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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2197/2020**

SMT URVASHI AGGARWALPetitioner

Through: Mr. S.C. Singhal, Mr.
Saideep Kaushik and Mr.
Ritvik Madan, Advs.

versus

SHRI INDER PAUL AGGARWAL

& ORS.

.....Respondents

Through: Respondent in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **09.09.2025**

1. The present petition is filed by the petitioner challenging the judgment dated 03.03.2020 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge ('**ASJ**'), South-West District, Dwarka Courts, New Delhi in Criminal Appeal No. 21/2020.

2. By the impugned judgment the learned ASJ dismissed the appeal filed by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**').

3. It is averred that the marriage between the petitioner and Respondent No. 1 was solemnized on 11.11.1997, whereafter, a male child was born on 14.08.2000 and a girl child was born on 11.04.2002 out of the said wedlock.

4. It is alleged that on 11.04.2004, the petitioner and Respondent No. 1 separated from each other and have been residing separately since then.

5. It is stated that on 19.01.2006, Respondent No. 1 filed a petition before the learned Family Court seeking divorce from the petitioner. It is alleged that on 15.09.2008, the petitioner subsequently filed a complaint under Section 12 of the DV Act



before the learned Metropolitan Magistrate ('MM') against Respondent No. 1 and his family members.

6. Thereafter, on 28.11.2011, the learned Family Court allowed the petition filed by Respondent No. 1 seeking divorce and passed a decree of divorce between the petitioner and Respondent No. 1 holding the conduct of the petitioner to be cruel against Respondent No. 1 and his family members.

7. Aggrieved by the aforesaid decree, the petitioner preferred an appeal before this Court being MAT. APP. 6/2012, the said appeal is still pending adjudication before this Court.

8. After passing of the decree of divorce by the learned Family Court, Respondent No. 1 preferred an application before the learned MM seeking dismissal of the complaint filed by the petitioner under Section 12 of the DV Act on the ground that the marriage between the petitioner and Respondent No. 1 had been dissolved by the aforesaid decree granting divorce.

9. The learned MM *vide* order dated 04.10.2018 allowed the application by Respondent No. 1 and thereby dismissed the complaint filed by the petitioner under Section 12 of the DV Act.

10. The learned MM noted that maintenance has already been granted to the petitioner under Section 125 of the Code of Criminal Procedure, 1973 ('CrPC'). It was further noted that the complaint has been filed after a period of four and a half years from the date when the parties started to reside separately and no relief can be availed by the petitioner.

11. Aggrieved by the order of the learned MM, the petitioner preferred an appeal before the learned ASJ being Criminal Appeal 21/2020.

12. As noted above, the learned ASJ by the impugned



judgment dismissed the appeal filed by the petitioner noting that the petitioner failed to provide any explanation for filing the complaint belatedly that is after a period of four and a half years after the parties had started to reside separately.

13. Aggrieved by the impugned judgment the petitioner has filed the present petition.

14. The learned counsel for the petitioner submits that the learned ASJ erred by dismissed the appeal of the petitioner on the ground of limitation. He submits there is no period of limitation provided under the DV Act to file a complaint.

15. He submits that the learned ASJ failed to appreciate the fact that the findings of the learned Family Court in the decree granting divorce have not attained finality as the same has been challenged by the petitioner before this Court in MAT. APP. 6/2012.

16. He submits that the learned ASJ wrongly observed that the petitioner would be at liberty to seek revival of the complaint once the appeal filed by the petitioner against the decree granting divorce was reversed.

17. *Per contra*, Respondent No. 1 appears in person and vehemently opposes the arguments as raised by the learned counsel for the petitioner. He consequently prays that the present petition be dismissed.

18. I have heard the parties and perused the record.

Analysis

19. In the present case, it is undisputed that the petitioner and Respondent No. 1 started residing separately from each other since 11.04.2004. The petitioner, thereafter on 15.09.2008, filed a complaint under Section 12 of the DV Act after a period of



more than four years since the parties had allegedly separated.

20. It is the case of Respondent No. 1 that during the pendency of the proceedings under DV Act, the learned Family Court passed a decree of divorce in favour of Respondent No. 1 noting the conduct of the petitioner to be cruel. Pursuant to which, Respondent No. 1 filed an application before the learned MM seeking dismissal of the complaint filed by the petitioner under Section 12 of the DV Act in view of the decree passed by the learned Family Court.

21. The learned MM *vide* order dated 04.10.2018 noted that the petitioner had not given any reasonable explanation for filing the complaint at a belated stage. It was further noted that the said complaint was filed by the petitioner as a counterblast to the divorce proceedings filed by Respondent No.1 and thereby allowed the application of Respondent No. 1 and dismissed the complaint of the petitioner.

22. Aggrieved by the same the petitioner preferred an appeal before the learned ASJ challenging the order of the learned MM. The learned ASJ in the impugned judgment noted that the petitioner had failed to provide any explanation, to have filed the complaint after a period of more than four years from the date since the parties started residing separately from each other and thereby dismissed the appeal of the petitioner on the ground of limitation.

23. It is the contention of the learned counsel for the petitioner that the learned ASJ erred in dismissing the appeal of the petitioner on the ground of limitation. He contends that the DV Act does not provide for any period of limitation to file a complaint.



24. It is pertinent to note, in the present case, at the time of filing the complaint under Section 12 of the DV Act the petitioner was concededly the legally wedded wife of the respondent. The complaint was given by the petitioner on 15.09.2008, however, the decree of divorce was passed by the learned Family Court on 28.11.2011.

25. Moreover, it is settled law that not providing any form of financial sustenance to the wife is a form of domestic violence. Maintenance is required to be provided on day-to-day basis and not providing the same can be held to be a continuing offence as per the provisions of the DV Act.

26. The Hon'ble Apex Court in the case of **Krishna Bhattacharjee v. Sarathi Choudhary : (2016) 2 SCC 705** held that the offences under the DV Act are continuing in nature and if the wife is aggrieved by the actions of the husband even after dissolution of their marriage, the wife can approach the court under Section 12 of the DV Act. The relevant portion of the judgment is reproduced hereunder:

*“32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. “Economic abuse” as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. **We need not***



advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of “continuing offence” gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22.05.2010 and the said authority had forwarded the same on 01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of “continuing offence” and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.”

(emphasis supplied)

27. It is pertinent to note that the learned Family Court passed the decree of divorce while proceedings under the DV Act were still pending and it was only on the filing of an application by Respondent No. 1 the complaint of the petitioner was dismissed by the learned MM.

28. Therefore, in light of the observations made in the aforesaid judgments, the learned ASJ and learned MM erred in dismissing the complaint of the petitioner on the ground of limitation.

29. It is the contention of the learned counsel for the petitioner that the learned ASJ failed to appreciate the fact that the findings of the Family Judge in the decree granting divorce have not attained finality since the same has been challenged by the petitioner before this Court.



30. In the present case, the decree passed by the learned Family Court granting divorce has been challenged by the petitioner before this Court in MAT. APP. 6/2012. It is pointed out that the said appeal is still pending adjudication before this Court and the next date of hearing is 24.09.2025.

31. It is pertinent to note, the learned Family Court has passed a decree of divorce between the petitioner and respondent holding the conduct of the petitioner to be cruel, however, its findings have not attained finality in view of the appeal challenging the said decree pending before this Court.

32. However, it is undisputed that the petitioner has been held to be of cruel behaviour which led to grant of divorce. The findings, in the opinion of this Court, will have direct bearing on the complaint filed by petitioner alleging domestic violence.

33. Therefore, the complaint under DV Act cannot proceed till the pendency of the appeal. Therefore, in the opinion of this Court, the learned ASJ rightly held that the petitioner can seek revival of the said complaint once the appeal preferred by the petitioner against the decree of divorce is allowed.

34. However, the complaint of the petitioner as observed above cannot be dismissed on the ground of limitation.

35. In view of the aforesaid discussion, the present petition is disposed of and the impugned judgment is modified to the extent as discussed above. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 9, 2025