



\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 427/2023 & CRL.M.A. 9887/2023**

VINEET AGARWALPetitioner
Through: Mr. RD Maurya, Adv.
(through VC)

versus

THE SATE (NCT OF DELHI)Respondent
Through: Mr. Raj Kumar, APP for
the State with Mr. Neel
Nayyar, Mr. Shubham
Sharma, Mr. Ashutosh
Arya, Mr. Arun Vats, Mr.
Tarun Vijayan & Mr.
Anmol Sharma, Advs.
SI Udai Singh, PS- Saket

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
22.07.2024

%

1. The present petition is filed challenging the judgment dated 09.12.2022 (hereafter the '**impugned judgment**') passed by the learned Principal District and Sessions Judge (**PDSJ**), South District, Saket in CIS CA No. 146/2022 titled as '*Vineet Agarwal v. Puja*'.

2. The learned PDSJ, by the impugned judgment, dismissed the appeal preferred by the petitioner against the order dated 22.04.2022 (hereinafter the '**impugned order**') passed by the learned Metropolitan Magistrate (**MM**), Mahila Court (South), Saket.

3. By the impugned order, the learned MM dismissed the petitioner's challenge to the maintainability of the complaint being CTC No. 6161/2020 filed by the respondent under Section 12 of the Protection of Women from Domestic Violence Act,

CRL.REV.P. 427/2023

Page 1 of 5



2005 (hereinafter the ‘DV A

4. It is alleged by the respondent that she along with her minor daughter were thrown out of the matrimonial house, located at Saket, Delhi, where she claims to have 50% ownership. She claimed that at the time of filing the complaint, she was residing at C-158, Sarvodaya Enclave, New Delhi-110017, which is within the territorial jurisdiction of the learned Trial Court.

5. The learned counsel for the petitioner submits that the complaint preferred by the respondent is not maintainable primarily, on the ground of double jeopardy.

6. Firstly, he submits that a domestic violence case bearing No. 21-2-09675-8 is already pending adjudication before the Superior Court of Washington for King County and a protection order was passed as well.

7. Secondly, he submits that the respondent being a permanent resident of the United States of America (hereinafter ‘USA’), cannot institute a complaint in Delhi and consequently, the courts in Delhi lack jurisdiction. He submits that both the petitioner and respondent are green card holders and permanent residents of the USA. They have one daughter aged 18 years of age. In 2020, owing to temperamental and religious differences between the parties, he filed a divorce petition before the Superior Court of Washington for King County. Thereafter, the respondent shifted to India and filed the complaint which forms the subject matter of the present proceedings.

8. Article 20(2) of the Constitution of India embodies the doctrine of double jeopardy, which ensures that no person is prosecuted and punished for the same offence more than once when he has been tried by a competent court.



9. The Hon'ble Apex Court in the ***State Of Mizoram v. Dr. C. Sangnghina***: 2019 (13) SCC 335 laid down the ingredients that need to be satisfied before invoking the defence of double jeopardy. It was held as under:

“15. Under Article 20(2) of the Constitution of India, no person shall be prosecuted and punished for the same offence more than once. Section 300 Cr.P.C. lays down that a person once convicted or acquitted, cannot be tried for the same offence. In order to bar the trial of any person already tried, it must be shown – (i) that he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts; (ii) that he has been convicted or acquitted at the trial; and (iii) that such conviction or acquittal is in force. Where the accused has not been tried at all and convicted or acquitted, the principles of “double jeopardy” cannot be invoked at all.”

(Emphasis Supplied)

10. It is observed that conviction or acquittal in one of the proceedings is an essential consideration, and defence of double jeopardy cannot be invoked in its absence.

11. In the present case, the proceedings before the US Court are stated to be pending. Consequently, the learned PDSJ and the learned MM have rightly held that the principle of double jeopardy cannot be invoked at this stage.

12. The learned ASJ also rightly observed that whether the alleged incident of domestic violence pertains to occurrence in US would be examined during the course of the trial.

13. In so far as the issue of jurisdiction before the Delhi court is concerned, it is not disputed that the parties own a joint house in J-Block, Saket and the respondent visits and stays in the said house in Delhi. The same is noted by the learned PDSJ in the impugned judgment. The learned MM also noted that the



respondent is residing within the jurisdiction of PS Malviya Nagara and whether or not she is actually residing in the jurisdiction is a matter of trial.

14. The Hon'ble Apex Court in ***Darshan Kumari v. Surinder Kumar*** : 1995 Supp (4) SCC 137, held that Section 126 of CrPC, for the purpose of conferring territorial jurisdiction, does not require that the applicant is a permanent resident of a place. Even a temporary residence of the aggrieved party confers territorial jurisdiction to the place of residence.

15. A coordinate bench of this Court in ***Sharad Kumar Pandey v. Mamta Pandey*** : CrI. M.C. 4044/2009, has analysed the meaning of temporary residence under the DV Act:

“9. All legislative enactments on matrimonial disputes or custody matters make ordinary residence or residence or the place where parties lived together or the place of cause of action as a ground for invocation of jurisdiction of the Court. Domestic Violence Act is the first Act where a temporary residence of the aggrieved person has also been made a ground for invoking the jurisdiction of court. The expression “residence” means “to make abode” - a place for dwelling. Normally place for dwelling is made with an intention to live there for considerable time or to settle there. It is a place where a person has a home. In Webster Dictionary, the residence means to dwell for length of time. The words “dwelling place” or abode are synonyms. A temporary residence, therefore, must be a temporary dwelling place of the person who has for the time being decided to make the place as his home. Although he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be place of her residence and this cannot be considered a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing a case against another person.

10. I, therefore, consider that the temporary residence, as envisaged under the Act is such residence where an aggrieved person is compelled to take shelter or compelled to take job or do some business, in view of



*domestic violence perpetrated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home. This temporary residence does not include residence in a lodge or hostel or an inn or residence at a place only for the purpose of filing a domestic violence case. **This temporary residence must also be a continuing residence from the date of acquiring residence till the application under Section 12 is disposed of and it must not be a fleeing residence where a woman comes only for the purpose of contesting the case and otherwise does not reside there.***

16. The respondent has categorically pleaded before the learned Trial Court that though she is a permanent residence of the USA, however, temporarily resides at C-159, Sarvodaya Enclave, Delhi and also at J-104, Saket, Delhi and at the time of filing of the complaint by the respondent, she was temporarily residing in Delhi.

17. The learned PDSJ rightly upheld the impugned order while observing that whether the respondent resides outside India or not is a matter of trial requiring a detailed analysis of the complaint.

18. At the time of filing of the petition, the contention of the respondent of temporarily residing within the jurisdiction of Delhi, is to be taken on a demurrer.

19. I, therefore, find no infirmity in the impugned judgment passed by the learned Trial Court.

20. The petition is, therefore, dismissed.

AMIT MAHAJAN, J

JULY 22, 2024

"SS"