

**IN THE COURT OF SHATAKSHI, JUDICIAL MAGISTRATE FIRST
CLASS, GURUGRAM.**

Case No. : 23 of 2017
CIS No. : DV-44-2017
Date of Instt. : 22.3.2017/18.5.2017
Date of Order: 22.1.2018

Aashita W/o Saket Dalal D/o Sh. Satyapal Singh Saharan, Presently
residing at H.No. 11, Sector-40, Near DPS School, Gurugram.

..... Complainant

Versus

1. **Saket Dalal** S/o Sh. Jagmohinder Singh Dalal C/o Tata Consultancy Services, Block-C, Kings Canyon, ASF Insignia, Gurugram-Faridabad Road, Gwal Pahari, Gurugram, Haryana.
2. **Jagmohinder Singh Dalal** (father-in-law), aged about 58 years.
3. **Smt. Indrawati** (mother-in-law), aged about 55 years wife of Jagmohinder Singh Dalal.

Both residents of 407/7, Sant Nagar, Near D.N. Model School, Patiala Chowk, Jind, Haryana.

..... Respondents

**(APPLICATION UNDER SECTION 468 OF CRIMINAL PROCEDURE
CODE,1973)**

Present: Sh. Vishal Gupta, counsel for complainant.
Sh. Vipin Gupta, counsel for respondents no. 1 to 3.

ORDER:-

This order shall dispose of an application filed by the respondent under Section 468 of Criminal Procedure Code, 1973 (**hereinafter referred as “Cr.P.C”**) for dismissal of present petition on the ground of expiry of period of limitation filed by the complainant under Protection of Women from Domestic Violence Act, 2005 (**hereinafter referred as "DV. Act"**).

2. Through this application the learned counsel for respondent/applicant submitted that the present application has been filed by the petitioner for harassing the respondent. The ulterior motive of complainant is to file false cases against the respondent in the present case. He further submitted that the complainant in the present case or the petitioner left her matrimonial home on 22.03.2015 alongwith her father and all her belongings. He further contended that the period of limitation for complaint against the offence has already expired. It is already 24 months since the respondent has left her matrimonial home. Therefore, the present petition under Section 12 of Domestic Violence Act is time barred and is not maintainable.

3. The ld. counsel for petitioner in the present case had relied upon **“V.D. Bhanot Vs. Savita Bhanot 2012 (1) RCR Criminal 834”** wherein it has been held by the Hon'ble Supreme Court that if the wife who has shared house hold in the past but no longer continue to do so when the Domestic Violence Act came into force. She would still be entitled to the Protection of Domestic Violence Act. He has also relied upon another Judgment **“Krishna Bhattacharjee Vs. Sarathi Chudhary 2016 (1) RCR Criminal 152”** wherein it has been held by the Hon'ble Supreme Court that the bar of limitation would not be applicable to the application filed under Section 12 of Domestic Violence Act because the concept of continuing offence get attracted.

4. Copy of the present application was given to the petitioner/complainant. The reply had been filed. In their reply the learned counsel for petitioner stated that the Section 468 of Cr.P.C. is not applicable on the present petition filed under Section 12 of Domestic Violence Act. He submitted that domestic violence is a continuing offence and there is no period

of limitation for expiry of the present offence. Therefore the present application should be dismissed. With these prayer the learned counsel prayed for dismissal of the present application. The Id. Counsel for respondent has relied upon **“Inderjit Singh Grewal Vs. State of Punjab & Anr 2011”** wherein the Hon'ble Supreme Court in para no. 7 has held that the procedure of Cr.PC shall be applicable upon offences of domestic violence. He has also relied upon the Judgment **“Nagesh Malik Vs. Payal Malik 2010”** wherein the Hon'ble High Court of Delhi has held that the domestic relationship between the aggrieved person and the respondent must be present and alive at the time where complaint under domestic violence was filed and if this relationship is not alive on the date when complaint was filed, the domestic relationship cannot be said to be there. The Hon'ble Court has further held that there should not be unreasonable delay beyond the period of limitation and if the petition is filed after expiry of period of limitation then it should be dismissed.

5. Arugments heard. Record perused.

6. It has been argued by the Id. Counsel for applicant/respondent that the petitioner had deserted the matrimonial home on 22.3.2015. The petition could only be filed within one year. However the present petition has been filed after two years.

7. The case law cited by the Id. Counsel for complainant **“V.D. Bhanot Vs. Savita Bhanot 2012 (1) RCR Criminal 834”** is not applicable in the present case as in this case doemestic violence was alleged in the year 2005 before enactment of this act. However in the present case when the petition was filed in the year 2017 the DV Act was already in existence. Therefore the given case law is not applicable in the present facts and circumstances. In **“Krishna**

Bhatacharjee Vs. Sarathi Chudhary 2016 (1) RCR Criminal 152” the claim for Stridhan was made for which the Hon'ble Supreme Court has held that bar of limitation would not be applicable whereas in the present case it is related to the maintenance and other relief from the respondent. Here it is the absence of matrimonial relationship existing between the petitioner and respondent. Therefore the present case law is also not applicable in the given facts and circumstances.

8. It is a settled principle of law that the procedure followed for the claims of domestic violence is the procedure given under Cr.P.C. The procedure laid down under Cr.P.C for filing complaint is given under Section 468 of Cr.P.C wherein it has been clearly provided that no petition or complaint shall be entertained after the expiry of period of limitation. This court is of the view that the petition under DV act should also be filed within the mandatory period of one year as procedure of Cr.P.C is applicable upon DV Act proceedings. Therefore the present application at hand is allowed since the complaint or petition filed by the petitioner is barred by law. Therefore present petition or complaint be dismissed due to applicability of bar or limitation. File be consigned to record room after due compliance.

ORDER : ALLOWED

Announced in open court:

Dated: 22.1.2018

(Shatakshi)
Judicial Magistrate First Class,
Gurugram , UID -HR0509

Note:- This order contains four (4) pages and each page has been duly checked and signed by me.

(Shatakshi)
Judicial Magistrate First Class,

Puneet
Steno III

Shatakshi
JMIC, Gurugram
UID No. HR0509

