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

+ CRL.M.C. 705/2017 & CrI.M.A.2985/2017 (stay)

ARTI KAUSHIK

..... Petitioner

Through Mr.C.M. Mathur, Adv.

versus

SATYADEV SHARMA

..... Respondent

Through Mr.Mukesh Gupta, Adv. with
Mr.Shashi Gupta, Adv. for R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **05.07.2018**

Respondent nos.1 & 2 are father-in-law and mother-in-law of the petitioner. Petitioner filed a complaint under Domestic Violence Act before the learned Metropolitan Magistrate, Delhi wherein respondent nos.1 & 2 were impleaded as respondent nos.2 & 3. Learned MM summoned the respondents. Respondents preferred Criminal Appeal before the learned Additional Sessions Judge, Delhi, which has been allowed by the order impugned by the petitioner under section 482 Cr.P.C.

Learned Additional Sessions Judge by relying on the admission of the petitioner has held that there was no domestic shared household between petitioner and respondent nos.2 & 3 since they are living separately right from the year 2008. In para 11 of the impugned order, learned Additional Sessions Judge has observed as under:

“11. Now advertising back to the facts of the present case. The perusal of trial court record would show that respondent herein has admitted in letter dated 28.10.2010 written by her to Bank Manager of Central Bank of India, Ghaziabad that she along with her husband Himanshu Sharma had been residing in House No.651, Baghban Apartments, Sector-18, Rohini, Delhi since April-May 2008. She has also admitted this fact in Transfer Petition (Civil) No.2013 titled as “Ms. Aarti Kaushik vs. Himanshu Sharma” filed by her before Hon’ble Supreme Court of India. Thus, it is an admitted position on record that respondent herein was residing separately from appellants since April-May 2008. She had filed the complaint case u/s PWDV Act against them in the month of September, 2013 i.e. after considerable gap of more than 5 & ½ years or so. In this backdrop, the question which arises for consideration before this Court is as to whether the appellants can still be said to be in ‘domestic relationship’ with the respondent herein or not. The answer, in the opinion of this Court, has to be in negative. The reason is quite obvious that the respondent ceased to be in domestic relationship with the appellants since the day when she alongwith her husband had shifted to some other house situated in Sector 18, Rohini, Delhi in April-May 2008 and had started residing there permanently. It is not the situation where the respondent had shifted to said other house for quite some period or temporarily or with the understanding that she would return back to matrimonial house and would start residing with the appellants in their house situated at Shalimar Garden Extension-II, Sahibabad. While taking this view, I am also fortified by the judgment of our own High Court in the matter titled as **Vijay Verma vs. State NCT of Delhi & Anr.** reported at **2010 (4) JCC 2377**, wherein it has been held as under:

“5. Filing of a petition under Protection of Women from Domestic Violence Act by the petitioner taking shelter of domestic relationship and domestic violence needs to be considered so that this Act is not misused to settle property disputes. Domestic relationship is defined under the Act in Section 2(f) as under:

"(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."

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'."

This case is squarely covered by the law laid down in Vijay Verma (supra). Accordingly, no fault can be found by the order of the Appellate Court.

For the foregoing reasons, I am not inclined to entertain the present petition filed under section 482 Cr.P.C. Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J

JULY 05, 2018/ab