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

% *Date of decision: 17th January, 2025*

+ **CRL.M.C. 332/2021 & CRL.M.A. 1699/2021**

SEBASTIAN JERONIMO PEREIRA & ANR.Petitioners

Through: Ms. A. Reyna Shruti, Advocate.

Versus

ALISHA DAVIDRespondent

Through: None

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+ **CRL.M.C. 2169/2022 & CRL.M.A. 9194/2022**

SEBASTIAN JERONIMO PEREIRA & ANR.Petitioners

Through: Ms. A. Reyna Shruti, Advocate.

Versus

STATE (NCT) OF DELHI & ORS.Respondents

Through: SI Himanshu, PS Maidan Garhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.C. 332/2021

1. The Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C'*) has been filed for quashing of CTC No.6647/2020 filed by the Respondent, Alisha David under Section 12(1) read with Section 18, 19, 20, 21 and 22 of the Protection of Women



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against Domestic Violence Act, 2005 (*hereinafter referred to as 'DV Act'*) against the Petitioners.

2. The Petitioner No.1, Sebastian Jeronimo Pereira got married to Respondent, Alisha David on 21.01.2015 under the Special Marriage Act, 1954. From their wedlock, one son, Schneiden Pereira was born on 18.03.2016, while the Respondent was in Darjeeling.

3. It is claimed that soon after the marriage, there were frequent quarrels between the parties. In March, 2015 the Respondent went away to Hyderabad without informing Petitioner No.1. He eventually found out that she was based in Hyderabad, from her friends. She returned after about 4-5 days, but again in October, 2015 she stayed with her friend at Bhayandar and eventually moved to her mother's house in Darjeeling. It is claimed that despite repeated efforts by Petitioner No.1 to reconcile the differences and to bring her back, the Respondent did not meet any success. Eventually, Petitioner No.1 went to Darjeeling and brought the Respondent and the child back to Mumbai, on 04.02.2017.

4. The Respondent acted abusively on 31.05.2017 and harassed the Petitioners including his mother/Petitioner No.2, who is an aged lady. While Petitioner No.1 was at work, the Respondent along with the child left for Gurgaon where her brother resides, without informing Petitioner No.1.

5. Amidst attempts of reconciliation, Petitioner No.1 made sure that the Respondent and the child were well taken care of by regularly transferring money to the Respondent for their expenses. However, on 10.05.2018 the Respondent came back from Delhi and created a scene at the work place of Petitioner No.1 resulting in loss of his job. Thereafter, the Respondent



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handed over the custody of the child to Petitioner No.1 at Police Station Mahim (East) and since then the child has been in custody of Petitioner No.1 and going to school in Mumbai.

6. The Petitioner No.1 also filed a *Suit for Permanent Injunction* in May, 2018 to restrain the Respondent from taking the custody of the child. Eventually, on 28.03.2019, Petitioner No.1 and the Respondent entered into *Consent Terms* in Petition No.53/2018 wherein it was agreed that the child would remain in the custody of Petitioner No.1 while Respondent would visit the child in Court premises in accordance with the Terms agreed between the parties.

7. On 26.02.2020, the Respondent came to visit Petitioner No.1 for a short while and decided to live with Petitioner No.1 and the child. On 14.03.2020, she brought him back to Mumbai, but due to complete lockdown imposed after a few days, he was constrained could not ask her to leave but to allow her to continue to live in his house. However, she continuously harassed the Petitioners and did not take any interest in the upbringing of the child.

8. On 01.10.2020, the Respondent took the child from Petitioner No.1 on the pretext of taking him to park, but came to Delhi without informing him resulting in extreme alarm as the child did not return home. He filed a Missing Person Complaint with MHB Station in Borivali but he subsequently came to know that the child had been wrongly taken away by the Respondent. He asserted that her coming to stay in Mumbai from 14.03.2020 was a wilful ploy to take the child out of his custody.

9. On 06.10.2020, the Petitioner No.1 filed an Application in Family



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Court Mumbai for restoration of custody of the child and also filed an Application seeking directions to the Respondent to bring back the child to Mumbai. He was allowed virtual meeting with the child, but the Respondent failed to comply and a Contempt Petition was filed by the Petitioner No.1.

10. Eventually, the Respondent filed a Transfer petition, T.P.(C) NO.65 of 2021, before the Apex Court for transfer of the Suit for Permanent Injunction from the Family Court, Mumbai to Delhi, but the same got dismissed *vide* Order dated 03.02.2022.

11. Thereafter, on 22.12.2020, the Respondent has filed the Complaint under D.V. Act seeking the following reliefs :

- (i) Protection order under Section 18 of the Act;
- (ii) for restraining the Petitioner from committing any act of Domestic Violence;
- (iii) to pass Order under Section 19; and
- (iv) for monetary relief/maintenance.

12. She also lodged a Complaint under Section 498A of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC, 1860'*) which was another counterblast to the Petitioner's Application for restoration of Custody and the Contempt Petition as there was no earlier Complaint lodged by the Respondent with the Police or otherwise about any such alleged acts. In the interim, the Family Court, Mumbai allowed the Petitioner's Application *vide* Order dated 11.01.2021 and eventually the custody of the child was returned to him on 16.01.2021.

13. The Petitioner has sought the quashing of this Petition on the ground that the proceedings under the D.V. Act have been initiated maliciously as a



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counterblast due to her private and personal grudges against Petitioner No.1. She in fact, committed Contempt of Court by taking away the custody of child from him; her filing of Petition is an abuse of process of the Court. It is claimed that the Petition has been filed only to harass and cause inconvenience to him. He is residing in Mumbai and is a primary caregiver of the child and is taking care of his day to day activities and his schooling. The Petitioner cannot appear before learned M.M. in Delhi without significant distress to the child. The Petitioner No.2 is an aged lady of 70 years and is a patient of asthma, which renders her more vulnerable to Covid-19 and it is difficult for her to travel.

14. Furthermore, the Complaint has not been filed within one year of alleged Domestic Violence. The Complaint has been filed on 22.12.2020 and is *barred by limitation under Section 468 of Cr.P.C.*

15. The Complaint is being filed belatedly 2½ years after the alleged act of violence and that too only because the custody of the child was restored to Petitioner No.1 in *Consent Terms* of 28.03.2019.

16. Reliance has also been placed on Inderjit Singh Grewal vs. State of Punjab, (2011) 12 SCC 588, wherein the Supreme Court has held that filing of a Complaint under Section 12 of the D.V. Act beyond the limitation period given in Section 468 of Cr.P.C is the abuse of the process of Court. Section 28(1) of D.V. Act specifically provides that all proceedings under Section 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of Code of Criminal Procedure, 1973. *One year limitation period* has been provided for offences punishable with imprisonment for a term not exceeding one year in Section 468 of Cr.P.C.



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No allegations whatsoever of Domestic Violence have been made in 2½ years preceding the Complaint. She voluntarily separated from Petitioner No.1 and moved to Delhi for 2 years. She herself voluntarily came to reside with the Petitioner No.1 in March, 2020. As such she has ceased to be an aggrieved person in the eyes of law.

17. Moreover, the entire allegations made in the Complaint are untrue and thus, the present Petition is liable to be quashed.

18. Furthermore, proceedings under Section 498A of IPC, 1860 have also been initiated against the Petitioners frivolously with no basis from proceeding against them.

19. A reference has been made to State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335, wherein the Court has observed that “*the criminal proceedings may be quashed under the inherent powers of the Court, where a criminal proceeding is manifestly attended with malafide and/or the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge*”.

20. Similarly, in Gyan Singh vs. State of Punjab, (2012) 10 SCC 330, it has been observed that inherent powers of the Court must be exercised to end justice and to prevent abuse of process of law.

21. Hence, the Prayer is made that the Petition under D.V. Act be quashed.

22. ***The Respondent in her Counter-Affidavit*** has taken the *Preliminary Objections* that from the bare perusal of the Petition, it is evident that the Petitioners have not approached this Court with unclean hands and has



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suppressed material facts. The Petition has been filed with an ulterior and oblique motive to abuse the process of law by seeking quashing of Domestic Violence case in order to intimidate and/or pressurize the Respondent to agree to the larger designs of the Petitioners to prevent her from availing the remedies available to her under law. There are specific allegations of demand of dowry and entrustment made in the Complaint aside from physical and mental cruelty. The averments in the Complaint *prima facie* disclose the *commission of domestic violence and mental cruelty* by the Petitioners for which various Complaints have been made to the Mumbai Police, Gurugram Police and Delhi Police.

23. It is asserted that soon after the marriage, the Petitioner No.1 treated the Respondent with utmost cruelty which she suffered in silence thinking that the acts of Petitioner No.1 were attributable to his being drunk since he was a habitual alcohol consumer.

24. In March, 2015 the atrocities increased to such an extent that she was left with no option but to lodge a Police Complaint on 31.03.2015 for the first time against the Petitioners. It is further claimed that because of the persistent demands of dowry by the Petitioners, she took up a private job, but after some time she conceived and required extra care and because of her complications, she left the job. This infuriated the Petitioners and they started neglecting her and taunting her on petty issues, thereby causing utmost cruelty. After the birth of the child, on the persuasion of the Petitioners and their promise that they would not treat her with cruelty, she along with the child, returned to matrimonial home in February, 2017 and they all resided in rented accommodation for about 2 months till 16.04.2017



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after which they again shifted to their own house. However, the harassment and cruelty commenced again and she was compelled to leave the matrimonial home on 31.05.2017, when she went to her friend's house in Thane, from where she went to her brother's house in Gurugram, Haryana on 02.06.2017.

25. She further asserted that she had been lured into writing a Letter and to give temporary custody of the child to Petitioner No.1, who thereafter filed a Petition for Permanent custody of child in Family Court, Mumbai and an Order of Injunction against the Respondent from entering the house of the Petitioners. Eventually when she went to meet the child, he refused to recognize her. Thereafter, she suffered from stress attack and severe pain in chest and was taken to Family Care Hospital, Mahim, Mumbai, but none of the Petitioners came to enquire about her health. With the intervention of *Padri*, she was allowed to see her child after 8 days. The Police complaint dated 25.12.2018 was made by her.

26. The Respondent submits that though she had filed a Complaint dated 18.04.2019 before the CAW Cell, Gurugram, Haryana, but the Police Officials have failed to take any notice and the Petitioners failed to appear before the CAW Cell. Rather, she was told to withdraw her Complaint and to go back to the matrimonial home. On the assurances from Petitioner No.1 that he would also withdraw the child custody case, she withdrew her Complaint on 27.05.2019. After the withdrawal of her Complaint, she was allowed to stay in the house of the Petitioner, but when she refused to give an Affidavit that she had filed a false Complaint before CAW Cell, Gurugram, she was again thrown out of the matrimonial home and she came



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back to her brother's house on 24.07.2019.

27. It is asserted that there are specific averments of allegations of Domestic Violence made in the Complaint and it is not liable to be quashed.

28. **On merits**, she has reiterated the facts as narrated above and has submitted that the present Petition is *mala fide* and abuse of process of law and is liable to be dismissed.

29. **Submissions heard and record perused.**

30. The Petitioner No.1-husband has sought the quashing of the CTC No. 6647/2020 filed under Sections 12(1) read with Sections 18/19/20/21/22 of the DV Act.

31. To understand the nature and scope of the proceedings undertaken in the DV Act, it is pertinent to observe that *United Nations, The Committee on the Elimination of Discrimination against Women (CEDAW)* in its recommendations had recommended that the States parties to act to protect women against violence of any kind occurring within the family. The phenomenon of domestic violence in India is widely prevalent, but remains invisible in public domain. The civil law does not address this phenomenon in its entirety. In order to provide a remedy in the civil law for the protection of women from being victim of domestic violence and to prevent occurrence of domestic violence in the society, the DV Act was introduced in the Parliament.

32. In the Statement of Objects and Reasons as well, it has been observed that the DV Act has been enacted to honour its commitment of India to CEDAW. It was stated that presently a woman subjected to cruelty by her husband or his relatives, has the remedy under Section 498A of IPC, 1860;



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the civil law does not address this phenomenon in its entirety. Therefore, the DV Act was enacted to provide for a remedy under the civil law which is intended to protect the woman from being a victim of domestic violence.

33. From the Statement of Objects and Reasons, it is abundantly clear and needs no further elaboration that the remedies provided under the DV Act are civil remedies and not criminal.

34. A reference may be made to Section 28 of the DV Act which provides for the procedure. While its Sub-Clause (1) states that the DV proceedings shall be governed by the provision of Cr.P.C., 1973, but Sub-Clause (2) empowers the Court to lay down its own procedure for disposal of the Application under Section 12 of the DV Act or Sub-Section 2 of Section 23 of the DV Act.

35. It is evident that it is an empowering provision which makes provisions of Cr.P.C., 1973 applicable for summoning and ensuring the presence of the Respondent and such other aspects, but while considering the Application under Section 12 of the DV Act for adjudication on merits, essentially the civil procedure is followed which may be improvised or defined by itself.

36. This aspect was considered in Kunapareddy @ Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari & Ors., (2016) 11 SCC 774, wherein the Apex Court referred to the *Statement of Objects and Reasons* to observe that the proceedings are essentially civil in nature. Also, considering the Section 28, it was held that the Legislature incorporated Sub-Section (2) of Section 28 of the DV Act by keeping a defined purpose in mind Section 28 of DV Act in making Cr.P.C., 1973 procedures



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applicable to the DV Act, but the proceedings essentially are civil in nature as is evident from the fact that even the amendment of Complaint is allowed. Further, the reliefs granted by the Court are absolutely civil in nature.

37. In the case of Kamatchi vs. Lakshmi Narayanan, (2022) 15 SCC 50, the Apex Court observed that essentially, the proceedings under Section 12 of the DV Act are initiated on filing of a Complaint which is followed by a Reply by the Respondent, and after considering the rival pleadings and also if the Court so desires, taking evidence by way of Affidavits, the Court may pass appropriate Orders under Section 12 of the DV Act which may be for protection. The procedure thus, followed also indicates that the proceedings are essentially civil in nature.

38. Having so observed that the proceedings and remedies under DV Act are Civil, ***the first contention of the Petitioners may be considered, whether the Complaint is barred by limitation.*** This aspect was considered by the Apex Court in the case of *Kamatchi* (supra), wherein it was observed that the Complaint under Section 12 of the DV Act being essentially civil in nature, Section 468 of Cr.P.C., 1973 providing for limitation does not get kicked in. It is only when *there is a breach of Order of Protection* passed under Section 12 of the DV Act and it constitutes the offence under Section 31 of the DV Act that the period of limitation as prescribed under Section 468 of Cr.P.C., 1973 would become applicable from the date of commission of such offence. Insofar as filing of an Application under Section 12 of the DV Act is concerned, there is no starting point for limitation for preferring the Application under Section 12 of the DV Act. The starting point arises only and only after there is a breach of Protection Order passed under



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Section 12 of the DV Act.

39. It is, therefore, abundantly evident that there is *no limitation for filing of the Application under Section 12 of the DV Act*. The first objection of the Petitioners that the present Application under S.12 DV Act is barred by limitation, is without merit.

40. ***The second limb of the Argument is that the present Application under DV Act filed by the Respondent, is vexatious, malicious and a retaliatory measure*** to Application for grant of custody of the child filed by him. It is asserted by the Petitioner that there are no averments made which could justify the filing of an Application under Section 12 of the DV Act.

41. To appreciate this contention of the Petitioners, it is pertinent to refer to ***Section 3 of the DV Act*** which defines ***Domestic Violence***. It provides that any act, omission or commission or conduct of the Respondent *which harms or injures or endangers the health, safety and well-being of the aggrieved person*, would constitute domestic violence. ***Explanation I*** provides the term domestic violence would include physical abuse, sexual abuse, verbal and emotional abuse, including the ridicule, humiliation, repeated threats of physical pain; economic abuse which includes deprivation of the economic or financial resources, disposal of household effects and prohibition to continued access to resources or facilities by the aggrieved person.

42. This definition of *Domestic Violence* is comprehensive and includes not only physical abuse but also mental and emotional abuse. Most importantly, it also includes economic abuse. Further, the reliefs which a person may seek under the DV Act are not limited only to monetary reliefs,



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but also extend to custody orders in respect of the child, compensation for the injury or physical, mental, emotional distress caused to the person; most importantly to *Protection Orders* and *Residence Orders* i.e. *a right to shared household*.

43. In the present case, the Respondent-wife has sought reliefs for *Protection, Residence Order, Monetary Relief, Custody of the child as well as Compensation Order* in her Complaint under the DV Act.

44. The Petitioner has asserted that there is no *prima facie* evidence of violence of any kind to which the respondent has been subjected and the DV petition is not maintainable.

45. In this regard, it would be pertinent to refer to Section 17 of the DV Act which provides for *right to reside* in a shared household while Section 19 deals with *Residence Orders* which could be passed by a Magistrate. Sub-section (1) of Section 17, which begins with a non-obstante Clause, states that notwithstanding anything contained in any other law for the time being in force, *every woman in a domestic relationship shall have the right to reside in the shared household*, whether or not she has any right, title or beneficial interest in the same.

46. What is thus, evident is that while all other reliefs are available to an “aggrieved person” thereby implying that the person should have been a victim of domestic violence, but so is not the pre-requisite for Right of Residence under Section 17 of the DV Act.

47. In this regard, reference be made to the Judgement of Apex Court in the case of Prabha Tyagi vs. Kamlesh Devi, (2022) 8 SCC 90 wherein it was observed that the right of residence of a mother, daughter, sister, wife,



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mother-in-law and daughter-in-law or such other categories of women in a domestic relationship have the right to reside in a shared household de hors a right, title or beneficial interest in the same. The right of residence is guaranteed under Sub-Section (1) of Section 17 and she cannot be evicted, excluded or thrown out from such a household even in the absence of there being any form of domestic violence i.e. *even if she is not an 'aggrieved person'*.

48. Therefore, even if the contention of Petitioner is accepted that there was no domestic violence, then too the right to claim residence is still maintainable.

49. Undeniably, the parties got married on 21.01.2015 and there may have been chequered history of parties separating since 06.11.2015, but even thereafter, the parties have been meeting and have been regularly in touch. It is not denied that the Respondent had come to the house of the Petitioner-Husband where she had stayed in his house during the COVID-19 period. Therefore, at this stage, it cannot be said that there is no merit in the Complaint. After considering the totality of the circumstances, this is not an appropriate stage for the Court to consider the merits of the averments made and to observe that outrightly no cause of action is disclosed in the Petition and to assess if the allegations are vague and whether any relief is warranted on the merits of the case.

50. As already noted above, it is essentially a civil proceeding and it is for the learned Magisterial Court to decide on merits whether the Respondent-Wife is entitled to any relief or any Orders as sought by her in her Petition under Section 12 of DV Act. It cannot be held at this stage that the



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proceedings are vexatious and liable to be quashed.

51. There is *no ground made out for quashing of the CTC No.6647/2020* filed by the Respondent at this stage.

52. However, the Petitioner-Husband is at liberty to agitate his contentions on merit before the learned Metropolitan Magistrate who may consider the same and decide the Petition under Section 12 of the DV Act.

53. Accordingly, the present Petition along with pending Application(s), if any, is disposed of.

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54. A separate Petition has also been filed under Section 482 of Cr.P.C on similar grounds for quashing of the FIR No.370/2021 dated 24.12.2021 registered under Sections 498A/323/506 and 34 of IPC, 1860, Police Station Maidan Garhi, Delhi, filed by Respondent, Alisha David.

55. The contents of the Complaint on which the present FIR was registered on 24.12.2021 are essentially identical to the averments as detailed above.

56. The Petitioner-Husband has submitted that there are no averments made out from the allegations made in the Complaint and no *prima facie* case is made out under Sections 498A/323/506/34 of IPC, 1860 and the FIR is liable to be quashed.

57. At the outset, the reference may be made to Section 498A of IPC, 1860 which reads as under: -

“Section 498A — Husband or relative of husband of a woman subjecting her to cruelty. — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which



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may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

58. The ingredients for an offence to be made out under Section 498A of IPC, 1860 are that there has to be cruelty inflicted against the victim which either drives her to commit suicide or cause grave injury to herself or to lead such conduct on the would cause grave injury and danger to life, limb or health.

59. The second part of this Section refers to harassment with a view to satisfy an unlawful demand for any property or valuable security raised by the husband or his relatives.

60. In the case of Dara Lakshmi Narayana and Others vs. State of Telangana and Another, 2024 SCC OnLine SC 3682, the Apex Court while dealing with the components of Section 498A of IPC, 1860 and to ascertain whether the same are attracted on vague allegations raised by the wife, observed that the contents of the Complaint may be assessed to see if there is any kind of cruelty as contemplated in Clause 1 or if there is any harassment for dowry as contemplated in Clause 2 is made out. If the



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allegations in the FIR are found to be vague and ambiguous and lack precise allegations which are alleged after the Notice of Divorce, then it may be concluded that the FIR has been lodged as a retaliatory measure intended to settle the score with the husband and his relatives. In such a situation, the quashing of the FIR is justified.

61. In Jayedeesinh Pravinsinh Chavda and Others vs. State of Gujarat, 2024 SCC OnLine SC 3679, the Apex Court again while considering the guilt of the husband under Section 498A of IPC, 1860 observed that cruelty simplicitor is not enough to constitute the offence under Section 498A of IPC, 1860; rather it must be done either with an intention to cause injury or to drive the person to commit suicide or with an intention to coerce her and her relatives to meet unlawful demands. Mere cruelty is not enough to constitute the offence.

62. A reference was made to the aforementioned judgments in the case of Digambar and Another vs. The State of Maharashtra and Another, 2024 INSC 1019, wherein it was reiterated that where the FIR or the Complaint even if taken on the face value and accepted in their entirety, do not *prima facie* constitute a case against the accused, the quashing of proceedings would be justified. Only stating cruelty has been committed by the Appellants, would not amount to an offence under Section 498A of IPC, 1860.

63. It is apposite to refer to the case of Dara Lakshmi Narayana and Others, (supra), wherein the Apex Court while discussing the objective of Section 498A of IPC, 1860, also raised concerns about its misuse in matrimonial disputes. It was observed that Section 498A of IPC, 1860 was



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intended to curb cruelty inflicted on the woman by her husband or his family, ensuring swift intervention by the State. However, the recent times have seen that a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage. There is a growing tendency to misuse the provisions like Section 498A of IPC, 1860 as a tool for unleashing personal vendetta against husband and his family members. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Many a times, recourse is taken to Section 498A IPC, 1860 only to seek compliance of unreasonable demands of a wife. The Courts, therefore, time and again have cautioned against prosecuting the husband and his family members in the absence of a clear *prima facie* case against them. Section 498A of IPC, 1860 was only intended for the protection of woman subjected to cruelty, but cannot be permitted to be misused by her, for which the facts of each case may be closely scrutinised.

64. *In the light of the aforesaid discussion, the facts of the present case may now be considered.*

65. The Petitioner-Husband and the Respondent/Complainant-Wife who met through a matrimonial site i.e., “*Shadi.com*”, got married on 21.01.2015 under the Special Marriage Act, 1954 before the Registrar of Marriages, Old Customs House, Mumbai.

66. According to the Complainant Wife, she immediately thereafter went to reside in her matrimonial home in Mumbai along with her husband and mother-in-law. She asserted that during the initial meetings prior to October,



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2014, the Petitioner-Husband and his family members appeared to be progressive and morally sound who claimed that they believed in simple living and high thinking. They were inclined in promoting education for women in the family and were against the dowry, gifts and flamboyant marriage with pomp and show. Impressed by their high moral values and character, she got married to the Petitioner-Husband. However, gradually, she saw these values starting to fade.

67. According to her averments made in the FIR, when she stepped into the matrimonial home, her Mother-in-Law started showing her quarrelsome nature towards her. The Mother-in-law and the Petitioner-Husband wanted to fetch more dowry. One day, the Petitioner-Husband called up the father of Respondent-Wife and disrespected him by saying demeaning things like he was getting much better proposals, but he thinks that he made a mistake by choosing this marriage proposal over the other one. He further made numerous derogatory statements amongst which was *“me and my family did not meet this social and financial status as we did not give costly gifts, jewellery and clothes and performed the marriage like paupers”*. The mother-in-law also talked to her in a taunting manner and passed derogatory remarks towards her father in the presence of entire family by saying that *“what kind of a father would seek other people’s help to get his daughter married, such people should in the first place not have children specially daughter”*.

68. Such derogatory remarks made the Complainant-Wife feel very hurt and embarrassed before the entire family. Whenever she approached the Petitioner-Husband about such conduct of his mother or that her father was



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insulted in front of entire family, the Petitioner-Husband conveniently sided with his mother and told her not to interfere in whatever discussions happen between their respective parents.

69. The Petitioner-Husband also supported his mother by saying that his mother's opinion was not wrong and any respectable person would make sure that he is able to get the daughter married out of his own pocket according to the wishes of the family of the groom.

70. It is further asserted that the mother-in-law and the Petitioner-Husband also asked her to bring cash from her father as they wanted to buy a bigger house and a car. She, therefore, suggested that she would do a job and would give entire salary to them. She took the private job in July, 2015 but she conceived and eventually had to leave the job.

71. The above allegations made by the Respondent-Wife, *firstly* are vague and general and do not give any specific dates or occasions when such alleged conversations have been made. *Secondly*, the said comments even if made may not be in good taste, but by no interpretation can it be termed as an act of cruelty as envisaged under Section 498A of IPC, 1860.

72. Furthermore, she also claimed that she told the Petitioner-Husband and the Mother-in-Law about her pregnancy, they instead of getting excited, retorted that they did not need child as they cannot afford the expenses of the child.

73. The Respondent-Wife further alleged that rather than taking care of her during her pregnancy, they mentally harassed her leading to her medical condition getting deteriorated. Left with no option, she went to live with her parents in Darjeeling on 06.11.2015. The child was born on 18.03.2016 and



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thereafter, she returned to the matrimonial home on her own in February, 2017.

74. According to the Complainant-Wife, when she gave the information about the birth of the child, the Petitioner-Husband came to see the baby finally on 19.03.2016, but not thereafter. She was then pressurised to return to Mumbai and was again pressurised to take up a job even though the son was barely 11 months old. When she expressed her disinclination, she was thrashed by the Petitioner-Husband on the instigation of the mother-in-law. She further claimed that every now and then, she was taunted and harassed on petty things and humiliated for not bringing sufficient dowry. At times, she was not given sufficient food and was told by the Mother-in-Law that the house belonged to her and not to the respondent.

75. From the said allegations also, no such act of cruelty is made out which could attract the ingredients of Section 498A of IPC, 1860.

76. The Complainant-Wife had further asserted that the Petitioner-Husband took her and their child to a rented accommodation on 16.02.2017 where they lived till 16.04.2017 i.e., for two months and thereafter returned to the matrimonial home for some time. Thereafter, she was thrown out along with her son at the instigation of the Mother-in-Law and Sister-in-Law. She repeatedly requested to return to matrimonial home as she was not in a position to pay the rent or bear the expenses of the child, but the conduct did not improve and cunningly got rid of the responsibility of the child and the Complainant-Wife.

77. She further claimed that she went to live with her friend, Sonal Dass at Thane. Her friend informed about her whereabouts to the Petitioner-



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Husband, but he outrightly declined to take her back unless she rubbed her nose in the feet of the mother-in-law. She, therefore, decided to leave and went to Gurugram, Haryana along with the child to her brother's house on 02.06.2017. After sometime, she took a rented accommodation as there was little space in the brother's house.

78. She stated that on 10.05.2018, she along with her son went to the matrimonial home in Mumbai as the Petitioner-Husband had asked her to discuss the issues. The moment she reached Mumbai, the Petitioner-Husband snatched the child from her and threw her out from the house. She reported the matter to the local Police where they had lot of arguments and the Petitioner-Husband agreed to get the custody of the child for the two months from May to June, 2018 and to return the custody in first week of July, 2018. The Petitioner-Husband also promised not to object to her meeting the child. According to her, she visited the house of the Petitioner-Husband on 24.12.2018 to take the child back where she met the Sister-in-Law who had come to see the parents, but she shut the door on her face by saying that she did not know her and she would not let her meet the child unless the demands were fulfilled.

79. The Complainant-Wife had claimed that due to the humiliation and the stress, she suffered severe chest pain and went for a check up to Family Care Hospital, Mahim, Mumbai. She informed the hospital Authority to inform her husband, but he did not come to see her. In this regard, she has exhibited the Medical Document as Annexure R-3, whereby it has been written that she had complaint of Chest pain since evening. She had generalised weakness, whole body pain, no spike of fever, nausea/vomiting



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but no history of any major illness. She was prescribed some medicines. The medical document does not reflect that she was suffering from a “stress attack”.

80. Thereafter, on 18.05.2020, the Petitioner-Husband filed a Custody Petition before the Family Court Bandra, Mumbai and she was dragged from Delhi to attend the proceedings at Mumbai during the COVID-19 period. She stayed in the matrimonial home and left along with the son on 01.10.2020. This also does not show any act of cruelty.

81. It was thus, asserted that such conduct of the Petitioner-Husband and his family members has caused her immense mental, emotional torture and harassment and they may be punished for the offences under Section 498A/323/506/34 of IPC, 1860.

82. From all these averments even if they are admitted on the face value, what emerges is that the parties had matrimonial disputes, consequent to which the Complainant-Wife left the matrimonial home way back on 16.11.2015. Thereafter, she came to live in the matrimonial home for a little while in 2016 after the child was born and also during Covid-19 period. Thereafter, they tried to live together, but things did not work out.

83. It is clear that these are not specific averments of there being any dowry demands or of cruelty of the kind that would endanger the Respondent-Wife’s life, limb or safety or would drive her to commit suicide. While she has asserted that there were dowry demands, but there is no specific dowry demand rather her own averment shows that the mother of the Petitioner-Husband was making remarks that if the father of the Respondent-Wife did not have enough money to marry the daughter, they



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should not have a daughter.

84. There is no *prima facie* evidence to show that such alleged remarks were made but even if it is accepted to be true, it only reflects that it was a simple marriage performed under the Special Marriage Act, except from using the word 'harassment' on account of dowry, there are no specific details of any kind of dowry harassment.

85. It is also pertinent to observe that the Custody Petition got filed by the Petitioner-Husband on 01.10.2020 which was responded by the Complainant-Wife by filing a Petition under Section 12 of DV Act on 17.12.2020 and thereafter, the Complaint before the CAW Cell on 09.12.2020. Clearly the initiation of the proceedings under the DV Act and Section 498A of IPC, 1860 are nothing but retaliatory action of the Complainant-Wife.

86. As has been discussed in the case of Digambar and Another, (supra) and other judgments as discussed above, there are no specific allegations of dowry harassment, beating or threats. *All the averments made are vague and do not disclose any offence under Sections 498A/323/506/34 of IPC, 1860.*

87. Accordingly, FIR No. 370/2021 under Sections 498A/323/506/34 of the IPC, 1860 registered at Police Station Maidan Garhi, Delhi along with the Chargesheet and all consequential proceedings emanating therefrom, is quashed.

88. The Petition stands disposed of along with pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE



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JANUARY 17, 2025

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Signature Not Verified

Digitally Signed By: VIKAS
ARORA

Signing Date: 11.02.2025
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