



2025:DHC:1299



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

Pronounced on: 27th February, 2025

+ **W.P.(CRL) 3356/2017 & CRL.M.A. 19728/2017**

- 1. SQN LDR PRABHAKAR BHATT**
S/o Ghanshyam BhattAppellant No.1
- 2. SH. GHANSHYAM BHATT**Appellant No.2
- 3. SMT. PUSHPA BHATT**Appellant No.3
W/o Sh. Ghanshyam Bhatt

All Resident of:-
3/1B, Shivkuti, Govindpur
Teliarganj, Allahabad,
Uttar Pradesh-211004

Through: Mr. Himanshu Gupta, Advocate
through VC

versus

MAJ. ANNU LAMBA,
W/o Sqn. Ldr. Prabhakar Bhatt,

D/o Sh. Rajbir Lamba,
R/o 202, Army Aviation Sqn. (UH),
Bathinda Cantt., Punjab-151004

....Respondent

Through: Mr. Akshay Chowdhary & Ms. Sonali
Madaan, Advocates.
Respondent present through VC

J U D G M E N T

NEENA BANSAL KRISHNA, J.



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1. The Writ Petition under Article 226 and 227 of the Constitution of India has been filed for quashing of Complaint filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter 'D.V. Act'*), pending before the Court of learned M.M.
2. ***Briefly stated***, Petitioner No.1/Sqn. Ldr. Prabhakar Bhatt was married to Respondent/Major Annu Lamba while Petitioner No.2 and 3, Sh, Ghanshyam Bhatt and Smt. Pushpa Bhatt, are the parents of Prabhakar Bhatt.
3. Petitioner No.1 got married to the Respondent on 26.11.2011 according to Hindu Customs and Rites. Thereafter, they lived together in the matrimonial home in Allahabad for about one month. Thereafter, both of them resided at the place of their postings. Petitioner claimed that he and Respondent never ever resided together at Delhi despite which the Petition has been filed in Delhi.
4. The quashing of the Petition under the D.V. Act is sought on the ground that the *Court in Delhi do not have territorial jurisdiction to entertain the Petition* as the Petitioner No.1 and the Respondent never ever resided together in Delhi. Furthermore, the Petition contains vague and ambiguous allegations made in a routine manner, in a mechanical language. It contains completely false and frivolous accusations against the Petitioners. Without prejudice, Petitioners No. 2 & 3 (parents of petitioner No.1) have been unnecessarily made parties in this Complaint even though the Respondent has no grievance against them. They have been impleaded as a party only to harass and humiliate them at this old age. The entire family of Petitioner No.1 has been roped in with a view to seek vengeance.



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5. It is further asserted that the Complaint contains only unsubstantiated allegations against the Petitioners. There are no specific incidents or even specific dates of alleged incident, which reflects the falsity of the Complaint.

6. Petitioner No.1 is serving as a Squadron Leader in Air Force and is posted in Agra whereas the Respondent is posted as a Senior Air Traffic Control Officer (SATCO), at Bhathinda. The present Petition is instituted to only embarrass the Petitioner No.1 and to jeopardize his career and cause hindrance in rendering service to the nation.

7. The Respondent is in fact, one year elder to the Petitioner No.1 and also senior in service to him. It is not reasonable to expect that Petitioners would commit any act of Domestic Violence upon her.

8. It is further stated that Respondent is seeking a *Restraint Order* and *also for directions to the Petitioners not to alienate or create third party interest in the properties purchased using her money and matrimonial/shared household*. The Respondent admittedly is the owner of one piece of land which is worth Rs.13 lakhs, which she was able to purchase only because the household expenses were being met by Petitioner No.1. The other piece of land in which she is the co-owner with the mother of Petitioner No.1, is now worth about Rs.17 lakhs. *The Petitioner No.1, however, is not the owner/co-owner in these two properties.*

9. It is further submitted that as per the knowledge of Petitioner No.1, Respondent's subscription towards PF was Rs.31,500/- while he has just contributed Rs.18,000/- month. He is also repaying a loan amount of Rs.6.5 lakhs to AFGIS. Further, Respondent is having all the jewellery worth Rs.6 lakhs that was gifted by his parents in marriage. The Respondent is also in



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her possession of jewellery, 'stridhan' given to her by her parents. Till now, Petitioner No.1 has invested all his earnings and savings on his wife and daughter. He is not having a very sound financial background. Furthermore, he is an SSC Officer and left with only three years of service. To survive without a healthy bank balance, would be difficult.

10. The Respondent, on the other hand, has a sound financial status and multiple assets worth Rs.51 lakhs by which she can support herself and the daughter very well. ***Therefore, prayer (b) seeking Restraint Order is liable to be rejected out rightly.***

11. The *prayers (c) and (d) amply demonstrate the greedy nature of the Respondent as she seeks maintenance @ Rs.50,000/- per month for herself and the daughter and Rs.44,000/- towards litigation expenses.* It is asserted that she is earning approximately Rs.1,00,000/- per month. In addition, she is getting Rs.10,000/- per month towards maintenance of the daughter under the Air Force Rules. There are no circumstances justifying her claim for maintenance for herself and the daughter, and the relief thus, sought is obnoxious and without any basis.

12. Furthermore, it may also be considered that in previous attempts to resolve the matter amicably, Petitioner No.1 had sought the custody of the daughter and did not intend to seek any maintenance for the daughter from the Respondent. Even otherwise, he would be depositing certain amount in her *Sukanya Samridhi* account so that Respondent has good amount of money for the daughter's future, but the Respondent is not willing to accept any of the proposals.



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13. It is further asserted that till March, 2016 he was providing monetary support to Respondent and the daughter but thereafter, she refused to take the money which is corroborated by the audio recording of the conversation. It is evident that this Petition has been filed only to harass the Petitioner No.1 despite the Respondent having sufficient source of income to support herself and the daughter. Pertinently Air Commodore *vide* Order dated 19.08.2016 did not grant any maintenance to the Respondent by observing that she was serving as an Indian Army Officer and was financially independent. *Therefore, her reliefs in regard to maintenance and monetary compensation are liable to be rejected out rightly.*

14. Likewise, it is contended that while on one hand she is claiming that she wants to reside with Petitioner No.1, but on the other hand she is seeking a Restraint Order against the Petitioners *vide* prayer clause (f). The relief and her assertions are self contradictory and falsify her claim.

15. Moreover, there is no domestic violence ever committed by the Petitioners and thus, there is no question of executing any bond with surety.

16. Further, had the Petitioners any intention to seek dowry from the Respondent or her family, it is not understandable as to why would they spend so much money on the Respondent and why would they purchase the land in her name for which her contribution was minimal, which is established from the past few years Bank Statements in the passbook of Petitioner Nos.1 & 2.

17. It is also asserted that the Petitioners never complained of not getting a car during the marriage; rather he had given the second hand car (Hyundai Santro) worth Rs.2 lakhs, for her exclusive use, while he purchased one



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Hyundai Verna for about Rs.8,20,000/- from his own funds for his use. There is no question of seeking any dowry from the Respondent.

18. In the end, it is contended that the Respondents allegations that Petitioner No.1 is roaming hand in hand with another woman, is absolutely baseless. It is an old habit of Respondent to question the integrity and loyalty of Petitioner No.1 towards her. She has no trust in him or in his commitments towards her even though he is committed completely towards her in his responsibilities as a father and as a husband. The Petitioner No.1 has always tried to solve their personal problems within the house so that much uproar should not affect their daughter's mental peace and also their own social image and dignity. Because of such conduct of the Respondent, he is unable to focus on his professional growth as he is always worried about what next allegation is going to be made and what the future of the daughter would be. It is, therefore, submitted that there is no merit in the Petition under Section 12 of the D.V. Act which is liable to be quashed.

19. ***The Respondent in her Reply*** has taken *preliminary objections* that this Petition is a *complete abuse of the process of law* and is not maintainable. The averments, allegations, contentions and statements made in the present Petition, are contrary and inconsistent with the case of the Respondent as has been stated by her in the Complaint. The Respondent is a defence personnel serving in Indian Army, for last nine years. She was recruited under Short Service Commission category. After one year the Respondent would retire from her service and then would have to figure out other options of work to sustain herself and her minor daughter.



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20. She has filed T.P.(C) 596/2018 to get the divorce proceedings initiated by the Petitioner in Family Court, Allahabad to Delhi in which the Notice has already been issued by the Apex Court.

21. It is claimed that the present Writ Petition has been filed with the singular aim to harass, and victimise the Respondent, who is the deserted wife with the responsibility of a minor child.

22. The Respondent has asserted that *she has her permanent residence in Delhi at the parental house of her parents in Qutubgarh, Delhi*. She, having been deserted by Petitioner, took leave and came to Delhi with the minor daughter and started residing at her parental home. While she was at Delhi in her parental home, the present Petition under Section 12 D.V Act was filed. She being a defence personnel has to move to different places owing to her job commitments. The present Petition is, therefore, maintainable at Delhi.

23. *On merit,s* all the averments made in the Petition are denied. It is admitted that the Respondent is 50% owner of land purchased at Pargana Sorav, Gram Behmalpur, District Allahabad admeasuring 342 Sq. Mtrs. but she has asserted that she was compelled to invest her hard-earned money into the purchase of the land as per the wish of the parents of the Petitioner. She contributed about 4 to 5 lakhs even though she had no inclination to purchase the property, but she succumbed to the pressure in order to maintain peace and harmony in the matrimonial home.

24. She has further claimed that Petitioner and his parents were very unhappy on birth of the girl child and used to ill treat her. The original documents of the property are also in the custody of the Petitioner, which he



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has refused to hand over to her despite repeated requests. She has further claimed that the Hyundai Santro car did not belong to Petitioner No.1, but was given to her by her brother initially for the purposes of learning driving and thereafter, for her personal use.

25. She has further asserted that Petitioners used to pass lewd comments and taunt her and the daughter. She was time and again criticised by her in-laws including the Petitioner, for not bringing sufficient dowry. She was threatened time and again, that if she did not act the way they wanted her to, she and her minor daughter would be thrown out of the house. It is claimed that the allegations made in the Writ Petition are all vague and baseless.

26. In so far as the accusations of Petitioner No.1 being involved with other woman is concerned, it is explained that it was one of the colleagues of the Petitioner who had informed her about him roaming hand in hand with another woman in public. Since the description of the woman given was identical to a female staff working with Petitioner No.1, the suspicion/doubt of the Respondent got confirmed as she discovered that he was having an illicit relationship with another woman. She brought this to the notice of Group Captain Rajan. The conduct of the Petitioner towards her worsened after this incident and she has been subjected to verbal and physical abuse leaving her in a state of shock and misery.

27. The Respondent has denied that she left the company of the Petitioner to live separately. She also denied that Petitioner No.1 ever made attempts to meet the daughter or was willing to undertake the responsibility for her upbringing. The intention of Petitioner No.1 is clearly established after he initiated divorce proceedings in Family Court, Allahabad.



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28. After he went to his posting, he lost interest in the Respondent and the child. Initially, he used to visit them on weekends which got modified to monthly visits and thereafter, he stopped his visits completely. Since November, 2015 there has been rare communication between them. She is struggling in her job commitments and in raising the daughter without any assistance or support from the Petitioners.

29. All other contentions in the Complaint are denied. In the end, it is explained that because of the harassment and threats extended by Petitioner No.1, including physical and mental cruelty and desertion by him and her ouster from the matrimonial home, she was left with no other option but to seek support/help from her parents to help her in bringing up the daughter.

30. The Respondent cannot afford to stop her job for supporting herself, her minor child and the parents. After the end of tenure, she would be again compelled to come and reside at her parental home as she has no other residence. It is averred that all the averments made in the Complaint are specific, precise and supported by material evidence. She has reiterated her assertions that she had been harassed on account of dowry and that her dowry articles as well as the property documents, have been retained by the Petitioner.

31. She has admitted that Rs.10,000/- per month are being paid by Petitioner No.1 pursuant to Orders passed by Government of India, Ministry of Defence under Air Force Rules since April, 2017. However, it is claimed that Petitioner No.1 has never been interested in taking the custody of the child, but is merely claiming the same so that he does not have to pay any amount for her maintenance. Various efforts have been made for



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reconciliation, but the Petitioner has not been forthcoming. She was even compelled to make the Complaint to the President, AWWFA (Local) 20 Wg., on 02.06.2016. It is submitted that there is no merit in the present Petition which is liable to be rejected.

32. *The Petitioner in his Rejoinder to the Reply has reaffirmed his assertions as made in the Writ Petition.*

33. **Submissions heard and the written synopsis submitted on behalf of the parties along with the record, perused.**

34. Admittedly the Petitioner No.1 got married to Respondent on 26.11.2011 and one daughter was born from their wedlock. After the marriage, they both went to live in the matrimonial home at Allahabad and thereafter, because of their postings they have been living in different places. There is no denial that since November, 2015 both have been living separately. A Divorce petition has been filed by Petitioner No.1 on 17.08.2016 in Family Court, Allahabad after which the present Petition has been filed by Respondent on 28.03.2017 in the Family Court, Rohini.

35. Presently, Petitioner is posted at Air Force Station, Agra since 15.05.2017 while the Respondent is posted at her place of posting.

36. ***The first preliminary objection taken by the Petitioners is that the Petition is barred by Limitation.***

37. This aspect was considered by the Apex Court in the case of Kamatchi vs. Lakshmi Narayanan, (2022) 15 SCC 50, wherein it was observed that the Complaint under Section 12 of the D.V. Act being essentially civil in nature, Section 468 of Cr.P.C., 1973 providing for limitation does not get kicked in. It is only when *there is a breach of Order*



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of Protection passed under Section 12 of the D.V. Act and it constitutes the offence under Section 31 of the D.V. Act that the period of limitation as prescribed under Section 468 of Cr.P.C. 1973 would become applicable from the date of commission of such offence. Insofar as filing of an Application under Section 12 of the D.V. Act is concerned, there is no starting point for limitation for preferring the Application under Section 12 of the D.V. Act. The starting point arises only and only after there is a breach of Protection Order passed under Section 12 of the D.V. Act.

38. It is, therefore, abundantly evident that there is *no limitation for filing of the Application under Section 12 of the D.V. Act*. The first objection of the Petitioners that the present Application under S.12 of D.V. Act is barred by limitation, is without merit.

39. *The second preliminary objection* on which the quashing of the D.V. Petition is sought is that *the parties have never resided together in Delhi*. **Therefore, this Court has no territorial jurisdiction to entertain the Petition.**

40. Pertinently, the Respondent in her Written Submissions has specifically averred that after their separation in November, 2015 she was compelled to shift to her parental home in Delhi and the present Petition under Section 12 D.V. Act was filed by her. It cannot be overlooked that she is an Army Officer and has necessarily to go to her place of posting which may be out of Delhi; however, there is specific averments that her permanent place of abode is her parental home, which is undeniably in Delhi.



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41. Section 27(1) of D.V. Act stipulates that the Magistrate within whose local limits the person aggrieved permanently or “temporarily resides” or carries on business or is employed, would have the jurisdiction to entertain the Application.

42. In the present case, while the matrimonial home may have been at Allahabad, but there are specific averments that after separation she shifted to her parental home in Delhi. When she filed the present Application in March, 2017 she was reporting to Army Aviation Directorate, Parade Ground, Delhi Cantonment, New Delhi since 05.12.2016. As she was on temporary duty, she resided in Delhi till her next posting which came in April, 2017. Now also, she may be away on postings, but her assertions that her permanent Residence is with her parents in Delhi, cannot be overlooked.

43. It is evident that the Petition under D.V. Act can be filed by the aggrieved person where she permanently or temporarily resides. It is her assertion that at the time of filing of the present Petition in 2017, she was temporarily posted in Delhi and her permanent residence is her parental home in Delhi.

44. The the Supreme Court in the case of Shyamlal Devda vs. Parimala, Criminal Appeal No.141/2020 arising out of SLP (Crl) No.4949/2019 decided on 22.01.2020, held that a plain reading of Section 27 of D.V. Act makes it clear that the Petition is maintainable where the person aggrieved is residing temporarily.

45. Similarly, in the case of Ramlakhan Singh vs. Union of India, W.P(C) 7818/2018 decided by the Division Bench of this Court on 02.12.2013 it was held that where a victim of domestic violence finds shelter in her parental



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home and she specifically claims it to be a place of temporary residence she can prefer a Complaint in such place. Merely because she has to search for employment or to pursue some course which would fetch her job so that she could be financially independent cannot be inferred to say that such place does not have territorial jurisdiction.

46. Thus, the Respondent was residing with her parents within the territorial jurisdiction of the learned M.M. at the time of filing of the Petition. *In the facts of the present case, prima facie it has been shown that this Court has territorial jurisdiction and the plea taken on behalf of the Petitioner is not tenable.*

47. *The next ground* for quashing of the Complaint as taken by the Petitioners is that *the contentions of domestic violence are vague and not specific*. However, the perusal of the Petition shows that there are specific averments which have been made to make out a case of domestic violence which need to be considered on merits; it cannot be said that the Petition does not disclose *any act of domestic violence* or that the Petition is liable to be rejected out rightly.

48. It is also pertinent to note that there is specific relief of maintenance claimed on behalf of the daughter, which cannot be said to be without any basis. The learned M.M. may come to whatever conclusion, but the averments made in the Complaint cannot be said to be bereft of any cause of action.

49. Pertinently, the Respondent has also claimed a right in '*shared household*' under Section 17 of the Domestic Violence Act. To appreciate this contention of the Petitioners, it is pertinent to refer to *Section 3 of the*



D.V. Act which defines *Domestic Violence*. It provides that any act, omission or commission or conduct of the Respondent *which harms or injures or endangers the health, safety and well-being of the aggrieved person*, would constitute domestic violence. *Explanation I* provides the term *domestic violence* would include *physical abuse, sexual abuse, verbal and emotional abuse, including the ridicule, humiliation, repeated threats of physical pain; economic abuse which includes deprivation of the economic or financial resources, disposal of household effects and prohibition to continued access to resources or facilities by the aggrieved person.*

50. This definition of *Domestic Violence* is comprehensive and includes not only physical abuse, but also mental and emotional abuse. Most importantly, it also includes economic abuse. Further, the reliefs which a person may seek under the D.V. Act, are not limited only to monetary reliefs, but also extend to *custody orders* in respect of the child, *compensation for the injury or physical, mental, emotional distress caused to the person*; most importantly to *Protection Orders* and *Residence Orders* i.e. *a right to shared household*.

51. *In the present case*, the Respondent-wife has sought reliefs for *Protection, Residence Order, Monetary Relief, and Custody of the child as well as Compensation Order*, in her Complaint under the D.V. Act.

52. The Petitioner has asserted that there is no *prima facie* evidence of violence of any kind to which the respondent has been subjected and the D.V. petition is not maintainable.

53. In this regard, it would be pertinent to refer to Section 17 of the D.V. Act which provides for *right to reside* in a shared household while Section



19 deals with *Residence Orders* which could be passed by a Magistrate. Sub-section (1) of Section 17, which begins with a non-obstante Clause, states that 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.

54. What is thus, evident is that while all other reliefs are available to an “*aggrieved person*” thereby implying that the person should have been a victim of domestic violence, but so is not the pre-requisite for Right of Residence under Section 17 of the D.V. Act.

55. In this regard, reference be made to the Judgement of Apex Court in the case of *Prabha Tyagi vs. Kamlesh Devi*, (2022) 8 SCC 90 wherein it was observed that the right of residence of a mother, daughter, sister, wife, mother-in-law and daughter-in-law or such other categories of women in a domestic relationship have the right to reside in a ‘shared household’ *de hors* a right, title or beneficial interest in the same. The right of residence is guaranteed under Sub-Section (1) of Section 17 and she cannot be evicted, excluded or thrown out from such a household even in the absence of there being any form of domestic violence i.e. *even if she is not an ‘aggrieved person’*.

56. *Therefore, even if the contention of Petitioner is accepted that there was no domestic violence, then too her right to claim residence is still maintainable.*

57. As already noted above, it is essentially a civil proceeding and it is for the learned Magisterial Court to decide on merits whether the Respondent-



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Wife is entitled to any relief or any Orders as sought by her in her Petition under Section 12 of D.V. Act. *It cannot be held at this stage that the proceedings are vexatious and liable to be quashed.*

Conclusion:-

58. It is, therefore, concluded that there is no justifiable ground shown by the Petitioners entitling them for quashing of the Complaint. The averments made in the Petition, are based on merits which is to be appreciated by the learned M.M. who may pass appropriate Orders after considering the rival contentions of the parties.

59. *The Petition is hereby dismissed. The pending Application(s), if any, are accordingly disposed of.*

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 27, 2025

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