ready to maintain her and she refuses to cohabit the women/wife can be refused payment of maintenance.

10. As far as factual matrix of the aforesaid case, namely VANAMALA and ROHTASH SINGH is concerned, both these cases are based on identifying and recognizing the right of a woman who was divorced not on the ground of proved adultery.

11. In the aforesaid background, both these Judgments will be hardly of any assistance to the Petitioner. Considering the expressed embargo on the right of the Petitioner, to claim maintenance particularly, divorce was ordered on 27.4.2000 based on the allegation of adultery, the Court below has rightly held that the Petitioner-wife is not entitled for maintenance.

12. In the aforesaid background, no case for interference is made out. Both these Petitions lack merit.

13. Dismissed.

2020 (1) MMLJ 339 (M.P)

MADHYA PRADESH

(Before – Sunil Kumar Awasthi, J.)

Ramesh Chandra Sharma and others — Petitioner

Vs.

Smt. Meena — Respondents

M.Cr.C. No.19979/2019

Decided on – 07.01.2020

Protection of Women from Domestic Violence Act, 2005, Section 12 and 2(f)—Code of Criminal Procedure, 1973, Section 482—Complaint under—Quashing for—Domestic relationship—Establishment of—Domestic Relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under DV Act is filed—If such relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there —When 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 DV Act—In the present case, the respondent resides at Indore (M.P.), whereas the applicants are residing Alwar (Rajasthan) and they are not shared the household with the respondent at any point of time—Petition filed u/s 482 of Cr.P.C. is allowed—Complaint is hereby quashed against applicants. (Para 8 and 9)

[Vijay Verma v/s State (NCT) of Delhi, (2010) 7 AD(Delhi) 401 : (2010) 118 DRJ 520 – referred)

Law Point

The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed.

Counsel for Appearing Parties:-

Shri Hitesh Sharma, learned counsel for the applicants.

None for the respondents.

ORDER

Before – Sunil Kumar Awasthi, J. — 1. Applicants have filed present petition under Section 482 of Cr.P.C. for quashing the proceedings of criminal Case No. 627/2019 under Section 12 of Protection of Women From Domestic Violence Act, 2005 (in short DV Act) pending before the Court of Judicial Magistrate First Class, Indore.

2. It is not disputed that the Pooja daughter of applicant No.1 and 2 was married to the son of respondent on 07.12.2015. From their wedlock one daughter was born out. Presently Pooja is residing with the applicant No.1 and 2 with her daughter. The applicant No.3, 4 and 5 are the brother, brother in-law and sister of Pooja.

3. Learned counsel for the applicants has submitted that respondent and her son ill-treated the Pooja on account of demand of dowry. After receiving the information regarding this, the applicant No.1 and 2 approached Indore police for protection and with the help of police Pooja went back to the house of applicant No.1 and 2. After reaching in her parental house situated Alwar (Rajasthan) Pooja made complaint against the respondent and her son at Mahila police Station Alwar regarding demand of dowry and harassment. After the intervention of police, Pooja went back to Indore but after sometime she was again thrown out from her matrimonial house. Thereafter, Pooja filed an application under Section 125 of Cr.P.C. for getting maintenance from her husband. She again lodged police complaint against husband and his family members at Mahila Police Station Alwar. She also filed petition under Section 12 of DV Act against them. Then to build pressure upon Pooja, the respondent has filed this case under Section 12 of DV Act against the applicants, which is clear abuse pf process of law because the applicants never resided with the respondent, therefore, they are not covered under the definition of 'Domestic relationship'. Under these circumstances, no case is made out against them under the said Act, thus the trial court has committed error in taking cognizance against the applicants for the aforesaid offence. Hence, learned counsel for the applicants prays for quashment of proceedings of Criminal Case No.627/2019 pending before the Judicial Magistrate First Class, Indore against the applicant.

4. None is appeared on behalf of the respondent when the case was called for hearing.

5. Having heard learned counsel for the applicants and perused the record.

6. In the present petition, the respondent taking shelter of domestic relationship and domestic violence under the Domestic Violence Act. 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."

7. 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. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, a person can be a respondent but if the relationship does not continue and the relationship had been in past and is not in present, a person cannot be made respondent on the ground of past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there. Reliance has been placed *Vijay Verma Vs. State of NCT of Delhi &Anr., reported in 2010 (118) DRJ 520,* which is also relied by this Court in M.Cr.C.No.9246/2014, the para of 5, 6 and 7 of the aforesaid Judgement is as under:

> 5. Filing of a petition under Protection of Women from 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 Domestic Violence Act 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.....

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.

8. This Court has carefully gone through the complaint preferred under Section 12 of the DV Act, and in the considered opinion of this Court, that in the present case, the respondent resides at Panchvati colony, Indore, whereas the applicants are residing Alwar (Rajasthan) and they are not shared the household with the respondent at any point of time therefore, the applicants are not covered under the definition of domestic relationship with the respondent, thus proceedings based upon the compiaint initiated in

the matter pending before the Judicial Magistrate, First Class- Indore is not maintainable against the applicants and deserves to be quashed.

9. In view of the above, the present petition filed under Section 482 of Cr.P.C. is allowed and the proceedings of criminal Case No.627/2019 pending before the Judicial Magistrate First Class, Indore under D.V. Act against the applicants namely Ramesh Chandra Sharma, Smt. Nirmal Sharma, Shailesh, Ramesh Chandra Meena and Smt. AnuradhaMeena is hereby quashed.

Let a copy of this order be sent to concerned trial court for information and necessary compliance.

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2020 (1) MMLJ 343 (Mad)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Before – M. Nirmal Kumar, J.)

Gnanavel — Appellant

Vs.

State through represented by the Inspector of Police, Oomachikulam Police Station, Madurai -- Respondent

Crl. A(MD)No. 299 of 2014

Decided On : 03-01-2020

Indian Penal Code, 1860, Section 304B and 498A—Dowry death and matrimonial cruelty—Appeal against conviction—Father and brother of the deceased and Village President have categorically stated about the appellant subjecting the deceased to cruelty and harassment and the death had occurred otherwise than under normal circumstances within seven years of marriage—But, in present case, The trial Court, without affording an opportunity to the appellant, had convicted him for offence under Section 304-B IPC.—Hence, this Court feels it necessary, in the interest of justice, to afford appellant that opportunity—Case is remitted back to the trial Court—Appeal is partly—allowed to the extent indicated above. (Para 15 to 17)

Counsel for Appearing Parties:-

For Appellant : Mr.C.M.Arumugam

For Respondent : Mr.K. Suyambulinga Bharathi, Govt. Advocate (crl.side)

Cases Referred:-

Shamnsaheb M.Multtani Vs. State of Karnataka reported in (1995) SCC (Cri) 943 : (2001) SCC (Cri) 358

Subramani Vs. State, Rep.by Deputy Superintendent of Police, Jeyapuram Sub Division, Trichirappalli District reported in (2013 (3) MLJ(Cr) 236)

Gur Bachan Singh Vs. State made in Criminal Appeal No.892 of 1991

JUDGMENT