

\$~18

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

+ **CRL.M.C. 452/2012**

% *Judgment delivered on: 7th February, 2012*

SONIA CHAUHAN RAGHOVE Petitioner
Through : Mr.M.B. Singh, Adv.

versus

SANJIVE RAGHOVE & ORS Respondent
Through : NEMO.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CrI.M.A. 1565/2012(Exemption)

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

CrI.M.A. 1566/2012(Delay)

Delay condoned.

Criminal M.A. stands disposed of.

+ **CrI. M.C. 452/2012**

1. Vide the instant petition, the petitioner has challenged the impugned judgment dated 15.11.2011 passed by Id. ASJ (01), District-West Delhi and order dated 16.08.2010 passed by Id. MM in

Complaint Case no. 278/01/2010, filed under Section 12(1)(3(4)(5) read with Sections 18,19,20 and 22 read with Rule 6(1) of the Domestic Violence Act, has issued summons only against respondent no. 1 i.e. husband of the complainant and declined to issue summons against respondent no. 2 to 5.

2. I note in order dated 16.08.2010, ld. MM of Mahila Court, West Delhi has recorded that respondent no. 1 Dr. Sanjeev Raghav, husband of the applicant, who is residing at Rewari, Haryana. Respondent no. 2 and 3 are residing separately and cannot be stated to be in domestic relationship with the applicant. Therefore, ld. Trial Judge not preferred to issue summons against the aforesaid respondents.

3. Similarly, respondent no. 4 is residing in Delhi. She is the married sister in law, who does not share any domestic relationship with the applicant. Therefore, respondent No.4 has also not been summoned.

4. As far as the respondent no. 5 is concerned, who is stated to be the friend of respondent No.1 and not a relative, therefore respondent No.5, has also been summoned.

5. Being aggrieved by the order dated 16.08.2010 the petitioner has challenged the aforesaid order passed by ld. MM before the court of Sessions.

6. Vide order dated 15.11.2011, ld. ASJ after considering the fact has held that respondent no. 1 is the husband of the applicant and respondent no. 2 to 4 are the father-in-law, mother-in-law and sister-in-law of the applicant respectively and respondent no. 5 is the colleague of respondent no. 1. It is alleged in the application that petitioner had

married with respondent no. 1 on 10.03.2004. After the marriage, they lived together as husband and wife at her matrimonial home at 5109/3, Cat.III, Modern Housing Complex, Mani Majra, Chandigarh from 10.03.2004 to 23.05.2004. It is further alleged that she was harassed, humiliated and ill-treated by respondent no. 1 to 4 for not fulfilling their demands of dowry. They hatched a conspiracy to turn the complaint out of the matrimonial home and while acting on the same, respondent no. 1 had started applying for the job outside Chandigarh.

7. I note that Id. ASJ, has perused the impugned order dated 16.08.2010, wherein it is recorded that respondent no. 2 to 4 cannot be summoned as they cannot be stated to be in domestic relationship with the complainant. Respondent no. 5 has not been summoned as he is a friend of respondent no. 1 and not the relative.

8. I note Id. ASJ has also dealt the issue raised by Id. Counsel for the petitioner and has referred Section 2 (f) of the Act that respondent no. 2 to 4 being the blood relatives of respondent no.1 and with whom petitioner lived immediately after her marriage fall within the domestic relationship.

9. It is further submitted by the Id. Counsel for the petitioner that as per the provisions of Section 2 (q) of the Act, the male partner of the respondent is liable for violation of the Act. Respondent no. 5 being the business partner of the respondent no. 1 is liable to summoned.

10. Section 2 (a) of the Act defines aggrieved persons. For the convenience, said Section is reproduced as under:-

“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. I note, Id. Addl. Sessions Judge has been guided by the case titled as *Vijay Verma vs. State N.C.T of Delhi & Anr.* decided by this Court in 2010 (4) JCC 2377 wherein it is recorded as under:

“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.”

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 *Crl. M.C. No. 3878 of 2009* *Page 3 of 7* *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. Crl. M.C. No. 3878 of 2009 Page 4 of 7 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'.

12. It is clear from the judgment recorded by Id. ASJ that complainant had admitted in her application under Section 12 of the Act, that had stayed together at her matrimonial home at 5109/3, Cat.III, Modern Housing Complex, Mani Majra, Chandigarh from 10.03.2004 to 23.05.2004. However, respondent no. 2 & 3 are living together separately from the petitioner. Respondent no. 4 is the married sister and is also living separately from the petitioner.

13. There is no allegation in the application, which would show that petitioner along with respondent no. 1 and respondent no. 2 to 4 had lived together as a joint family.

14. As respondent no. 5 is concerned, he is alleged to be a business partner of the respondent no. 1. Respondent no. 5 being the business partner of the respondent no. 1 does not fall under the category of the male partner as provided by the proviso to Section 2 (q) of the Act.

15. In the view of above, I find no discrepancy in the order passed by the Id. Trial Courts, therefore I refrain to interfere with the same.

16. Accordingly, the instant petition is dismissed.

17. No order as to cost.

SURESH KAIT, J

FEBRUARY 07, 2012

Jg