

M.Cr.C.No.9246/2014

22.09.2015

Parties through their counsel.

The petitioners before this court have filed this present petition under Section 482 of Code of Criminal Procedure 1973 for quashment of complaint preferred under the Protection of Women from Domestic Violence Act 2005.

The facts of the case reveal that the present petitioners and respondent are real brothers and sister. The sole respondent got married about 40 years back. She was residing with her husband namely Rajendra Shukla as well as along with her children. The complaint was preferred by her on 02/10/2011 when she visited the house of her brothers. She was abused and she was told that she will not get any share in the property of their father. The respondent alleging violence by taking shelter by the provisions of the Act 2005 has preferred a complaint under Section 12 of the Act 2005 and the learned Magistrate has taken cognizance of the same.

Learned counsel appearing for the petitioners have vehemently argued before this court that in the present case, their sister only with a view to obtain a share in the property of their father has filed a complaint under Section 12 of the Act of 2005 and at no point of time they have misbehaved with their sister. Attention was drawn towards paragraph 9 of the complaint which is

on record and the contention of the learned counsel is that the aforesaid paragraph reflects that their sister wants property and money from them.

It has been argued before this court that demand of share by her sister and denial of the same by brother is not covered within the meaning of Domestic Violence as defined under Section 3 of the Act of 2005.

On the other hand, learned counsel appearing for the sole respondent has vehemently argued before this court that the brothers have misbehaved with the sister, they are not giving any share in the property and therefore, the act of the brothers certainly covered within the meaning of Domestic Violence as defined under Section 3 of the Act of 2005. He has placed reliance upon a judgment delivered in the case of **Hirdashay vs. Nutan Bai** reported in **2003 (2) M.P.L.J (84)**.

This court has carefully gone through the aforesaid judgment and in the aforesaid judgment it was a dispute between husband and wife and there was a statement made against the husband alleging commission of offence under Sections 494 & 498A of the Indian Penal Code and in those circumstances, learned Single Judge has held that evidence adduced on behalf of complainant has to be accepted as it is pace value and it should not be examined at the stage of taking cognizance of the offence.

He has also placed reliance upon a judgment delivered by the Supreme Court in the case of **Rumi Dhar vs. State of West Bengal** and he has also placed heavy reliance upon paragraph 11 of the aforesaid judgment. The same reads as under:-

11. The jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstance of each case. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, and this court, in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the appellant herein for framing charge.

For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly.

This court has carefully gone through the aforesaid judgment. It is not a dispute between husband and wife. It is the case where allegation has been made against two real brothers by sister who is demanding share in the property of her father. While the matter is being argued and the document brought before this court which is a will executed by the father. The document, Will which is on record reflects that father has not given any share to the daughter and the contention of the learned counsel for the petitioners is that father has not willed any property to daughter, she can not claim suit property, therefore she has taken recourse of all previous claims by invoking statutory provisions of Law as contained under Section 12

of the Act of 2005.

Learned counsel for the petitioners have also placed reliance upon a judgment delivered in the case of **Vijay Verma vs. State of N.C.T. Of Delhi & Another** reported in **2010(118)DRJ 520**. Paragraph 5,6&7 of the aforesaid judgment reads as under:-

5. Filing of a petition under Protection of Women from [Domestic Violence Act](#) 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 relationship 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 violence 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.

This court keeping in view the aforesaid judgment is of the considered opinion that the present case is a case in which this court is of the considered opinion that the conduct of the petitioners in not giving the share to the sister, keeping in view of the totality of the circumstances of the case is not covered within the meaning of the term 'Domestic Violence' as defined under Section 3 of the Act 2005.

Learned counsel has also placed reliance upon a judgment delivered in the case of [Adil & Ors. vs. State & Another](#) reported in [2010\(119\) DRJ 297](#) . Paragraph 10 & 11 reads of the aforesaid judgment reads as under:-

10. It is apparent from the perusal of the order of Trial Court and Appellate Court that both, the Trial Court and the Appellate Court mis-directed themselves and did not consider the relevant provision of the [Domestic Violence Act](#). [Under Domestic Violence Act](#), the first pre-condition is that the applicant must be an aggrieved person. 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](#). This Court had clarified the legal position in respect of domestic relationship in Vijay Verma Vs. State NCT of Delhi & Anr., Criminal Misc. No. 3878 of 2009 and observed as under:

"5. Filing of a petition under Protection of Women from [Domestic Violence Act](#) 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 relationship 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."

(emphasis added)

11. In this case it could not have been decided by the Court of MM without recording evidence as to whether any domestic relationship existed between the parties on the date of filing application or soon before that in accordance with law laid down by this Court. It must be kept in mind that resort of [Domestic Violence Act](#) cannot be done to enforce property rights. For enforcement of property rights, the parties are supposed to approach civil court. Resort to [Domestic Violence Act](#) can be done only where there is urgent requirement of wife to be maintained and provided residence when because of domestic violence, she had been rendered homeless and she had lost source of maintenance. [Domestic Violence Act](#) is not meant to enforce the legal rights of property, neither an interim order can be passed without first prima facie coming to conclusion that a domestic relationship existed between the parties and the applicant was an aggrieved person within the meaning of [Section 2\(a\)](#) of the Domestic Violence Act. In the present case, the order of learned MM and learned ASJ is absolutely silent as to how respondent was an aggrieved person and how a domestic relationship existed between her and petitioners.

Keeping in view the aforesaid judgment as an attempt is being

made to enforce the property rights, this court is of the considered opinion that the respondents should have take recourse to the other legal remedies that is filing a civil suit etc., inspite of complaint under Section 12 of the Act 2005.

Learned counsel for the respondent has argued before this court that the petitioners are having remedy of appeal / revision, therefore, the present revision be dismissed.

This court has carefully gone through the complaint preferred under Section 12 of the Act 2005 and in the considered opinion of this court after going through the entire complaint and the subjected document annexed alongwith complaint, this court is of the considered opinion that in the present case, sister is seeking a share in the property which has been left behind by her father and the complaint has been filed with a specific prayer for grant of share in her father's property. She is not residing with her brothers and she was earlier also not residing with her brothers. She is happily married for the last 40 years. She is having children and one fine morning i.e., on 02/10/2011, after visiting her brother's house, she has filed this present complaint as they have expressed their inability to give share to their sister as there is already a will in existence.

In the considered opinion of this court, the entire complaint is misconceived complaint and the proceedings filed in the complaint

initiated in the matter pending before the Magistrate, Class-I deserves to be quashed and are hereby quashed preferred under Section 482 stands allowed, however a liberty is granted to the sole respondent to take recourse to the other remedies that is filing a civil suit for claiming a share if any in the property.

It is made clear that any observation made by this court in the present petition which has been preferred under Section 482 will not come in way of the parties in respect of any litigation.

The observations are confined only to the extent to the present complaint preferred under Section 12 of the Act 2005 is concerned.

(S.C. Sharma)
Judge

Karuna