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

+ **CRL.M.C. 79/2017**

**SMT VAISHNAV @ NIKKI**

..... Petitioner

Represented by: **Mr. Abhishek Aggarwal,**  
Advocate.

versus

**STATE (GOVT OF NCT OF DELHI) & ANR** ..... Respondents

Represented by: **Mr. Hirein Sharma, APP for**  
the State.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

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**10.01.2017**

**Crl. M.A. No. 357/2017 (Exemption)**

Allowed, subject to all just exceptions.

**CRL.M.C. 79/2017 and Crl. M.A. Nos. 356/2017 (calling of Trial Court record) and 358/2017 (Stay)**

1. Aggrieved by the order dated 27<sup>th</sup> February, 2016 passed by the learned Additional Sessions Judge upholding the order of the learned Metropolitan Magistrate deleting the name of respondent No.2, that is, Abhimanyu from the array of parties in a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short 'PWDV Act') the petitioner prefers the present petition.

2. In the complaint under Section 12 of the PWDV Act the respondent No.2 was impleaded as respondent No.3 therein and the allegations were

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that after the marriage of the complainant/ petitioner herein with the brother of the respondent No.2 on 3<sup>rd</sup> March, 2014 she was harassed and tortured. It is alleged that the respondent Nos. 1, 2 and 3 in the complaint used to misbehave with her and taunt her. The only specific instances are of 15<sup>th</sup> August, 2014 and 21<sup>st</sup> September, 2014 wherein it is alleged that the respondent Nos. 1, 2 and 3, pressurised the complainant/petitioner to fulfil their demand of ₹10 lakhs and a swift desire car and when she expressed her inability she was abused, slapped and dragged on the floor. She was assaulted by kicks and fists.

3. Admittedly, respondent No.2 is serving in Indian Army and is posted at Rajasthan. The respondent No.2 placed on record his service certificate which showed that he was not on leave on 15<sup>th</sup> August, 2014 and 21<sup>st</sup> September, 2014 the only two specific dates mentioned by the complainant/petitioner in her complaint.

4. Considering the fact that there was impeccable material on record to show that the respondent No.2 was not present in the matrimonial home at the relevant time and was serving at Rajasthan, he was directed to be deleted from the array of parties by the learned Metropolitan Magistrate which order was upheld by the learned Additional Sessions Judge vide the impugned order.

5. Learned counsel for the petitioner submits that given a chance the petitioner would be able to prove the presence of respondent No. 2 in the matrimonial home at the relevant time. No material has been placed on record as to how the complainant will be able to prove the presence of respondent No.2 at the material time at the matrimonial home and thus in

view of impeccable material placed on record, the two courts below committed no error in deleting respondent No.2 from the array of parties.

6. The petition and applications are dismissed with a cost of ₹10,000/- to be paid to the Delhi Legal Services Authority within four weeks.

**MUKTA GUPTA, J.**

**JANUARY 10, 2017**  
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