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

**Date of Decision: 24<sup>th</sup> July 2024**

+ CRL.REV.P. 334/2023

BIBI SABERA

.....Petitioner

Through: Mr. Ravindra S. Garia, Mr. R.B. Singh, Mr. Sunil Singh and Mr. Shashank Singh, Advocates.

versus

MAJOR DR. CHANDRA SHEKHAR PANT@ HIMMAT KHAN

.....Respondent

Through: Mr. Vaibhav Kapur, Advocate.

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**ANUP JAIRAM BHAMBHANI J.**

**CRL.REV.P. 334/2023**

By way of the present petition filed under section 397 read with section 401 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner impugns order dated 06.03.2023 made by the learned Additional Sessions Judge, Karkardooma District Courts, Delhi ('ASJ') in CrI. Appeal No. 168/2022. The criminal appeal had arisen from order dated 30.07.2022, by which order the learned Metropolitan Magistrate (Mahila Court), Karkardooma District Courts, Delhi had dismissed an application under section 12 of the Protection of Women from Domestic Violence Act 2005 ('DV Act').



2. Notice on the present petition was issued *vide* order dated 28.03.2023; pursuant to which reply dated 05.06.2023 has been filed on behalf of the respondent.
3. The court has heard Mr. Ravindra S. Garia, learned counsel appearing for the petitioner, as well as Mr. Naginder Kumar, learned counsel appearing for the respondent.
4. Mr. Garia submits, that on 09.02.2023 the appeal was heard at length, though in-part; and the matter was thereafter posted by the learned ASJ to 06.03.2023 for further arguments. As recorded in order dated 06.03.2023, on that date the petitioner (appellant before that court) had stated that an amicable settlement between the parties was not possible. Counsel submits, that though this statement was duly recorded in their presence and the matter was posted to 25.05.2023 for further arguments, when the order was released, it transpired that the learned ASJ had also directed the S.H.O., P.S.: Shakarpur, Delhi to file a report about the 'citizenship' of the petitioner; directing the S.H.O. to verify whether the petitioner was an Indian citizen; and if not, in what capacity she was residing in India. The learned ASJ had also recorded a direction to the petitioner to the same effect.
5. In this context, it is submitted that the citizenship of the petitioner is of no relevance to the DV Act proceedings, or to the appeal that had arisen therefrom; and that the petitioner was entitled to decline an amicable settlement with the respondent; and, as is foreseeable, the probable consequence of inquiring into the petitioner's citizenship status would be of the petitioner getting deported from the country,



which would inure to the respondent's benefit, who (latter) would thereby be relieved of facing proceedings under the DV Act.

6. Mr. Garia submits, that the learned ASJ ought to have decided the appeal under the DV Act filed by the petitioner on its own merits, without reference to the petitioner's citizenship status in India, which was not a matter under consideration of the learned ASJ.
7. On the other hand, Mr. Kumar argues, that the issue of citizenship came-up in view of the fact that in the complaint under the DV Act filed before the learned Magistrate, the petitioner had indicated her permanent address as Kabul, Afghanistan; and had given her present address as a certain premises in Shakarpur, Delhi which happens to be the address of the Advocate who was representing her. It is submitted that it is in this context that the learned ASJ doubted as to whether the petitioner was *at all residing in India*, and therefore whether she could have had a "*shared household*" with the respondent in the context of the DV Act.
8. Mr. Garia however argues, that it now stands clarified by the Supreme Court that the issue of a 'shared household' does not depend on whether a party has *physically resided* with her husband/partner in a household; and what is relevant is whether she has the *right to reside* in such household.<sup>1</sup>
9. It is evident from a perusal of the impugned order, that the learned ASJ has put the S.H.O. to "*notice*" directing him to "... *facilitate the matter*" within "... *FIVE WORKING DAYS*"; and has also warned the

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<sup>1</sup> *Prabha Tyagi vs. Kamlesh Devi*, (2022) 8 SCC 90



S.H.O. of consequences to follow against “... *the erring official*”, and also cautioning him that non-compliance with the order would be viewed seriously.

10. By the text and tenor of the direction contained in the impugned order, it appears that the learned ASJ is of the view that the citizenship status of the petitioner is central to deciding the petition under section 12 of the DV Act.
11. However, this court is of the opinion, that the petitioner’s claim that she had a ‘shared household’ with the respondent cannot be decided on the basis of her citizenship status in India. However, by way of the impugned order the learned ASJ has directed a report to be filed by the concerned S.H.O. about the petitioner’s citizenship; and has thereafter observed that “... .. *if she is not an Indian citizen, in which, (sic) capacity she has been residing in India.*”
12. On a plain reading of section 12 of the DV Act, it is clear that what is relevant and material for deciding a petition under that provision is whether or not the wife had a ‘shared household’ with the respondent, which is an issue to be decided within the meaning, contours and parameters of the law as laid down by the Supreme Court; and the petitioner’s citizenship status *per-se* is wholly irrelevant to that issue.
13. To be clear, in order to establish her case in the proceedings under the DV Act, the *petitioner would definitely be required to show* that she had a ‘shared household’ with the respondent; however, the answer to that issue would *not* turn-upon her citizenship status, since even a foreign national, regardless of her visa status, could have a ‘shared household’ with another person within the meaning of the DV Act.



14. The court must be careful not to conflate proceedings under the DV Act with those under the Foreigners Act, 1946 ('Foreigners Act'). To appreciate this, it must be noticed that there is nothing in the DV Act to suggest that a 'domestic relationship' can only be between two persons holding Indian citizenship. As can be gathered from its preamble, the objective of framing the Domestic Violence Act has no connection with the citizenship of a woman. The preamble reads as under:

*“An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.”*

15. Section 12 of the DV Act provides that an 'aggrieved person' may file an application before a concerned Magistrate seeking one or more of the reliefs available under that statute. One of the reliefs available under the DV Act is the right of every woman who is in a 'domestic relationship' with a respondent to reside in the 'shared household'. This right is provided in section 17 of the DV Act, which reads as follows :

*“17. Right to reside in a shared household.-(1) 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.*

*(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law. ”*



16. Thus, the three aspects that are relevant for seeking relief under section 17 are (i) that the applicant must be a woman; (ii) that she must be in a domestic relationship with the respondent; and (iii) that she should be asserting her right to reside in the shared household.

17. An ‘aggrieved person’ is defined in section 2(a) of the DV Act, as follows :

*“(a) “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;”*

18. A ‘domestic relationship’ finds its definition from section 2(f), which reads 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;”*

19. And finally, the meaning of a ‘shared household’ is given in section 2(s), which reads as under :

*“(s) “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;”*



20. As is seen on a plain reading of the foregoing relevant sections, the citizenship of a woman does not find mention anywhere in those provisions; and is therefore of no relevance to an application under section 17 of the DV Act. In fact, section 17 grants to ‘every woman’ who is in a ‘domestic relationship’ with a respondent, the right to reside in the ‘shared household’ regardless of whether she has any right, title or the interest in the same.
21. Furthermore, the provision says that a ‘domestic relationship’ may subsist between two persons, who live or have at any point lived together in a shared household, whether they are related by marriage, or through a relationship in the nature of marriage, or by consanguinity, or adoption, or as family members living in a joint family. Thus even marriage is not an essential ingredient for a person to be in a domestic relationship with another.
22. In the reading of this court, citizenship does not have even the remotest connection with a woman being an aggrieved person, or being in a domestic relationship, or having a shared household with a respondent. A foreign citizen may also fulfill the essential ingredients of being an ‘aggrieved person’ in a ‘domestic relationship’ with a right to reside in a ‘shared household’ within the meaning of the DV Act. Even if, in a given case, a person has entered the country without a visa, or has continued to reside in the country in breach of the conditions or the term of their visa, that would be irrelevant for deciding whether or not such person has a right to reside in a shared household. To be sure, if a woman violates the conditions of her visa, she may be liable for action under the Foreigners Act; but that is not a



consideration that would be relevant for deciding an application under section 12 of the DV Act.

23. One may even conceive of a situation, where a woman may have temporarily resided in India and may have left the country for some reason, be it expiration of her visa, or having been forced-out by the husband or partner; even so, a plain reading of the DV Act shows that such a woman would be entitled to protection under that statute, since she may be an ‘aggrieved person’ within the meaning of section 2(a) of the DV Act.
24. As a sequitur to the above discussion, in the opinion of this court, the question of a ‘shared household’ must be decided by a court *de-hors* the citizenship status of an ‘aggrieved person’ who makes an application for relief under section 12 of the DV Act.
25. In view of the above, order dated 06.03.2023 is set-aside; thereby directing the learned ASJ to proceed to decide the criminal appeal bearing No. 168/2022 in accordance with law, without delving into the question of the petitioner’s citizenship status.
26. The revision petition is disposed-of in the above terms.
27. Pending applications, if any, also stand disposed-of.

**CRL.M.A. 10369/2024**

28. In view of the revision petition having been decided and disposed-of as above, this application is dismissed as infructuous.

**ANUP JAIRAM BHAMBHANI, J**

**JULY 24, 2024/ak**