

HIGH COURT OF KERALA**BENCH - HONOURABLE MR. JUSTICE A. BADHARUDEEN****Date of Decision: 25th June 2024**

CRIMINAL REVISION PETITION NO. 463 OF 2024

AGAINST THE JUDGMENT DATED 11.04.2024 IN CRA NO.18 OF 2024 OF DISTRICT COURT & SESSIONS COURT, PALAKKAD ARISING OUT OF THE ORDER DATED 04.01.2024 IN CRL.M.P.NO.4006/2023 IN MC NO.59 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS-II, PALAKKAD

REVISION PETITIONER/APPELLANT/PETITIONER:**JAYASREEPetitioner****VERSUS****RESPONDENTS/RESPONDENTS/RESPONDENT AND STATE:****Legislation:**

Protection of Women from Domestic Violence Act, 2005 – Sections 12, 17, 18, 19

Code of Criminal Procedure, 1973 – Sections 397, 401

Indian Evidence Act, 1872 – Section 106

Subject: Criminal revision petition concerning the interim reliefs sought under the Protection of Women from Domestic Violence Act, 2005, focusing on the right of residence in a shared household post-divorce and the competency of the Magistrate in directing eviction.

Headnotes:

Domestic Violence – Right to Reside – Petitioner sought interim reliefs under Section 12 of the DV Act to prohibit the respondent from committing domestic violence and evicting her and her minor child from the shared household – Magistrate granted prohibitory order but directed petitioner to vacate the

house within a month – Sessions Court concurred – Revision Petition allowed, setting aside the eviction order – Divorced woman residing in shared household with minor child cannot be evicted without due legal procedure – Emphasis on protection under Section 17(2) of DV Act [Paras 1-21].

Shared Household – Interpretation – Court highlights expansive interpretation of ‘right to reside’ in shared household under Section 17 of DV Act – A woman in a domestic relationship has the right to reside irrespective of her title or actual residence – Clarifies that divorced women residing in shared household at the time of divorce or after cannot be evicted without following legal procedures [Paras 8-14].

Legal Procedure – Eviction – Court criticizes trial and appellate courts for ordering eviction without due process – Emphasizes that even a trespasser cannot be evicted forcefully and must be removed following established legal procedures [Para 19].

Decision: Revision Petition Allowed – Orders of lower courts set aside regarding eviction – Petitioner and minor child allowed to reside in shared household pending final decision in M.C.No.59/2023 – Respondent at liberty to pursue legal eviction procedures [Paras 20-21].

Referred Cases:

- Prabha Tyagi v. Kamlesh Devi, 2022 AIR (SC) 2331
- Juveria Abdul Majid Patni v. Atif Iqbal Mansoori, (2014) 10 SCC 736
- V.D. Bhanot vs. Savita Bhanot, (2012) 3 SCC 183
- Krishna Bhattacharjee vs. Sarathi Choudhury, (2016) 2 SCC 705
- Saraswathy vs. Babu, (2014) 3 SCC 712
- Rashmi Kumar vs. Mahesh Kumar Bhada, (1997) 2 SCC 397
- Ajay Kumar vs. Lata alias Sharuti, (2019) 15 SCC 352
- Satish Chander Ahuja vs. Sneha Ahuja, (2021) 1 SCC 414
- S.R. Batra vs. Taruna Batra, (2007) 3 SCC 169

Representing Advocates:

For petitioner: Rajesh Sivaramankutty, Arul Muralidharan

For respondent: Varghese C. Kuriakose, Amritha J.

Public Prosecutor: Sri M P Prasanth

ORDER

This Revision Petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure. The challenge in this revision petition is judgment in CrI.Appeal No.18/2024 on the files of the Sessions Court, Palakkad, arising out of order in CrI.M.P.No.4006/2023 in M.C.No.59/2023 on the files of the Judicial First Class Magistrate Court-II, Palakkad.

2. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent in detail. The learned Public Prosecutor appearing for the 2nd respondent, State of Kerala also was heard. Perused the order and judgment under challenge as well as the relevant records which led to the impugned verdicts.

3. I shall refer the parties in this Revision Petition as to their status before the trial court.

4. The case revolves around an interim order passed by the Magistrate in an application filed by the petitioner under the Protection of Women from Domestic Violence Act, 2005 ('D.V Act' for short) in M.C.No.59/2023, pending before the Judicial Magistrate of First Class-II, Palakkad.

5. The petitioner filed CrI.M.P.No.4006/2023 along with M.C.No.59/2023 under Section 12 of the D.V Act seeking interim reliefs: "(i) prohibiting the respondent from committing domestic violence; and (ii) prohibiting the respondent from evicting the house by the petitioner and minor child". According to the learned counsel for the petitioner, the petitioner and the respondent got married on 27.08.2009 as per customary rites at Sidhapudur Sri Ayyappan temple, Coimbatore, and they resided at the respondent's house. A female child born to them on 20.01.2011. The respondent never considered the petitioner and the minor child and never gave any amount for their livelihood. The petitioner filed O.P.No.1035/2022 for maintenance and the respondent filed O.P.No.70/2017 before the Family Court seeking divorce. According to the petitioner, the petitioner maintained domestic relationship and the petitioner and the minor child apprehend

commission of domestic violence again by the respondent by evicting them from the shared household. Thus the interim reliefs sought for. Opposing the interim reliefs, a detailed objection was filed by the respondent and resisted grant of interim reliefs sought for.

6. The specific contention raised by the respondent before the trial court is that the petitioner deserted the respondent and continued her cruel attitude towards the respondent from 03.06.2010 onwards and she denied conjugal obligation also. O.P.No.70/2017 filed by the respondent before the Family Court on the ground of desertion was allowed on 31.12.2022 and the appeal challenging the order in O.P.No.70/2017 was dismissed by a Division Bench of this Court in Mat.Appeal No.263/2023 dated 03.10.2023. It was during the pendency of the Mat.Appeal, on 11.07.2023, M.C.No.59/2023 was filed with ulterior motives, though there was no shared household at any point of time. The learned Magistrate as per order dated 04.01.2024 in Crl.M.P.No.4006/2023 allowed the first relief and also passed an order that “the petitioner shall vacate the house of the respondent within one month of this order”.

7. Impugning the said interim order, Crl.Appeal No.18/2024 was filed before the Sessions Court. But the learned Sessions Judge also concurred the finding of the trial court.

8. While assailing the concurrent verdicts of the trial court as well as the appellate court, the learned counsel for the respondent/revision petitioner herein argued that the verdicts of the trial court as well as the appellate court are illegal and the same were passed as against the ratio of the decision of the Apex Court reported in [2022 AIR (SC) 2331 : 2022 KHC 6542 : 2022 KLT SN 37], **Prabha Tyagi v. Kamlesh Devi**. The point argued by the learned counsel for the petitioner is that as per the ratio in **Prabha Tyagi's** case (*supra*), Section 17 of the D.V Act is referred, which provides that every woman in a domestic relationship shall have the right to reside in the shared household irrespective of whether she has any right, title or beneficial interest in the same. This right to reside in a shared household which is conferred on every woman in a domestic relationship is a vital and significant right. It is an affirmation of right of every woman in a domestic relationship to reside in a shared household. Every woman in a domestic relationship has a right to reside in a shared household even in absence of any domestic violence by respondent. Daughter, sister, wife, mother, grandmother or great grandmother, daughter-in-law, mother-in-law or any

woman having a relationship in nature of marriage, an adopted daughter or any member of joint family has right to reside in a shared household. Expression 'right to reside in a shared household' has to be given an expansive interpretation. Expression 'right to reside in a shared household' cannot be restricted to actual residence. Even in absence of actual residence in a shared household, a woman in a domestic relationship can enforce her right to reside therein. If a woman in a domestic relationship is an aggrieved person and she is actually residing in shared household, she cannot be evicted except in accordance with procedure established by law.

9. The learned counsel read out the relevant paragraphs of the decision in **Prabha Tyagi's** case (*supra*) to convince this Court that it is not necessary at the time of filing an application by an aggrieved person, the domestic relationship should be subsisting. Even if the aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing an application under Section 12 of the D.V Act, but has, at any point of time lived so, or had the right to live and had been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, the aggrieved person is entitled to file an application under Section 12 of the D.V Act.

10. Going by the ratio in **Prabha Tyagi's** case (*supra*), it could be noticed that while rendering the judgment, the Apex Court considered its following earlier judgments, viz. [(2014) 10 SCC 736], **Juveria Abdul Majid Patni v. Atif Iqbal Mansoori & anr.**; [(2012) 3 SCC 183], **V.D. Bhanot vs. Savita Bhanot**, [(2016) 2 SCC 705], **Krishna Bhattacharjee vs. Sarathi Choudhury and Another**; [(2014) 3 SCC 712], **Saraswathy vs. Babu**; [(1997) 2 SCC 397], **Rashmi Kumar vs. Mahesh Kumar Bhada**; [(2019) 15 SCC 352], **Ajay Kumar vs. Lata alias Sharuti and Others**; [(2021) 1 SCC 414], **Satish Chander Ahuja vs. Sneha Ahuja** and [(2007) 3 SCC 169], **S.R.Batra vs. Taruna Batra**. The Apex Court also referred contra decisions on this point by the various High Courts.

11. In paragraph 52, the Apex Court considered the following questions:

“(i) Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act

(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of violence?” (iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?”

While answering the questions it was held as under:

“It is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D.V. Act.”

12. While holding so, the observations made by the Apex Court in paragraphs 29 to 33 are relevant. The same are as under:

“29. As already noted, a domestic relationship means a relationship between two persons who live or have at any point of time, lived together in a shared household. The relationship may be by (i) consanguinity, (ii) marriage or, (iii) through a relationship in the nature of a marriage, (iv) adoption or (v) are family members living together as a joint family. The expression ‘domestic relationship’ is a comprehensive one. Hence, every woman in a domestic relationship in whatever manner the said relationship may be founded as stated above has a right to reside in a shared household, whether or not she has any right, title or beneficial interest in the same. Thus, a daughter, sister, wife, mother, grand-mother or great grand-mother, daughter-in-law, mother-in-law or any woman having a relationship in the nature of marriage, an adopted daughter or any member of joint family has the right to reside in a shared household.

30. Further, though, the expression 'sharedhousehold' is defined in the context of a household where the person aggrieved lives or has lived in a domestic relationship either singly or along with respondent, in the context of Sub-Section (1) of Section 17, the said expression cannot be restricted only to a household where a person aggrieved resides or at any stage, resided in a domestic relationship. In other words, a woman in a domestic relationship who is not aggrieved, in the sense that who has not been subjected to an act of domestic violence by the respondent, has a right to reside in a shared household. Thus, 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. Therefore, the right of residence of the aforesaid categories of women and such other categories of women in a domestic relationship 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. By contrast, Sub-Section (2) of section 17 deals with a narrower right in as much as an aggrieved person who is inevitably a woman and who is subjected to domestic violence shall not be evicted or excluded from the shared household or any part of it by the respondent except in accordance with the procedure established by law. Thus, the expression 'right to reside in a shared household' has to be given an expansive interpretation, in respect of the aforesaid categories of women including a mother-in-law of a daughter-in-law and other categories of women referred to above who have the right to reside in a shared household.

31. Further, the expression 'the right to reside in a shared household cannot be restricted to actual residence. In other words, even in the absence of actual residence in the shared household, a woman in a domestic relationship can enforce her right to reside therein. The aforesaid interpretation can be explained by way of an illustration. If a woman gets married then she acquires the right to reside in the household of her husband which then becomes a shared household within the meaning of the D.V. Act. In India, it is a societal norm for a woman, on her marriage to reside with her husband, unless due to professional, occupational or job commitments, or for other genuine reasons, the husband and wife decide to reside at

different locations. Even in a case where the woman in a domestic relationship is residing elsewhere on account of a reasonable cause, she has the right to reside in a shared household. Also a woman who is, or has been, in a domestic relationship has the right to reside not only in the house of her husband, if it is located in another place which is also a shared household but also in the shared household which may be in a different location in which the family of her husband resides.

32. If a woman in a domestic relationship seeks to enforce her right to reside in a shared household, irrespective of whether she has resided therein at all or not, then the said right can be enforced under SubSection (1) of Section 17 of the D.V. Act. If her right to reside in a shared household is resisted or restrained by the respondent(s) then she becomes an aggrieved person and she cannot be evicted, if she has already been living in the shared household or excluded from the same or any part of it if she is not actually residing therein. In other words, the expression 'right to reside in the shared household' is not restricted to only actual residence, as, irrespective of actual residence, a woman in a domestic relationship can enforce her right to reside in the shared household. Thus, a woman cannot be excluded from the shared household even if she has not actually resided therein that is why the expression 'shall not be evicted or excluded from the shared household' has been intentionally used in Sub-Section (2) of Section 17. This means if a woman in a domestic relationship is an aggrieved person and she is actually residing in the shared household, she cannot be evicted except in accordance with the procedure established by law. Similarly, a woman in a domestic relationship who is an aggrieved person cannot be excluded from her right to reside in the shared household except in accordance with the procedure established by law. Therefore, the expression 'right to reside in the shared household' would include not only actual residence but also constructive residence in the shared household i.e., right to reside therein which cannot be excluded vis-à-vis an aggrieved person except in accordance with the procedure established by law. If a woman is sought to be evicted or excluded from the shared household she would be an aggrieved person in which event SubSection (2) of Section 17 would apply.

33. *In support of this interpretation, another example may be noted. A woman on getting married, along with her husband may proceed overseas on account of professional or job commitments. Such a woman may not have had an opportunity of residing in the shared household after her marriage. If, for any reason, such a woman becomes an aggrieved person and is forced to return from overseas then she has the right to reside in the shared household of her husband irrespective of whether her husband (respondent) or the aggrieved person (wife) has any right, title or beneficial interest in the shared household. In such circumstances, parents-in-law of the woman who has returned from overseas and who is an aggrieved person cannot exclude her from the shared household or any part of it except in accordance with the procedure established by law.*

Another situation is a case where, immediately after marriage, the wife actually resided in the shared household while her husband proceeded overseas. When such a woman is subjected to domestic violence, she cannot be evicted from the shared household except in accordance with the procedure established by law.”

13. The Apex Court illustrated certain examples while deciding the right of the wife in a shared household in paragraph No.34 and the same is as under:

“34. There may also be cases where soon after marriage, the husband goes to another city owing to a job commitment and his wife remains in her parental home and nevertheless is a victim of domestic violence. She has the right to remain in her parental home as she would be in a domestic relationship by consanguinity. Also in cases where a woman remains in her parental home soon after marriage and is subjected to domestic violence and is therefore an aggrieved person, she also has the right to reside in the shared household of her husband which could be the household of her in-laws. Further, if her husband resides in another location then an aggrieved person has the right to reside with her husband in the location in which he resides which would then become the shared household or reside with his parents, as the case may be, in a different location. There could be a multitude and a variety of situations and circumstances in which a woman in a domestic relationship can enforce her right to reside in a shared household

irrespective of whether she has the right, title or beneficial interest in the same. Also, such a right could be enforced by every woman in a domestic relationship irrespective of whether she is an aggrieved person or not.”

14. Highlighting the relevant observations and ratio in **Prabha Tyagi's** case (*supra*), the learned counsel for the petitioner would urge that the verdicts of the trial court as well as the appellate court would require interference since the petitioner in this case, who admittedly has been residing in the shared household along with the minor, aged 13 years, even though divorced, has the right to continue her residence in the shared household and the petitioner could not be evicted, except by proceedings established by law.

15. Zealously opposing the contentions raised by the learned counsel for the petitioner, the learned counsel for the respondent argued that there was no shared household as defined under the D.V Act and the house, where now the petitioner and minor had been trespassed upon and continuing residence, is jointly owned by the petitioner and his father. He also submitted that since his father is now no more, the right of the father is devolved upon 7 persons, who are the wife of the father and the siblings of the respondent, 6 in numbers. The learned counsel for the respondent showed the legal-heirship certificate issued in this regard in support of this contention. It is also pointed out that even though in the M.C the petitioner stated her address as that of the alleged shared household, in this petition she stated her address in Coimbatore. The learned counsel for the respondent argued further that now the marriage between the petitioner and the respondent came to an end in view of the order of the divorce in O.P.No.70/2017, confirmed by this Court in Mat.Appeal No.263/2023 dated 03.10.2023. The learned counsel also placed order dated 15.12.2023 in SLP.No.27795/2023, arising out of Mat.Appeal No.263/2023 of this Court, where the Apex Court also dismissed the challenge against the finding in Mat.Appeal No.263/2023. Accordingly, it is argued that the petitioner did not have any right to continue residence at the alleged shared household and, therefore, the learned Magistrate rightly disallowed the said prayer while directing her to vacate the same and the learned Sessions Judge also rightly confirmed the same. Therefore, this Court also may confirm the concurrent findings.

16. Coming to the dispute involved herein, the question arose are:

(i) Whether a divorced woman can seek residence in a shared household on the basis of an earlier domestic relationship with the husband?

(ii) Whether a Magistrate is competent to direct the petitioner to vacate the building in a case where the petitioner sought a prohibitory order against eviction?

17. I have already extracted the prayers granted by the trial court and confirmed by the Sessions Court. Going by the decision in ***Prabha Tyagi's*** case (*supra*), it is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed, vis-à-vis, allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act, but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, that aggrieved person is entitled to file an application under Section 12 of the D.V. Act.

18. In view of the above ratio, even if an aggrieved person is not in a domestic relationship with a person in a domestic share household while filing the application, she had lived so or her right to live at any point of time while subjected to domestic violence or is later subjected to domestic violence on account of domestic relationship, she is entitled to file an application under Section 12 of the Domestic Violence Act. But the ratio of the decision after referring the definition of domestic relationship under Section 2(f) of the D.V. Act is as extracted herein above, in no way laid a ratio that a divorced woman can seek residence in a shared household on the basis of an earlier domestic relationship with the husband. Therefore, it is held that a divorced woman cannot claim right of residence in a shared household. But divorced women staying in a shared household at the time of divorce or after divorce 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.

19. Coming to the second question, the second prayer granted by the Magistrate that the petitioner should vacate the house of the respondent within one month is concerned, such an order is not legally sustainable. The rationale is, at present the petitioner and her minor child have been residing there. A domestic relationship, as defined under Section 2(f) of the D.V. Act

was there. Therefore, the petitioner could not be evicted except in accordance with the procedure established by law, as specifically provided under Section 17(2) of the D.V Act. Here, no such legal procedure is adopted by the respondent to get eviction of the petitioner. Even otherwise, even a trespasser could not be evicted forcefully and the procedure for evicting a person in possession or occupation of a premise is by resorting to law. In view of the matter, the second relief granted by the trial court and confirmed by the appellate court would not sustain in the eye of law. Therefore, the same is set aside.

20. In this matter, as of now, the M.C has been pending for the decision of the Magistrate Court after adducing evidence. At present, the petitioner and the minor, aged 13 years, have been residing there and therefore they could not be evicted without due procedure of law. If so, the verdicts impugned would require interference.

21. In the result, this petition is allowed permitting the petitioner and minor to continue their residence therein subject to the final decision in M.C.No.59/2023, pending before the Judicial Magistrate of First Class-II, Palakkad.

It is specifically made clear that the respondent is at liberty to evict the petitioner from the so called shared household as per law and mere pendency of M.C.No.59/2023 shall not be a bar for doing the same.

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