

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

+ **CRL.M.C.1105/2009**

Order reserved on: 06th February, 2014.

% Order pronounced on : 25th February, 2014.

POONAM Petitioner

Through: None.

versus

V.P.SHARMA Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. This matter although listed on several dates, but none for the parties has attended the court. The Supreme Court in a case reported in **(2013) 3 SCC 721** entitled *K.S.Panduranga vs. State of Karnataka* has clearly held that the courts are not bound to dismiss in default the case on account of non appearance of the parties. It is also not obligatory on the part of the court in all circumstances to engage amicus curiae. The court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent and the court is fully empowered to decide the matter on merit. In premise of that

this court had fixed the matter for final disposal when none of the parties has attended the court despite the adjournment of the case. Even, since the case had been reserved for orders, none of the parties had attended the court. The court thought it proper to proceed with the disposal of the matter on merit instead of dismissing it for non prosecution since only the question of law is involved in this case.

2. The petitioner has invoked the jurisdiction of this court under Section 482 Cr.P.C. against the order dated 18th November, 2008 passed in the Criminal Appeal No.24/2008 under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V.Act'). The said appeal had arisen out of the orders dated 21st February, 2008 of learned M.M.

3. The brief facts of the case are that the petitioner was married to respondent on 18th January, 1979 according to the Hindu rites and customs. The couple was blessed with a son. Subsequently, some differences had erupted between the parties. After a round of litigations, the parties settled their dispute and divorced by mutual consent was obtained on 3rd May, 2003. The parties, however, failed to abide by the terms and conditions of their settlement and further litigation ensued between them. The son of the

parties also moved the court for maintenance under Section 125 Cr.P.C. which is still pending. It was under these circumstances that a petition dated 1st January, 2008 under Section 12 of the D.V.Act was filed by the petitioner after passing of the D.V.Act by the Parliament on 26th October, 2006. Learned M.M. dismissed the petition under Section 12 of the D.V.Act and the petitioner preferred an appeal before the Sessions Court and the Session Court also vide judgment dated 18th November, 2008 dismissed the appeal, finding no merit therein.

4. The contention of the petitioner is that the leaned ASJ has not construed the provisions of D.V.Act and has failed to appreciate properly the definitions under Section 2 (f) and 2 (s) of the D.V.Act.

5. The respondent in its reply has contended that D.V.Act has no retrospective application and on the date provisions of D.V.Act were invoked by petitioner, there was no relationship between parties. It is contended that a divorced wife cannot be an aggrieved person.

6. It therefore is an admitted fact that on the date complaint under Section 12 of the D.V.Act was filed by the petitioner. She was a divorced wife of respondent. The sole question for consideration is whether a divorced wife who obtains divorce before the Act come into vogue, can

move against her ex-husband under the provisions of D.V.Act.

7. A woman who is an aggrieved person can invoke the jurisdiction of learned M.M. under D.V.Act. Does such aggrieved person means a divorced woman. Answer to the above question lies into the definitions of various expression used in D.V.Act. Section 2 (a) defines the aggrieved person as under:

“2 (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”

8. The use of the word is any woman ‘who is’ or ‘has been’. Both the expressions are in the present tense. The legislature has not used the word ‘who was’ or ‘had been’. This means the domestic relationship has to be in the present and not in the past. The definition requires that on the date Act come into force, the woman should be in domestic relationship.

9. The definition of domestic relationship given under Section 2 (f) further supports the view that the requirement under D.V.Act is that the relationship which is the basis of invoking the jurisdiction under D.V.Act has to be in the present. Section 2 (f) of the D.V.Act reads 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;

10. The definition clearly speaks of a domestic relationship between two persons who live or have at any point of time lived together in a shared household and are related by marriage or through a relationship in the nature of marriage. This definition also speaks about the existence of a relationship by marriage or a relationship in the nature of marriage at the time. The expression used is 'are related' by marriage. The expression by the legislature is not 'were related'. From the bare reading of these two provisions it is apparent that the intention of the legislature is to protect those women who are living into a domestic relationship being related by marriage.

11. The contention of the petitioner has been that when she can move the jurisdiction of the court under Section 125 Cr.P.C., nothing prevents her from invoking the jurisdiction of the court under D.V.Act. It is further contended that the expression used under Section 2 (f) 'at any point of time lived together' also includes a divorced wife.

12. This issue has been settled by this court in the case reported in **171**

(2010) DLT 67 entitled *Harbans Lal Malik vs. Payal Malik* wherein it has been held:

“11. It is apparent that in order to make a person as respondent in a petition under Section 12, there must exist a domestic relationship between the respondent and the aggrieved person. If there is no domestic relationship between the aggrieved person and the respondent, the Court of MM cannot pass an order against such a person under the Act. Domestic relationship is defined under Section 2 (f) of the Act and is as under:

"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;

12. It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and 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. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when

*complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there.
.....”*

13. It has also been settled by this court in ***Harbans Lal Malik*** (supra) that definition of ‘wife’ as available in Section 125 Cr.PC cannot be merged into Domestic Violence Act. Section 125 specifically provides that the wife means ‘divorced wife’. Explanation under Section 125 (1) (b) reads as under:

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried;

14. The court has further observed as under:

19. I, also consider that the definition of "wife" as available under Section 125 Cr.P.C could not be imported into Domestic Violence Act. The Legislature was well aware of Section 125 Cr.P.C. and if Legislature intended, it would have defined "wife" as in Section 125 Cr.P.C in Domestic Violence Act as well. The purpose and object of Domestic Violence and provision under Section 125 Cr.P.C. is different. While Domestic Violence Act has been enacted by the Parliament to prevent acts of domestic violence on women living in a shared household. Section 125 of Cr.P.C. is to prevent vagrancy where wife is left high and dry without maintenance. Law gives Crl. Rev. P. No.252/2010, 253/2010 & 338/2010 Page 10 of 16 a right to claim maintenance under Civil Law as well as Section 125 Cr.P.C. even to a divorced wife, but an act of domestic violence cannot be committed on a divorced wife, who is not living with her husband or family and is free to live wherever she wants. She has a right to claim maintenance and enforce other rights as

per law. She has a right to claim custody of children as per law but denial of these rights do not amount to domestic violence.

xxxx xxxx xxxx

20. This definition pre supposes that the woman is living with the person who committed violence and domestic relationship is not dead buried or severed. This does not speak of past violence which a woman suffered before grant of divorce.”

15. From the above discussion, it is apparent that the provisions under the D.V.Act can be invoked only when the domestic relationship is in existence. Where the domestic relationship ceased, the provisions under the D.V.Act cannot be invoked. In the present case, even before passing of the Act of Domestic Violence, the relationship of husband and wife between the parties was dissolved vide a divorce decree which the parties had obtained under an agreement by mutual consent.

16. The orders of the learned Trial Court and that learned Additional Sessions Judge does not suffer from any infirmity. The writ petition has no force in it. The same is dismissed.

DEEPA SHARMA, J

FEBRUARY 25, 2014

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