



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:07.01.2025

+ **CRL.REV.P. 203/2017**

..... Petitioner

versus

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Dinesh Garg, Adv.

For the Respondent : Mr. Baldev Singh, Mr. Divyansh Thakur &
Mr. Rishabh Kr. Singh, Advs.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed challenging the judgment dated 19.07.2016 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge ('**ASJ**'), West, Tis Hazari, Delhi in Criminal Appeal No. 54164/2016 titled as

2. The learned ASJ, by the impugned judgment allowed the appeal under Section 29 of the Protection of Women from Domestic Violence



Act, 2005 ('DV Act') filed by the respondent and set aside the order dated 20.06.2015 passed by the learned Metropolitan Magistrate ('MM'), whereby the respondent's application questioning the maintainability of the complaint under Section 12 of the DV Act was dismissed.

3. The learned ASJ while referring to the Friendship Agreement dated 13.04.2006 executed between the parties, that mentions that the respondent is married to one Mrs. Kavita and has one child out of the said wedlock and that the petitioner is married to one Mr. Vijay Kumar who is the brother of the respondent, held that a case under Section 12 of the DV Act is not made out as neither the petitioner was an aggrieved person in terms of Section 2(a) of the DV Act, nor was the relationship between the parties in the nature of marriage.

4. The brief facts of the case are as follows:

4.1. A complaint under Section 12 of the DV Act was filed by the petitioner alleging that the marriage between her and the respondent was solemnised on 22.04.2006, after which she resided with the respondent at her matrimonial home for almost seven years, where she was subjected to cruelty by the respondent and his family members on the pretext of dowry. The parties resided separately thereafter.

4.2. The respondent disputed the marriage and brought on record a Friendship Agreement executed between himself and the petitioner, marriage certificate dated 03.04.3006, the divorce decree dated 01.02.2008 as well as the letter dated



03.04.2006 written by the petitioner to the police, wherein it is mentioned that the petitioner was first married to the respondent's brother namely– Mr. Vijay Kumar on 28.03.2006, and after the execution of the Friendship Agreement on 13.04.2006, the marriage between the parties was solemnised on 22.04.2006.

4.3. The petitioner in her rejoinder stated that she was already married to the respondent on 25.02.2006 and placed on record the marriage certificate dated 07.05.2014, wherein it is stated that the marriage between the parties took place on the even date at Shree Veshno Mata Mandir Samiti.

4.4. The learned MM, by order dated 20.06.2015, dismissed the application filed by the respondent questioning the maintainability of the complaint.

4.5. Aggrieved by the said order of the learned MM, the respondent filed an appeal under Section 29 of the DV Act, which came to be allowed by the impugned judgement, thereby setting aside the order dated 20.06.2015 passed by the learned MM and dismissing the complaint filed by the petitioner under Section 12 of the DV Act.

5. The learned counsel for the petitioner submitted that the impugned judgement is erroneous and has been passed without application of mind.

6. He submitted that the petitioner is an aggrieved person in terms of Section 2(a) of the DV Act and that the relationship between the



parties was in the nature of marriage.

7. He submitted that the marriage between the parties was solemnized on 25.02.2006 in a small gathering at the Veshno Mata Mandir, however the actual wedding with all relatives present, took place on 22.04.2006.

8. He submitted that the after the solemnisation of marriage on 25.02.2006, the respondent later informed the petitioner that he was already married to and had a child with one Mrs. Kavita and has matrimonial litigation pending. He submitted that the respondent lured the petitioner into showing that she was married to his younger brother Mr. Vijay Kumar and got their marriage registered before the Registrar of Marriage on 03.04.2006.

9. He submitted that the respondent, in order to save himself from the prosecution for bigamy, hatched a conspiracy and obtained the marriage certificate dated 03.04.2006 and the Friendship Agreement dated 13.04.2006, whereas the marriage between the petitioner and Mr. Vijay Kumar was not a real marriage.

10. He submitted that the petitioner has resided with the respondent for a significant period of time and relied on *Deoki Panjhiyara vs. Shashi Bhushan Narayan Azad* : (2013) 2 SCC 137, wherein the Hon'ble Apex Court observed that a mere production of marriage certificate in support of the first marriage is not sufficient for any Court to render a complete decision with regard to the marital status between the parties.

11. *Per contra*, the learned counsel for the respondent submitted



that the learned ASJ while dealing with the appeal under Section 29 of the DV Act, has perused the evidence and pleadings placed before him and has given elaborate reasoning in the impugned judgement.

12. He submitted that the petitioner was married to the brother of the respondent on 28.03.2006, however, due to temperamental issues, she left his brother and started residing with the respondent in terms of the Friendship Agreement dated 13.04.2006.

13. He submitted that both the parties were already married to different persons, and the said marriages were subsisting on the date of the marriage between the parties on 22.04.2006, and therefore the same is no marriage in the eye of law, as the petitioner was aware of the previous marriages of the respective parties.

Analysis

14. 'Domestic relationship' as defined in the DV Act 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 relationship in the nature of marriage. The relevant provisions of the Act are reproduced here under:

Section 2 (a) of the DV Act defines aggrieved person which reads 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.

Section 2 (f) of the Act defines domestic relationship which reads 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.

Section 2 (q) of the DV Act defines respondent which reads as under:

“Respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Section 2 (s) of the DV Act defines shared household which reads as under:

“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.

15. In terms of Section 2 (f) of the Act, domestic relationship not only means a relationship between two persons who live together in a shared household by virtue of marriage. Two persons who lived together in a shared household through a relationship in the “nature of marriage” would also be called to be in a domestic relationship.

16. The petitioner, in the complaint, categorically stated that marriage between her and the respondent was solemnised on 22.04.2006 whereafter she resided in the shared household for almost



seven years and was subjected to cruelty.

17. It is settled law that at the initial stage when the issue of maintainability is raised, the Judge concerned has to take the allegations and the factual content on a demurrer. Even though respondent husband has relied upon certain agreement in order to show that the parties had entered into an alleged friendship agreement and has disputed the marriage by producing alleged marriage certificate between the petitioner and the respondent's brother, the same, however, cannot be accepted as a gospel truth at the initial stages.

18. The petitioner has contended that the said documents were executed since the respondent was already married and wanted to save himself from the allegations of bigamy. The nature of documents and the veracity and correctness of the same can only be tested after the evidence is led.

19. Even otherwise, in terms of Section 2 (f) of the Act, the relationship of parties living together through a relationship in the "nature of marriage" would also fall within the definition of domestic relationship. The allegation clearly points towards the allegation of domestic violence while the petitioner lived in a shared household for almost seven years in a domestic relationship if not as a married couple but at least as a couple in the nature of marriage.

20. The defence taken by the respondent to contend that the parties were not in a domestic relationship, can only be considered after the evidence is led.



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21. In view of the above, the impugned judgement is set aside and the present petition is allowed in the aforesaid terms.

22. The complaint case bearing Ct. No. 84/1/13 is restored to its original number before the learned Family Court and the learned Court is directed to proceed in accordance with law considering the observations made in the present judgment.

23. A copy of this judgment be sent to the learned Principal District & Sessions Judge, Tis Hazari Courts, Delhi for placing the matter before the concerned Court and for necessary compliance.

AMIT MAHAJAN, J

JANUARY 7, 2025