

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL REVISION PETITION No.1146/2019

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BETWEEN:

1. Smt. N.S.Leelavathi
W/o late S.Renuka Prasad
Aged about 62 years
2. Sri R.Shiva Prathap
S/o late S.Renuka Prasad
Aged about 37 years

Both are R/at No.50/1,
1st Cross, Nehrunagar
Seshadripuram
Bengaluru-560 020.

...Petitioners

(By Sri Rajashekar S., Advocate)

AND:

Smt. Dr.R.Shilpa Brunda
Also Known As Ayesha Zubair
W/o Dr. Zubair Khan
Aged about 41 years
R/at No.50/1, 1st Cross
Nehrunagar, Seshadripuram
Bengaluru-560 020.

Presently residing at No.8,
Ground Floor, 3rd Main,
6th Cross, V.R.Puram,
Palace Guttahalli,
Bengaluru-560 003.

...Respondent

(By Sri Mohammed Tahir, Advocate)

This Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C praying to set aside the order dated 07.03.2019 passed by the MMTC-IV, Bengaluru in CrI.Misc.No.113/2018 and set aside the order dated 19.08.2019 passed by the LX Additional City Civil and Sessions Judge, Bengaluru in Criminal Appeal No.615/2019 and dismiss the complaint filed by the respondent herein under Section 12 of D.V.Act in CrI.Misc.No.113/2018 on the file of MMTC-IV, Bengaluru by allowing the present Criminal Revision Petition.

This Criminal Revision Petition having been heard and reserved on 02.12.2019 coming on for pronouncement of Orders this day the Court made the following:-

ORDER

This petition has been filed by petitioners No.1 and 2 challenging the order passed by LX Additional City Civil and Sessions Judge, Bengaluru, in Criminal Appeal No.615/2019 dated 19.8.2019 whereunder the order dated 7.3.2019 passed by IV Metropolitan Magistrate Traffic

Court, Bengaluru in CrI.Misc. No.113/2018 was confirmed by dismissing the appeal.

2. The factual matrix of the case are that petitioner No.1 is the mother of respondent, petitioner No.2 is the brother of respondent. Respondent is working as a Doctor by profession and her marriage was performed with one Mr.Manohar during the year 2002. Thereafter, she started residing in the house of in-laws at Delhi. She stayed there for few months. thereafter she eloped with Dr.Zubair Khan and the marriage with Mr.Manohar ended by way of decree of divorce. Immediately, she changed her name as Ayesha Zubair and converted herself to Muslim religion and she got married with Dr.Zubair Khan, in her matrimonial home. Subsequently they shifted to UAE and settled down there permanently and there she has given birth to two children. It is further stated that the grandmother of petitioner No.2 one Smt.Savithamma was the absolute owner of property bearing No.50 and 50/1 at Sheshadripuram, Bengaluru. The said property was gifted

in favour of the second petitioner. It is further contended that in the first week of October, 2018, respondent came to the house of the petitioners and demanded to give the property to her. When her demand was refused, she picked up quarrel and even went to the extent of causing injury to her parents as well as petitioner No.2. So in this behalf a complaint was also registered against respondent in Crime No.106/2018. As a counterblast, respondent has also filed complaint against both the petitioners and wife of second petitioner before the jurisdictional police. Her complaint is registered in Crime No.105/2018. In that background respondent filed a complaint under Section 12 of Domestic Violence Act (hereinafter called as 'DV Act', for short). Thereafter, after service of notice an application was filed by the petitioners with regard to maintainability of such complaint. The trial Court dismissed the said application. Appellate Court confirmed the same. Challenging the same the petitioners are before this Court.

3. I have heard the learned counsel appearing for the petitioners and respondent.

4. The main grounds urged by the learned counsel for the petitioners are that complainant is not an aggrieved person as contemplated under Section 2(a) of DV Act. It is his further submission that the petition as against the petitioners is not maintainable under Section 12 of the DV Act. In order to maintain the petition there must be domestic relationship as contemplated under Section 2(f) of the DV Act. It is his further submission that the respondent-complainant is not in a shared household. If all these definitions are read together with reference to the factual matrix of the case, no complaint can be entertained under Section 12 of the DV Act. It is his further submission that the respondent got married in the year 2002 and thereafter she has divorced the first husband and got married to a person who is not belonging to her religion and thereafter she is residing permanently at Dubai. It is his further submission that she has filed a suit

for partition for claiming partition in the property and she is not a divorcee so as to take shelter under the DV Act. The trial Court and appellate Court without considering the said factual matrix and the proposition of law have come to a wrong conclusion and have wrongly dismissed the application. The application filed by the respondent is nothing but abuse of process of law. It is his further submission that domestic relationship comes to an end once the respondent daughter moved out of the shared household and established her own household with her husband. In order to substantiate the said contention he relied upon the decision in the case of **Vijay Verma Vs. State (NCT) of Delhi and Another** reported in **AIR 2011 (NOC) 171 (DEL.)**. Petitioner No.2 and respondent are real brother and sister and respondent has filed a suit for partition. In order to file complaint under the DV Act, there should not be partition in the family. In order to attract the provisions of the DV Act, the respondent daughter must be lived together in a shared household. Continuously living

in the shared household is must in order to attract the provisions of DV Act. In order to substantiate his argument he relied upon the decision of the Madhya Pradesh High Court in M.Cr.C.No.9246/2014 disposed of on 22.9.2015 in the case of **Rajkishore Shukla Vs. Asha Shukla**. It is his further submission that if the respondent resides separately, then under such circumstances, there is no domestic relationship between the petitioners and the respondent. In this regard he relied upon the decision of the Bombay High Court in the case of **Anitha W/o Anand Tambe Vs. Sri.Anand S/o Eknath Tambe**. It is his further submission that the aggrieved person cannot seek protection under the DV Act. Though she is a female member, she is entitled only when she satisfies the other provisions of the DV Act. In order to substantiate his argument he relied upon the decision in the case of **Hiral P. Harsora and Others Vs. Kusum Narottamdas Harsora and Others** reported in **(2016) 10 SCC 165** and also another decision of the Andhra Pradesh High Court in the

case of **Yadlapalli Mary Mani Vs. The State of Andhra Pradesh**. On these grounds he prayed to allow the petition and to set aside the impugned order.

5. *Per contra*, the learned counsel for the respondent vehemently argued and submitted that the respondent has prayed relief under Sections 18, 19 and 22 of the DV Act. She has come from Dubai about four months back and she is residing in the said premises since four months. It is his further submission that the maintainability cannot be decided, it can be decided only after leading of the evidence. It is his further submission that the petitioners assaulted the respondent and at threshold it cannot be held that she is not staying in the said house. It is his further submission that the decisions quoted by the learned counsel for the petitioners are not applicable to the facts of the case on hand. When the parties are residing in a joint family in a household or a shared household, then under such circumstances, limited interpretation cannot be made irrespective of the title of the respondent, a

protection order can be made under Section 19(1)(a) of the DV Ac. In order to substantiate his argument he relied upon the decision in the case of **Smt.Preeti Satija Vs. Smt.Raj Kumari and Another** reported in **AIR 2014 Delhi 46**. It is his further submission that the relationship is not denied. Under such circumstances, the Court cannot now adjudicate the rights at this juncture. The object of the law if it is taken and if a woman is in a domestic relationship and lived at any point of time together in a shared household either by consanguinity, marriage or through relationship in a joint family and if there is any domestic violence, then the Court can give the relief . In this behalf he relied upon the decision of Delhi High Court in the case of **Kusum Lata Sharma Vs. State and Another** reported in **2011 SCC Online DEL 3710**. It is his further submission that a rental agreement has been entered into by the respondent and she is not having residence, under such circumstances a residential order has to be passed. On these grounds he prayed to dismiss the petition.

6. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records.

7. After hearing the learned counsel appearing for the parties, it is not in dispute that petitioner No.1 is the mother and petitioner No.2 is the brother of respondent. It is also not in dispute that she got married in the year 2002 and subsequently she obtained a divorce and thereafter she got married with one Dr.Zubair Khan and started residing at Dubai. It is also not in dispute that respondent filed a complaint under Section 12 of the DV Act for protection.

8. The first question which remains for consideration of this Court is that whether there exists a 'domestic relationship' as contemplated under Section 2(f) of DV Act between the petitioners and respondent and whether there is a 'shared household' between the petitioners and the

respondent. For the purpose of brevity, I quote Section 2(f) and (s) of the DV Act which reads as under:

2(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.”

2(s): “shared household”

means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which

may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

9. Chapter IV of the DV Act deals with the procedure for obtaining orders of reliefs. Section 12 provides for presenting an application to the Magistrate by an aggrieved person or by a Protection Officer or any other person on behalf of the aggrieved person seeking one or more reliefs provided under the Act as per Sections 17 to 22 of the DV Act. The said provisions shall be governed by the provisions of Code of Criminal Procedure.

10. Section 2(a) of the DV Act defines an aggrieved person. An 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.

11. On perusal of the said definition it makes it clear that only woman in a domestic relationship either in the past or at present with the respondent, who has been subjected to domestic violence by the respondent can seek the reliefs provided under Chapter IV of the DV Act.

12. By reading of Section 2(f) along with Section 3 of the DV Act, if any such act as mentioned in Section 3 of the DV Act is committed, it amounts to domestic violence. Domestic relationship means who have lived together or who has lived in a shared household and 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 said definition mentioned therein categorizes certain categories of relationship. The learned counsel for the respondent by contending that it is an exhaustive definition and it includes the daughter who has gone in marriage and has come and resides with the parents will also include the domestic relation. But as

could be seen from the definition *prima facie* a restrictive and exhaustive meaning has been given. This point of law came up before the Hon'ble Apex Court in the case of **Indra Sarma Vs. V.K.V. Sarma** reported in **(2013) 15 SCC 755**. At paragraphs No.22, 34 and 35 it has been observed as under:

22. We have to first examine whether the appellant was involved in a domestic relationship with the respondent. Section 2(f) refers to five categories of relationship, such as, related by consanguinity, marriage, relationship in the nature of marriage, adoption, family members living together as a joint family, of which we are, in this case, concerned with an alleged relationship in the nature of marriage.

Relationship in the nature of marriage

34. Modern Indian society through the DV Act recognises in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a

relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

- (a) Consanguinity*
- (b) Marriage*
- (c) Through a relationship in the nature of marriage*
- (d) Adoption*
- (e) Family members living together as joint family.*

35. The definition clause mentions only five categories of relationships which exhausts itself since the expression “means”, has been used. When a definition clause is defined to “mean” such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression “include” so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression “relationship in the nature of marriage”.

13. On going through the said decision of the Hon’ble Apex Court it makes it clear that domestic relationship arises in respect of an aggrieved person, if the aggrieved person has lived together with the petitioners in a shared

household, but 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*". That does not mean that living together at any stage in the past would give right to a person to become aggrieved person to claim domestic relationship. *At any point of time*, indicates that the aggrieved person has been continuously living in the shared household as a matter of right, but if for some reason if 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. Where a family member leaves the shared household to establish his or her own household, he or she cannot claim to have a right to move an application under Section 12 of the DV Act on the basis of domestic relationship. This proposition of law came up before the Delhi High Court in the case of **Vijay Verma Vs. State (NCT) of Delhi and another** reported in **2010 SCC Online DEL 2723**, wherein at paragraph No.6 it has been observed as under:

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.

14. 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. The term who is an aggrieved person came up before the Division Bench of this Court in the case of **Smt.Leelavathi S. Vs. Sri.Murgesh and Others** reported in **ILR 2010 KAR 4673**. In the said decision it has been held that an aggrieved person is a woman in a domestic relationship with the respondent in the past or at present who are subjected to domestic violence by the respondent.

15. Section 2(s) of the DV Act defines the shared household. The Hon'ble Apex Court in the case of **D.Velusamy Vs. D. Patchaiammal** reported in **(2010) 10 SCC 469** defines the expression "domestic relationship" as, it includes not only the relationship of marriage but also the relationship "in the nature of marriage". But subsequently, a Co-ordinate Bench of this Court in the case of **Mrs.G.A. Ferris Vs. Svetlana Alexandrovna Dobrochasova Ferris and Another** reported in **(2014) 2 KCCR 1797**, while interpreting Section 2(s) of the DV Act held that house owned by the mother-in-law if it is her exclusive property and same cannot be treated as shared household as defined under Section 2(s) of the DV Act. Wherein at paragraphs No.15 and 16 it has been observed as under:

15. On going through the impugned order, it is clearly seen that an attempt is made by 1st respondent—wife, who is complainant before the Learned Magistrate to stake a claim in the house exclusively

belonging to her mother-in-law as a shared house. None of the judgments, which are relied upon by Learned Counsel for 1st respondent would in any way relate to the facts on hand in the present case. On the contrary, the judgment rendered by the Apex Court in the matter of S.R. Batra (referred supra) relied upon by the petitioner squarely applies on all fours to the facts of the case on hand in accepting that the house owned by the petitioner herein is her exclusive property and same cannot be treated as shared house as defined under Section 2(s) of the Act.

16. Though the attempt made by Learned Counsel appearing for the 1st respondent—complainant is commendable, in the facts and circumstances, this Court cannot deviate itself to accommodate a wife, who is said to be in pitiable circumstances by permitting her to stay in the house exclusively belonging to her aged mother-in-law against her wish. The petitioner is aged 82 years and is in the evening of her life. Merely because husband of 1st respondent is the son of the petitioner, she cannot be burdened to provide

accommodation to her daughter-in-law against her wish. Even if the submission on the part of the 1st respondent—complainant in trying to appeal to the conscience of this Court to the effect that each set of facts will have to be assessed based on the merits of the same is given due consideration, the application filed by 1st respondent-complainant under Section 23(2) read with Section 19(1)(a) of the Act, cannot be considered, on any count.

16. The same issue has also come up before the Hon'ble Apex Court in the Case of **S.R.Batra and Another Vs. Taruna Batra (Smt.)** reported in **(2007) 3 SCC 169**, there also Section 2(s) has been defined and it has been held that house which exclusively belongs to mother-in-law of the woman wherein she only lived with her husband for some time in the past after their marriage is not a shared household. It is further held that in order to claim such right the property should belong to her husband or it should have been taken for rent by her husband or it

should have been a joint family property in which her husband was a member. Therein also the said property was belonging to mother-in-law. Hence, it was held that the respondent cannot claim any right to live in that house. At paragraph No.29 it has been observed as under:

“29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence it cannot be called a “shared household”.

17. As the same issue coming up often before the Court, the Hon'ble Apex Court in the case of **Indra Sarma Vs. V.K.V. Sarma** quoted supra, it has held as to how the

definition of the domestic relationship has to be interpreted. In the said decision it has been observed that when a definition clause has been defined as “mean” such and such, the definition is *prima facie* restrictive and exhaustive interpretation of the statutes. Section 2(f) of the DV Act has not used the expression “include” so as to make the definition exhaustive. At paragraph 35 it has been observed as under:

35. The definition clause mentions only five categories of relationships which exhausts itself since the expression “means”, has been used. When a definition clause is defined to “mean” such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression “include” so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression “relationship in the nature of marriage”.

18. It is well settled proposition of law that any interpretation which leads to absurdity should not be

accepted. By relying upon the decision in the case of **S.R.Batra and Another** *quoted supra*, the Delhi High Court reiterated the said principle in the case of **Sunita Gangwal Vs. Chottey Lal** reported in **2018 SCC Online Del 6708**. At paragraph **7(ii)** of the said decision it has been observed as under:

7(ii) The relevant observations of the Supreme Court in the S.R. Batra case (supra) are paras 21 to 30 and these paras read as under:--

“21. It may be noticed that the finding of the learned Senior Civil Judge that in fact Smt. Taruna Batra is not residing in the premises in question is a finding of fact which cannot be interfered with either under Article 226 or 227 of the Constitution. Hence, Smt. Taruna Batra cannot claim any injunction restraining the appellants from dispossessing her from the property in question for the simple reason that she was not in possession at all of the said property and hence the question of dispossession does not arise.

22. Apart from the above, we are of the opinion that the house in question cannot be

said to be a 'shared household' within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act'). Section 2(s) states:

"2(s) 'Shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

23. Learned Counsel for the respondent Smt. Taruna Batra has relied upon Sections 17 and 19(1) of the aforesaid Act, which state:

17. (1) *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.*

(2) *The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.*

xxxx

19(1) *While disposing of an application under Sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-*

(a) *restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;*

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under Clause (b) shall be passed against any person who is a woman.

24. Learned Counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the

respondent had lived in the property in question in the past, hence the said property is her shared household.

25. We cannot agree with this submission.

26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned Counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member, it is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a 'shared household'.

30. No doubt, the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

19. Keeping in view the ratio laid down in the above said decisions, I am of the considered opinion that in the instant case admittedly the respondent daughter left the house and got married with Dr.Zubair Khan and she established her residence at Dubai and there is no material to show that she has left the company of Dr.Zubair Khan and came over to Bengaluru and started residing with the petitioners i.e., mother and brother. It is the specific contention of the petitioners that she came only to see her ailing father, at that time she stayed in a hotel and after the death of her father she came and stayed in the house of the petitioners for a few days and as such she is not the resident. As observed by the decision in the case of **Vijay Verma** quoted *supra* where the family member leaves the

shared household to establish her own household, she cannot claim to have a right to move an application under Section 12 of the DV Act. The said principle is squarely applicable to the present facts of the case on hand. If at all she is having any right over the property, she can file a suit for partition. In this case it is not going to be adjudicated. During the course of argument it has been brought to the notice of this Court that she had already filed a suit for partition in O.S.8796/2018.

20. Leave apart that it is the specific case of the petitioners that the said property is the absolute and exclusive property of Smt.Savithramma-grand mother of first petitioner and the same has been gifted to the second petitioner by a registered gift deed. Under such circumstances, the said property is neither a joint family property nor the property of the husband of Smt.Savithramma. Then under such circumstances also the respondent is not entitled to the shared household and

she cannot file an application under Section 12 of the DV Act.

21. Taking into consideration the above said factual matrix of the case and the ratio laid down in the above decisions, I am of the considered opinion that, the respondent has not made out any good grounds so as to take any of the reliefs as stated in the DV Act.

22. I have carefully and cautiously gone through the order and judgment of the Courts below. Both the Courts below without locking into the said facts have come to a wrong conclusion and have held that the petition is maintainable.

23. Taking into consideration the above said factual matrix of the case the petition is allowed and the impugned order passed by LX Additional City Civil and Sessions Judge, Bengaluru, in Criminal Appeal No.615/2019 dated 19.8.2019 is set aside and it is held that the petition filed by the respondent under the DV Act is not maintainable.

In view of the disposal of the main petition, I.A. No.2/2019 does not survive for consideration and the same is accordingly disposed of.

**Sd/-
JUDGE**

AP*