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

Date of Decision: 26.04.2022

+ CRL.M.C. 1817/2022

BHARTI ANAND

..... Petitioner

Through: Mr. C.P. Vig, Advocate.

versus

SUSHANT ANAND AND ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CRL.M.A. 7699/2022 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 1817/2022

1. By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 ["CrPC"], the petitioner assails an order of the Metropolitan Magistrate, Mahila Court-02, West, Tis Hazari Court, Delhi ["MM"] dated 27.09.2021 in CIS No. 194/2021, to the extent that summons in her complaint under the Protection of Women from Domestic Violence Act, 2005 ["the DV Act"] were not issued to the respondent Nos. 3 and 4. The petitioner also assails the order of the Additional Sessions Judge, West, Tis Hazari Court, Delhi, dated

16.03.2022 in Crl. Appeal No. 130/2021, whereby the aforesaid order of the MM was affirmed in appeal.

2. The respondent No. 1 in these proceedings is the petitioner's husband and the respondent No. 2 is her mother-in-law. The respondent No. 3 is the petitioner's sister-in-law (being her husband's sister) and the respondent No. 4 is the husband of the respondent No.3.

3. The petitioner filed an application under Sections 12, 17, 18, 19, 20 and 22 of the DV Act in March, 2021. All the four respondents were arrayed as accused in the said application. By an order dated 19.03.2021, notice was issued to the respondent No. 1 and the matter was adjourned for consideration on the point of issuance of summons to other respondents. By the order dated 27.09.2021, the MM issued summons to the respondent No. 2 also, but came to the conclusion that respondent Nos. 3 and 4 had not been residing in the shared household and no summons were therefore issued to them.

4. The petitioner challenged the order dated 27.09.2021 by way of an appeal under Section 29 of the DV Act. The Appellate Court, by the impugned order dated 16.03.2022, affirmed the view taken by the MM, relying upon the judgment of this Court in *Harbans Lal Malik vs. Payal Malik*.¹

5. Having heard Mr. C.P. Vig, learned counsel for the petitioner, I am of the view that the orders of the MM and the Appellate Court do not call for interference by this Court under Section 482 of the CrPC.

6. The DV Act itself defines the terms "aggrieved persons", "domestic relationship" and "shared household" in the following

¹ (2010) 118 DRJ 582

terms:-

“Section 2. Definitions – In this act, unless the context otherwise requires -

*(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;*

xxxx xxxx xxxx

*(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;*

xxxx xxxx xxxx

*(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 house hold 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;”²*

7. The Trial Court and the Appellate Court have recorded their concurrent findings to the effect that the respondent Nos. 3 and 4 did not form part of the shared household with the petitioner. In proceedings under Section 482 of the CrPC, the Court does not

² Emphasis supplied.

generally interfere with factual findings. The plenary scope of the inherent jurisdiction of the High Court is to prevent abuse of the process of Court and to secure the ends of justice. Such inherent power is however to be exercised sparingly and not upon a re-appreciation of materials which have already been considered by the Trial Court and the Appellate Court. Reference in this context may be made to the judgments of the Supreme Court *inter alia* in *State of A.P. vs. Golconda Linga Swamy and Another*³ and *Chilakamarthi Venkateswarlu and Another vs. State of Andhra Pradesh and Another*⁴.

8. Analysing the facts of the present case in this context, it may be noted that in the complaint, the petitioner has mentioned in the memo of parties that the respondent Nos. 1 and 2 were resident at the matrimonial home [H.No. 455, Urban Estate, Phase-1, Jalandhar, Punjab], whereas the respondent Nos. 3 and 4 were resident of BB-18C Janakpuri, New Delhi-110058.

9. The averment in paragraph 1 of the application is that the complainant has lived with the respondent Nos. 1 and 2 in a shared household at the aforesaid address in Jalandhar, and that the joint family consists of the petitioner and the respondent Nos. 1 and 2 herein. The said averment is set out below:-

*“1. That complainant is an aggrieved person who has **lived with respondent no. 1 and 2 in shared household** No. 455, Urban Estate, Phase-1, Jalandhar, Punjab and has been subjected to domestic violence by accused persons. **The complainant, accused no.1 and 2 have***

³ (2004) 6 SCC 522 [paragraphs 5 to 7]

⁴ (2020) 17 SCC 595 [paragraphs 12 and 13]

***been living together in a joint family** and because of domestic violence as mentioned hereinafter, complainant is filing present application alongwith copy of domestic incident report lodged by complainant.”⁵*

10. Under the heading “Right to Reside in a Shared Household”, this position is reiterated in the following terms:-

***“As the complainant has been living as wife of respondent no.1 in a domestic relationship with respondent no.1 and 2** in house No. 455, Urban Estate Phase-1, Jalandhar hence complainant has a right to reside in the said shared household.”⁶*

11. There is no averment in the complaint as to the petitioner’s shared residence with the respondent Nos. 3 and 4.

12. A copy of the Domestic Incident Report [“DIR”] under Section 9B & 37(2)(c) of the DV Act has been placed on record [at page 56 of petition] wherein the names of respondent Nos. 3 and 4 find mention. Here also, the address of the respondent Nos. 3 and 4 is given in New Delhi. The averments in the DIR, which have been emphasized by Mr. Vig, are to the effect that the respondent Nos. 3 and 4 used to visit Jalandhar frequently and during those visits, resided in the matrimonial home of the petitioner. In paragraph 4.1 of the DIR, it is mentioned that the respondent Nos. 3 and 4 stayed at Jalandhar for about 10 days. Similarly, in paragraph 4.2, it is stated that the respondent Nos. 3 and 4 went back to Delhi but gave instructions to the respondent Nos. 1 and 2 on telephone to ill-treat the petitioner and they dominated the family. In paragraph 4.5 of the DIR, an averment

⁵ Emphasis supplied.

⁶ Emphasis supplied.

is made that the respondent Nos. 3 and 4 came to Jalandhar in December, 2016 and stayed in the matrimonial home of the complainant for about 15 days. There are also various allegations against the respondent Nos. 3 and 4 of interference in the petitioner's marital life. The complainant has also made allegations against the respondent No. 4 of sexual harassment and molestation, due to which she left the matrimonial home and returned to her parental home.

13. Although the complaint contains several allegations against the respondent Nos. 3 and 4 as noted above, as far as the living arrangements are concerned, it is the case of the complainant herself that the matrimonial home in Jalandhar was shared between her and the respondent Nos. 1 and 2. The respondent Nos. 3 and 4 (being the sister-in-law of the petitioner and her husband) visited often for various lengths of time, but there is no suggestion that they were, or intended to be, permanently resident in the said household. It is in this context that the MM and the Appellate Court have reached the conclusion that there is no domestic relationship between the petitioner and the respondent Nos. 3 and 4.

14. The Supreme Court in *Satish Chander Ahuja vs. Sneha Ahuja*⁷, with respect to the definition of shared household in the DV Act, has observed *inter alia* as follows:-

*“68. The words “lives or at any stage has lived in a domestic relationship” have to be given its normal and purposeful meaning. **The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different***

⁷ (2021) 1 SCC 414

places shall not make a shared household. *The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. As noted above, the 2005 Act was enacted to give a higher right in favour of women. The 2005 Act has been enacted to provide for more effective protection of the rights of the women who are victims of violence of any kind occurring within the family. The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read with Sections 17 and 19 of the 2005 Act grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.*⁸

15. While the above observations of the Court are in the context of the place of residence of the “aggrieved person”, it would equally apply to the identification of those who may be properly impleaded as respondents on the basis of residence in the shared household. Just as the woman living fleetingly or casually at different places, would not convert those places into a “shared household”, the visits of sundry family members to the matrimonial home, without permanency or the intention to treat the premises as shared household, would not render them as members of the “shared household”.

16. Mr. Vig also relied upon the judgment of the Division Bench of the Kerala High Court in *Kunjathiri vs. State of Kerala & Ors.*⁹. The Division Bench in that case has considered the question as to whether a complaint under the DV Act is maintainable against relatives of the husband without making the husband a party. No such question arises

⁸ Emphasis supplied.

⁹ Judgment dated 05.08.2015 in Crl. Rev. Pet. No. 328/2013

in the present case, and the aforesaid judgment is therefore of no assistance to the petitioner.

17. In view of the above, the view taken by the MM and the Appellate Court do not call for interference under Section 482 of the CrPC. The petition is therefore dismissed with the aforesaid observations.

APRIL 26, 2022
'Bhupi'/'

PRATEEK JALAN, J

[Click here to check corrigendum, if any](#)



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