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

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Judgment reserved on: 16.02.2018

Judgment delivered on: 20.02.2018

+ CRL.M.C. 2304/2016 & Crl. M.A. Nos.9669/2016 & 15253/2017

RAHUL BHARGAVA

..... Petitioner

Through Petitioner in person.

versus

STATE (NCT) OF DELHI & ANR

..... Respondents

Through Mr.Kewal Singh Ahuja, APP along
with SI Karan Pal.

R-2 with her counsel Ms. Priya
Hingorani, Mr. Sarvesh Chowdhary,
Mr.Himanshu Yadav and Ms. Reema
Bhandari, Advs

+ W.P.(CRL) 2787/2016 & Crl. M.A. No.14289/2016

RAHUL BHARGAVA & ORS

..... Petitioners

Through Petitioners in person.

versus

STATE (NCT) OF DELHI & ANR

..... Respondents

Through Mr. Avi Singh, ASC for the State
along with SI Karan Pal.

R-2 with her counsel Ms. Priya
Hingorani, Mr. Sarvesh Chowdhary,
Mr. Himanshu Yadav and Ms. Reema
Bhandari, Advs

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. Petitioner Rahul Bhargava seeks quashing of the complaint filed by respondent No. 2 (Divya Sharma) CC No. 46/1/2016 under Section 12 read with Sections 17, 18, 19, 20, 22 & 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'DV Act'). He also seeks a quashing of the FIR (FIR No.469/2016) registered under Sections 498-A/406 read with Section 34 of the IPC at Police Station Hauz Khas against himself as also his other family members on the complaint of his wife (Divya Sharma).

2. The argument of the petitioner is bordered on his submission that the Court below did not have the territorial jurisdiction to entertain the complaint case under the DV Act as even as per the complainant all acts/incidents of alleged domestic violence were committed outside the territorial jurisdiction of Delhi; not being within the precincts of National Capital Territory of Delhi, the cognizance taken on that complaint is bad; it is liable to be set aside. The same argument has been addressed on the FIR which has also raised the plea of territorial jurisdiction. Submission being that all acts of alleged cruelty were outside the territorial jurisdiction of the NCT of Delhi. Even on merits, the contents of the FIR do not disclose a cognizable offence. The proceedings both in the complaint case as also the FIR have to be quashed.

3. These arguments have been rebutted. Learned counsel for the State is assisted by the learned counsel for the complainant. It is pointed out that the averments in the complaint disclose the incidents of domestic violence which had erupted in Delhi; so also the cruelties (as defined under Section 498-A of the IPC) have been disclosed. No ground is made out to interfere with the orders passed by the Court below. Submissions made by the petitioners can only be decided at the stage of trial. The question of quashing does not arise.

4. Petitioner in support of his submission has placed reliance upon the following judgments of this Court to advance his submission. It is pointed out that in 2011 (1) Crime 496 Harbans Lal Malik Vs. Payal Malik as also in the subsequent judgment of 2010 (118) DRJ 520 Vijay Verma Vs. State of N.C.T. of Delhi & Anr., this Court had noted that where the parties had been staying in a foreign country and the alleged violence committed in a shared household was the incident of violence committed in a foreign country; the question of maintenance of a complaint under the DV Act would not arise; those proceedings had been quashed. Reliance has also been placed upon the judgment reported as 2009 (2) UJ SC 0562 Jitendra Panchal Vs. Intelligence Officer, NCB & Anr. as also AIR 1935 Bom 437 Emperor Vs. Narayan Mudlagiri Mahale to support the same argument.

5. Per contra, learned counsel for the State assisted by the counsel for the complainant has relied upon (2011) 11 SCC 301 Sunita Kumari Kashyap Vs. State of Bihar & Anr as also 2012 (4) SCR 287 Lee Kun Hee Vs. State of Uttar Pradesh to substantiate the argument that such like offences are continuing offences and where such offence is committed in more areas than one, the offence is triable by a Court having jurisdiction over every such area. Thus the prayer made in the petitions be not granted.

6. Arguments have been heard. Record has been perused.

7. Record discloses that the parties i.e. Divya Sharma and Rahul Bhargava had started interaction with one another through the medium of a matrimonial website namely www.Shadi.com. The families of the parties were introduced to one another in November, 2014. The husband and his family were residents of Australia. The interaction was done through a common friend namely one Vijay Kumar who was also a resident of Australia. E-mails were exchanged between the parties. The complainant and the respondent interacted with one another on 26.11.2014. The husband had come to India in December, 2014. Parties met several times between 30.12.2014 to 03.01.2015. The families of the parties had agreed that the marriage would be fixed for 22.04.2015. A rokka ceremony was held on 02.02.2015. The averments in the complaint further disclose that this rokka ceremony was coerced upon the family of Divya Sharma who had no option but to organize this function. The parties entered into a registered marriage on 03.02.2015 at Ghaziabad, UP. A marriage certificate (evidencing this fact) has been issued. This has not been denied. The father-in-law of the girl however refused to pay the visa fee which was required for processing the visa of the complainant to Australia. Ultimately it was the complainant's

father who had to shell out ₹2.61 lacs towards her visa fee for her travel to Australia. E-mail dated 25.02.2015 sent by Rahul Bhargava to his father has been highlighted by the learned counsel for the complainant to advance her submission that even the son was aggrieved by this act of his father. The complaint further discloses that the behavior of the respondent thereafter changed. He became erratic and abusive. The complainant learnt that the respondent was in fact suffering from a bipolar disorder since 2009 and this was probably the reason for his obsessive temperament. The complainant was not interested in continuing with this marriage. She accordingly applied for a cancellation of the marriage certificate on 10.03.2015. Her husband however tried to woo her again. She was persuaded by her father-in-law through e-mails to get the marriage formalities completed on the date which had already been agreed upon between the parties. The complainant succumbed to this persuasion. Parties then had a runaway marriage on 27.05.2015. This was against the advice of the complainant's parents but the respondent's parents who were in Australia had witnessed this on 'skype'. Para 29 of the complaint further discloses that the respondent husband then went back to Australia. A formal wedding was held on 20.07.2015 at Mapple Exotica, Chattarpur, New Delhi. The couple left for Australia on

22.07.2015. The further incidents of domestic violence and cruelties have been detailed in the complaint. The complainant returned to India on 18.10.2015. It is alleged that the husband of the complainant and his family landed up upon her parents' house on various dates between 22.10.2015 to 18.11.2015. During one such visit in October, 2015 the respondent's mother created a scene and told the complainant's mother that their daughter is useless. On 18.11.2015, the respondent and his father came uninformed to the complainant's house and started abusing and misbehaving with her father. The complainant came out of her room. Her husband rushed towards her and held her by hair while continuing to abuse her. He punched her 4-5 times on her head and face which haemorrhaged her left eye and she felt dizzy. This is contained in para 53 of the complaint. The complaint was accordingly filed.

8. The contents of the FIR which is also registered on the complaint of the complainant under Section 498A and Section 406 IPC have also been perused. Apart from the incidents which have been disclosed in the complaint under the DV Act it has been alleged that these acts of cruelties coupled with the demands of dowry raised by the parents of her husband were acts of cruelty; apart from the fact that her father-in-law had refused to

pay the visa money for her travel to Australia, they had made additional demands upon her and her family. The incident of 18.11.2015 has also been highlighted.

9. The Protection of Women from Domestic Violence Act had been promulgated in the year 2005. As per its statement of objects and reasons since the phenomenon of domestic violence had become widely prevalent, this Act had been introduced in addition to the penal provisions contained in Section 498-A of the IPC; this was to enable the civil law to address this phenomenon in its entirety. This Act covers those women who are or have been in relationship with the abuser where both parties have lived together in a shared household. The fact that Rahul Bhargava and Divya Sharma were related to one another through marriage is not in dispute. The fact that they were living together after their registered marriage (on 03.02.2015) is also not in dispute. The husband had gone back only after staying in India with his wife. The dates are not exactly clear but otherwise it is not disputed that after their registered marriage on 03.02.2015 they lived together. The fact that parties had a runaway marriage is again not in dispute. The formal wedding between the parties took place on 20.07.2015. They left for Australia on 22.07.2015. Apart from the incidents of cruelties and domestic

violence relating to episodes which had occurred both in India and in Australia, the details of incidents of October, 2015 & November, 2015 where the husband of the complainant and his family came back to India and both physically and mentally tortured the complainant and her family have already been detailed supra.

10. The definition of 'shared household' as contained in Section 2 (s) of the DV Act; it reads as under:-

“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.”

11. The definition of 'domestic violence' and particularly Explanation I and Explanation II of Section 3 has also been highlighted; economic abuse also comes within the ambit of domestic violence. Learned counsel for the complainant rightly points out that the father of the respondent not agreeing

to pay the visa fee for the travel of the complainant after marriage to Australia was a coercive financial burden upon the father of the victim and he had no choice but to pay their visa fee.

12. Section 27 of the DV Act reads as under:-

“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 this Act shall be enforceable throughout India.”

13. The jurisdiction of the Magistrate has been detailed. The aggrieved person which in this case was the complainant and being a resident of Delhi where the incidents/acts of domestic violence (noted supra) had occurred were within the territorial jurisdiction of Delhi. The averments in the FIR also disclose the manner in which the cruelties have been levelled upon the

complainant. The territorial jurisdiction of this Court to entertain this complaint and FIR is prima-facie writ large. On merits, the question as to whether the averments made by the complainant were the gospel truth or not can only be decided after the parties are relegated to trial. The Court at this stage cannot grant the prayers made in the present petitions. There is no case made out for quashing either the complaint (filed by the complainant under the DV Act) or the FIR registered at the behest of the complainant (under Sections 498-A/406/34 of the IPC). The powers under Section 482 of the Cr.PC have to be exercised sparingly and only if there is no perversity in the order of the Court below. This Court finds that there is no such perversity.

14. Both the petitions are without any merit. Dismissed with costs quantified at Rs. 25000/-.

INDERMEET KAUR, J

FEBRUARY 20, 2018

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