

**IN THE COURT OF MS. APARNA CHOUDHARY, JUDICIAL
MAGISTRATE FIRST CLASS, GURUGRAM (UID-HR0436)**

CNR No. : HRGR03-10807-2014
CIS No. : DV-122-2014
Crl. Case no. : 37
Date of Institution : 20.11.2014/01.06.2017
Date of Decision : 18.04.2019

Smt. Shalini Vashistha W/o Gurusharan Awasthi, D/o Sh. Kuldeep Vashistha
R/o Flat no. 104, Bhagwanti Group Housing Society, sector 56, Gurgaon.

.....Applicant/Complainant

Versus

1. Gurusharan Lal Awasthi, Son of Late Sh. Ram Roop Awasthi
 2. Shiv Dulari W/o Late Sh. Ram Roop Awasthi
 3. Ganesh Awasthi, Son of Late Sh. Ram Roop Awasthi
- All are R/o H/No. 7/65, Jai Shree Building Post Sagar Road no.2,
PS Tilak Nagar, Chambur Mumbai.

.....Respondents/Accused

**Complaint under Section 12 read with Section 17, 18, 19, 20, 22 and 23 of
the Protection of Women against Domestic Violence Act 2005.**

Present: Sh. Rishi Raj Yadav, Advocate for petitioner.
Sh. Pardeep Nawani, Advocate for respondent.

Judgment:

Succinctly, the petitioner has submitted that the marriage between the petitioner and respondent no. 1 took place on 27.04.2008 at Mumbai, according to Hindu rites and ceremonies. The father of the petitioner had organized reception ceremony at Gurgaon on 10.05.2008. No issue was born out of the wedlock of the petitioner and respondent No. 1. The petitioner lived with respondent no. 1 at Tilak

Nagar, Chembur, Mumbai. The father of the petitioner gave all the major and minor dowry articles to the respondents and their relatives and also spent Rs. 15 lakhs in the marriage. However, the respondent and his relatives were not satisfied with the dowry articles given to them in the marriage. From the very second day of the marriage i.e 28.04.2008, respondent no. 1 and his parents, brother and sister started harassing the petitioner for bringing insufficient dowry and asked the petitioner to bring Rs. 5 lakhs in cash and get a flat situated at Gurgaon registered in the name of the respondent no. 1. The respondents raised demand of Rs. 5 lakhs on the day of reception. On 12.05.2008 the respondents gave beatings to the petitioner to get their demands fulfilled. On 13.05.2008, the respondent no. 1 left Mumbai for London where he was working. Before leaving, the respondent no. 1 told the petitioner that he shall not take her to London till the time his demand of dowry is not met. On 22.05.2008 at about 7:45 a.m, the respondent no. 2 and 3 and Kamlesh turned the petitioner out of her matrimonial house to fulfill their demand of dowry. Since, then the petitioner is residing at her parental house at Gurgaon. The parents of the petitioner tried to talk to the respondents, however, they did not revert back. After some days petitioner gave a call to the respondent no. 1, however, respondent no. 1 abused her and asked her to fulfill his demands of dowry. On 03.06.2008 the petitioner along with her father went to Mumbai but the respondents threatened to kill them and again raised a demand of Rs. 5 lakhs. The petitioner in order to save her matrimonial life did not make any complaint regarding this. The petitioner lodged FIR 72 dated 18.05.2009 under Section 498-A/406/506 IPC against respondents. The petitioner has no source of income to maintain herself and is dependent upon her old aged parents. The respondent no. 1 has moral and statutory

duty to maintain the petitioner being his legally wedded wife. The petitioner faced domestic violence at the hands of the respondents therefore, a prayer for maintenance amount, protection order, residence order and compensation amount has been made.

2. The respondents, in reply filed on their behalf submitted that the present complaint is liable to be dismissed as the same is not maintainable because domestic relationship had seized between the parties as the petitioner has been residing separately from respondent no. 1 prior to 03.06.2008. The respondent no. 1 has no source of income since August, 2012 till date as the petitioner has lodged a false FIR against the respondent and the respondent no. 1 was in custody since 29.05.2014 to 12.06.2014 and his passport was impounded on 30.05.2014 till 04.08.2015. The respondent no. 1 is a British Citizen. The respondent no. 1 has no immovable property in his name in India. As alleged the firm namely Nexgen was in the name of brother of respondent no. 1 which was closed down with heavy loss. As per her bio-data, the petitioner is a qualified lady and his capable of maintaining herself. Besides this, denying all other averments of the petition specifically a prayer for dismissal of the present petition has been made.

3. In support of her case, the petitioner examined Ram Singh, Assistant, SBI as CW1. No one was examined as CW2. Jyoti Rani, Sales Officer, ICICI Bank was examined as CW3. The petitioner Shalini Vashishta was examined as CW4. She tendered her affidavit Ex. CW4/A. ASI Ramanand was examined as CW5. Thereafter, the evidence on behalf of the petitioner was closed by court order on 29.11.2017. The following documents, were tendered in evidence :-

Ex.P1

Photocopy of FIR No. 72 dated 18.05.2009

Ex.P2	Photocopy of FIR No. 143 dated 30.05.2014
Ex.P3	Certified Copy of Order dated 13.07.2010
Ex.P4	Photocopy of Judgment dated 31.05.2016 passed in case title Smt. Shalini Vashistha Vs. Gurusharan Awasthi
Ex.P5	Income Tax Return of Gurusharan Lal Awasthia
Ex.P6	Bank Statement of G Awasthi
Ex.P7	Letter dated 15.02.2008
Ex.P8	Invoice dated 14.06.2008
Ex.P9	Opening Water Service Bill
Ex.P10	Profile of Guru Awasthi on London Rishtey Singles Meetup
Ex.P11	Profile of Guru A.
Ex.P11/A	Profile of Nexgen Company
Ex.P12	Profile of Jai Bhavani Wafers Farsan on Indiamart
Ex.P13	Profile of Guru Awasthi on LinkedIn
Ex.P14	Bio-data of Guru Awasthi
Ex.P15	Letter dated 16.07.2007 of Tefima Ltd. To the British High Commissioner, Delhi
Ex.P16	Property Details of 24, Abbey View, Garsmouth Way, Watford WD25 9DY
Ex.P17	Smile Pathways prescription of Isha Gupta dated 28.09.2015

4. To controvert, the respondent No.3 Ganesh Awasthi got himself

examined as RW1 and tendered his affidavit Ex.RW1/A. Thereafter, the evidence on behalf of the respondents was closed by court order on 17.04.2018. However, the following documents were tendered by the respondents:-

Ex.RW1/1:	Certified copy of Judgment dated 29.03.2017 passed in case title State Vs. Gurusharan Lal Awasthi and Ors.
Ex.RW1/2:	Certificate under Section 65-B of Indian Evidence Act 1872
Mark-A	Photocopy of Newspaper Matrimonial Advertisement
Mark-B	Photocopy of Bio-data of Shalini Vashishta
Mark-C	Photocopy of Bio-data of Shalini Vashishta
Mark-D	Photocopy of cross-examination of Shalini Vashishta recorded on 12.10.2015
Mark-E	Photocopy of e-mail dated 02.07.2008
Mark-F	Photocopy of Curriculum Vitae of Shalini Awasthi
Mark-G	Photocopy of B.A Decree of Shalini Vashishta
Mark-H	Photocopy of Letter dated 18.10.2014 from UGC
Mark-I	Photocopy of E-mail dated 22.06.2008

5. I have heard the arguments of Shri Rishi Raj Yadav, learned Counsel for the petitioner and Shri Pardeep Nawani, learned Counsel for the respondents and have gone through the case file carefully.

6. Upon cogitating the arguments and careful perusal of records, it is manifest that the petitioner was married to the respondent No.1 on 27.04.2008 as per Hindu rites and ceremonies. It is an admitted fact that the respondent no. 1 left

India on 13.05.2008 i.e. after fifteen days of marriage. It is alleged by the petitioner that she was regularly harassed by the respondent no. 1 and his relatives for bringing dowry and she was ousted from her matrimonial house on 22.05.2008 and since then she has been residing with her parents at Gurugram. In the petitioner evidence, the bank statements of respondent no. 1 has been proved by CW1 Ram Singh of SBI Bank and CW3 Jyoti Rani of ICICI Bank. Further, CW5 ASI Ramanand has proved the travel details of respondent no. 1 from India to U.K and vice-versa. The petitioner Shalini herself stepped into the witness box as CW4 and tendered her affidavit Ex.CW4/A in her examination-in-chief in which she reiterated the facts mentioned in her petition.

7. At this juncture, it is clear that the petitioner resided at her matrimonial house between 27.04.2008 to 22.05.2008 wherein between she came to Gurgaon for her reception function on 10.05.2008. There is no evidence on record to prove the alleged beating of petitioner at the hands of the respondents on 12.05.2008. The petitioner has stated that she was ousted from matrimonial house on 22.05.2008 whereas the present petition under the provisions of Protection of Women from Domestic Violence Act, 2005 was moved on 20.11.2014 which is about six years later when the domestic relationship ceased to exist. Here, it is relevant to discuss *Smt. Vijaya Vasant Sawant Vs. Ms. Shubhangi Shivling Parab and others 2014(1) RCR (Criminal)* in which it was held by the Hon'ble Bombay High Court that where the petitioner had been staying away from the husband for more than four years prior to filing of the complaint ought to have been considered by the Trial Court where the delay in filing the complaint is not explained. Further, it was held in *Sejal Dharmesh Ved Vs. The State of Maharashtra 2013 (5) LJ SOFT 48* that

the applicant married on 04.05.1999 and lived with her husband in the U.S. The applicant returned to India on 11.02.2009 and filed a complaint under the DV Act on 18.01.2010. It was held that there was no domestic relationship between the parties. It was discussed that domestic relationship is defined to be one of which the party then lived and had earlier lived. That would be during the subsistence of the union between them. The application under the DV Act could be filed, when the marriage union subsisted. That having come to an end and long after the physical relationship came to be an end, she having returned to India, she cannot be taken to be living in any domestic relationship in India. A wife who lived in a domestic relationship earlier, but which ceases only because of any domestic violence can certainly file an application for such domestic violence that took place whilst she lived in that relationship. Such application is required to be filed within a reasonable time to show that relationship would give her the cause of action to sue under the D.V. Act for the reliefs under the Act.

8. Similarly, it has been held in ***Sonia Chauhan Raghove Vs. Sanjive Raghove 2012 (4) CIVIL COURT CASES 572 (Delhi)***. That an application under the Act cannot be filed by a person who has established his separate household and ceased to have a domestic relationship. Domestic relationship continues as long as the parties live under the same roof and enjoy living together in a shared household.

9. In this case it is an admitted fact that the petitioner resided at her matrimonial house for about one month and the domestic relationship ceased with respondent no. 1 on 13.05.2008 and with respondents no. 2 and 3 on 22.05.2008. There is nothing on record to suggest that any act of domestic violence took place from 22.05.2008 to 20.11.2014. No plausible explanation has been given by the

petitioner to show that as to how she is entitled to file and maintain the present complaint after a lapse of almost six years from ceasing of domestic relationship with the respondents. Even though the Protection of Women from Domestic Violence Act, 2005 is a beneficial legislation but the same cannot be used as a mechanism for satiating personal motives and to cause harassment to the other party. In the absence of any specific provision with regard to limitation of filing complaint under the DV Act the courts have to be guided by the rules of precedents and as well as judicial wisdom. From the aforesaid, discussion it is clear that the present is not maintainable as it is highly time barred and no relief whatsoever can be granted to the petitioner. Hence, the present petition/complaint stands **dismissed**. The file be consigned to record after due compliance.

ANNOUNCED IN OPEN COURT:
Dated: 18.04.2019

**(Aparna Choudhary),
Judicial Magistrate, 1st Class,
Gurugram.UID No.HR-0436**

Note: This judgment contains eight pages and all the pages have been signed.

**(Aparna Choudhary),
Judicial Magistrate, 1st Class,
Gurugram.UID No.HR-0436**

Pooja
Steno-Gr-III

CNR No.:HRGR03-10807-2014

DV-122-2014

Shalini Vashishta Vs. Gurusharan Lal

Present: Sh. Rishi Raj Yadav, Advocate for petitioner.
Sh. Pardeep Nawani, Advocate for respondent.

Final arguments heard. Now, to come up on after lunch for orders.

**(Aparna Choudhary),
Judicial Magistrate, 1st Class,
Gurugram/UID No.HR-0436**

Present: Sh. Rishi Raj Yadav, Advocate for petitioner.
Sh. Pardeep Nawani, Advocate for respondent.

File taken up again after lunch. Order pronounced. Vide my separate judgment of even date, the present petition/complaint stands **dismissed**. The file be consigned to record after due compliance.

**ANNOUNCED IN OPEN COURT:
Dated: 18.04.2019**

**(Aparna Choudhary)
Judicial Magistrate, 1st Class,
Gurugram/UID No.HR-0436**