1 and 2 ever shifted to B-166 to live with their son and the petitioner.

15. Therefore, in my opinion, there is no infirmity in the impugned order dated 03-01-2015 wherein it has been observed by the Ld. Trial Court that no case of domestic violence, in view of the facts mentioned in the complaint is made out against respondents No. 1 and 2. The petition is, therefore dismissed.

RAJNISH BHATNAGAR, J

JUNE 1, 2020

Sumant



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