

Judgment Text

1. Applicants have filed present petition under section 482 of Cr.P.C., 1973 for quashing the proceedings of criminal Case No. 14942/2015 under section 12 of Protection of Women From Domestic Violence Act, 2005 (in short DV Act) pending before Judicial Magistrate First Class, Indore.

2. It is not disputed that the marriage of the applicant No.1 and respondent No.1 was solemnized on 23.11.2010. Out of their wedlock they are blessed with a daughter Ku. Trisha (respondent No.2). The applicant No.2 is the father of the applicant No.1 and he is employee of Central Government and presently posted Deputy Registrar in Laxmi Bai National University of Physical Education, Gwalior. The applicant No.3 is wife of applicant No.2, whereas the applicant No.4 is younger brother of the applicant No.1 and he is in private service and lives in Gurgaon. Applicant No.5 is grand father of the applicant No.1 and applicant No.7 and 8 are aunties (Mosi) of the applicant No.1.

3. The facts of the case are that on 20.04.2015 the respondent No.1 filed a complaint against the applicants under Section 12 of DV Act before the court of Judicial Magistrate First Class, Indore alleging that in the marriage the parents of the respondent No.1 has given Rs. 8,50,000/- cash, gold and silver ornaments and other households articles as dowry. Although the applicants are not satisfied with the aforesaid dowry and after the marriage they started making demand of Rs. 22,000,00/- for purchasing fortuner car. On 20.09.2012 the applicants ousted her from the matrimonial house and since then she is living at Indore in her parental house alongwith her daughter (respondent No.2). She has also filed an application under section 9 of Hindu Marriage Act for restitution of conjugal rights before the Court of Principal Judge, Family Court Gwalior. During the proceedings of reconciliation she expressed her willingness to live with the applicant No.1 but he refused to keep her, therefore, she was compelled to file this complaint under Section 12 of DV Act. before the Judicial Magistrate First Class, Indore in which she made prayer for grant of Rs. 20,000/- for herself and Rs. 10,000/- for respondent No.2 as maintenance from the applicants. Being aggrieved by the aforesaid complaint, applicants filed this petition for quashment of the complaint.

4. Learned counsel for the applicants has submitted that at the time of marriage applicant No.1 husband of the respondent No.1 was working in Private Job at Indore and after few weeks of marriage, the respondent No.1 was also living at Indore with applicant No.1 where she was also working as Design Engineer in Shakti Pumps Pvt. Ltd at Pithampur. It is further contended that after a week of marriage the respondent No.1 started behaving abnormally on the grounds that she is an engineer whereas her husband is not having same status and she will not get job in Gwalior, therefore, she does not want to live any more in Gwalior. She also started abusing the applicant No.1 to 3 without any reason. After few weeks she shifted to Indore and resided their with the applicant No.1. It is also alleged that the respondent No.1 does not want to live with the applicant stating that she has solemnized the marriage with applicant No.1 under the pressure of her parents and as such she was not willing to marry with applicant No.1 because she loved someone else before marriage and therefore demanded that she be left at her paternal home. Hence, the applicant had no choice but to take her to her paternal house at Indore. Accordingly, she left her matrimonial house on or about 2012 and went to Indore. When the applicant No.1 and 3 contacted the respondent No.1 and her parents to solve this issue, the respondent No.1 alongwith her parents abused applicant No.2 and 3 in a very filthy language and also criminally intimidated them. They demanded Rs. 10,00,000/- for divorce of respondent No.1 by mutual consent else they will falsely implicated the applicant and his family member in dowry case. However, the applicant No.1 and 3 refused to accede to such illegal demand of money of respondent No.1. They also made a written complaint at Police Station Gole Ka Mandir, Gwalior on 10.06.2012 against the respondent No.1 and her parents but police did not register the FIR in this regard. The applicant No.1 to 3 filed a private complaint on 11.06.2012 before the Court of Judicial Magistrate First Class, Gwalior, which is still pending. It has also been submitted that latter on respondent No.1 again joined the matrimonial house at Delhi where applicant No.1 was working another job since 27.11.2012. Parents of respondent No.1 also came at their and live for few days during this they pressurizing the applicant No.1 for divorce by mutual consent and demanded Rs. 10,00,00/-, when he refused to do that then they left the house of the applicant No.1. Then applicant No.1 has filed an application for restitution of conjugal rights against the respondent No.1 at Gwalior, which was latter on transferred to Family Court at Indore however, due to non non-cooperating conduct of the respondent No.1 he withdrawn the aforesaid application. Meanwhile, the respondent No.1 lodged FIR under Section 498-A against the applicant No.1 and his family members. In the month of August 2013. The respondent No.1 filed an application under section 125 of Cr.P.C., 1973 for maintenance against the applicant No.1 at Family Court

Indore in which she has not made any allegation against the respondent No.4 to 8 regarding demand of Rs. 22,00,000/- for purchasing of fortuner car. On 20.04.2015, the respondent No.1 filed the present complaint under Section 12 of DV Act with intent to harass the applicant. It is further submitted that the applicant No.2 and 3 are residing at Gwalior, applicant No.4 is in private service for past many years and he is living in Gurgaon. The applicant No.7 and 8 aunties (Mosi) of the applicant No.1, are married and having their own family and they are living separately in Mathura (U.P.). The applicant No.5 is the grand father of the applicant and he is also residing separately, therefore, the domestic relationship do not exists amongst them, thus, the complaint filed by the respondent No.1 under D.V. Act is not maintainable against the applicant Nos. 2 to 8, hence, he prayed for quashment of criminal complaint pending before the Judicial Magistrate, First Class, Indore.

5. Learned counsel for the respondent opposes the prayer made by the applicants by contending that complaint made by the respondent against the applicants at very initial stage and at this stage it cannot be said that no domestic relationship was exist between the respondent No.1 and applicants. It is further submitted that while exercising the inherent power under section 482 of Cr.P.C., 1973 for quashing the proceeding only allegation in the complaint are to be taken into consideration without giving any opportunity to adduce the evidence to the respondent, hence no question arises for quashment of the proceeding. As per contents of the complaint, applicants persistently demanded Rs. 22,000,00/- for purchasing the furtuner car and they physically and mentally harassed her, therefore, it cannot be said that no domestic relationship amongst the respondent No.1 and applicant No.2 to 8 is exist at any point of time. The respondent is entitled for getting claim from the applicants under Section 19 of D.V. Act and the applicants are also guilt for domestic violence, which they have committed against the respondent while she was residing with them, therefore, petition filed by the applicants be dismissed with cost.

6. Having heard learned counsel for the parties and perused the records.

7. From the averments made in the complaint filed by the respondent No.1 under Section 12 of D.V. Act, it appears that respondent got married with the Kuldeep son of respondent No.2 and 3 on 23.11.2012. After the marriage the respondent No.1 came to her matrimonial house situated at Gwalior and resided

with the family members of her husband. Although, it is alleged by the applicant No.1 and respondent No.1 that they lived altogether in Gwalior for a very short time. After few weeks of the marriage the respondent No.1 lived in Indore with the applicant No.1 as he was in private Job at Indore and respondent No.1 was also working at Design Engineer in Shakti Pumps Pvt. Ltd at Pithampur. The respondent No.1 and applicant No.1 moved out their joint family and established their own households at Indore, Raipur and Delhi, therefore, at this stage it cannot be said that no domestic relationship was exist between the applicant No.1 to 3 and respondent No.1. From the complaint filed by the respondent under Section 12 of DV Act, it appears that the applicant No.1 to 3 were residing at Bungalow No.70, L.N.U.P.E Campus, Rescource Road, Shakti Nagar, Gwalior (M.P.) whereas applicant No.5 grand father of the applicant is residing at Shinde Ki Chhavni, Khallasipura, Behind D.D. Mall, Gwalior (M.P.) and applicant No.7 and 8 are residing at Dempier Road, Bahadurpur, Mathura (U.P.) and Braj Nagar, near Krishna Nagar, Mathura (U.P.), thus, it is clear that the applicant No.5, 7 and 8 are residing separately with the applicant No.1 and respondent No.1, therefore, it cannot be accepted that they were also sharing the households with the respondent No.1, hence, if the averments made in the complaint had accepted at their entirety, even then the complaint filed against by the respondent No.1 against the applicant No. 5 to 8 is not maintainable at all. Although, it is alleged that applicant No.3 is residing at Bungalow No.70, L.N.U.P.E Campus, Rescource Road, Shakti Nagar, Gwalior (M.P.) and he also harassed the respondent No.1 for making demand of Rs. 22,000,00/- for purchasing fortuner car, however, no such allegation was made by the respondent in the petition filed by her under section 125 of Cr.P.C., 1973 against the applicant. In the said application the allegation of demand of dowry and harassment has been made against the applicant No.1.

8. From perusal of the records, it appears that on 20.04.2015, the respondent No.1 made a written complaint to the Station House Officer-Mahila Thana, Indore alleging that after the marriage, her husband – Kuldeep, father-in-law, mother-in-law and brother in law started making demand of Rs. 22,000,00/- for purchasing of fortuner car and ill-treated her. In the report, it is stated that in the year 2011 her husband got job at Tresure Island, Indore and in the year 2012 her husband shifted Delhi and they started living there. When they were living at Indore and Delhi, applicant No.2 and 3 came there and demanded Rs. 22,000,00/- and harassed her. The aforesaid documents clearly established that after sometime of the marriage, respondent No.1 and her husband moved out joint family and established their own households at Indore and Delhi. It is

alleged that the applicant No.2 and 3 used to visit at Indore and Delhi and they reiterated the respondent No.1 with regard to dowry. In this regard the provision of Domestic Violence Act is to be taken into account. Under the Domestic Violence Act the first pre-condition is that the applicant must be an aggrieved person is a person defined in Section 2(a) of the Act. The domestic relationship must be there between the aggrieved person and respondent to invoke Domestic Violence Act.

9. The Delhi High Court in the case of Vijay Verma v. State of NCT of Delhi & Anr., reported in 2010 (118) DRJ 520, which is also relied by this Court in M.Cr.C.No.9246/2014, the para of 5, 6 and 7 of the aforesaid Judgement is as under:

5. Filing of a petition under Protection of Women from 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 reDomestic Violence Actlationship 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', say, wife has gone to her parents house or to a relative or some other female member has gone to live with her some relative, and, all her articles and belongings remain within the same household and she has not left the household permanently, the domestic relationship continues. However, where the living together has been given up and a separate household is established and belongings are removed, domestic relationship comes to an end and a relationship of being relatives of each other survives. This is very normal in families that a person whether, a male or a female attains self sufficiency after education or otherwise and takes a job lives in some other city or country, enjoys life there, settles home there. He cannot be said to have domestic relationship with the persons whom he left behind. His relationship that of a brother and sister, father and son, father and daughter, father and daughter-in-law etc survives but the domestic relationship of living in a joint household would not survive & comes to an end.

7. This meaning of domestic relationship has sense when we come to definition of domestic violence and the purpose of the Act. The purpose of the Act is to give remedy to the aggrieved persons against domestic violence. The domestic

violence can take place only when one is living in shared household with the respondents. The acts of abuses, emotional or economic, physical or sexual, verbal or nonverbal if committed when one is living in the same shared household constitute domestic violence. However, such acts of violence can be committed even otherwise also when one is living separate. When such acts of violence take place when one is living separate, these may be punishable under different provisions of IPC or other penal laws, but, they cannot be covered under Domestic Violence Act. One has to make distinction between violence committed on a person living separate in a separate household and the violence committed on a person living in the shared household. Only viole

nce committed by a person while living in the shared household can constitute domestic violence. A person may be threatening another person 100 miles away on telephone or by messages etc. This may amount to an offence under IPC, but, this cannot amount to domestic violence. Similarly, emotional blackmail, economic abuse and physical abuse can take place even when persons are living miles away. Such abuses are not covered under Domestic Violence Act but they are liable to be punished under Penal laws. Domestic Violence is a violence which is committed when parties are in domestic relationship, sharing same household and sharing all the household goods with an opportunity to commit violence. 10. This Court has carefully gone through the complaint preferred under Section 12 of the DV Act, and in the considered opinion of this Court, that in the present case, after sometime of the marriage the respondent gone with her husband leaves the share households to establish their own households at Indore and Delhi, and as a result domestic relationship comes to an end, therefore proceedings based upon the complaint initiated in the matter pending before the Judicial Magistrate, First Class-Indore is not maintainable against the applicant No.2 to 8 and deserves to be quashed. 11. In view of the above, the present petition filed under section 482 of Cr.P.C., 1973 is hereby allowed in part and the proceedings of criminal 14942/2015 pending before the Judicial Magistrate First Class, Indore under D.V. Act with respect to applicant No. 2, 3, 4, 5, 7 and 8 (Mahendra Pratap Singh, Smt. Meera Singh, Yashdeep Singh, Balkrishna Singh,, Smt. Vijaya Laxmi, Smt. Babita) is hereby quashed whereas present petition is dismissed with respect to applicant No.1- Kuldeep Singh. Let a copy of this order be sent to concerned trial court for information and necessary compliance.