

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
SINGLE BENCH : HON'BLE SMT JUSTICE S.R. WAGHMARE
M.Cr.C. No.78/2015

Preeti w/o Manoj Badoniya,
Aged: 28 years, Occupation-Housewife,
R/o H.No.199, Dr. Ambedkar Nagar,
District Indore (M.P.)

.....Petitioner

Vs.

Neha W/o Rohit Ujjaini,
Age -24 Years, Occupation - Housewife,
R/o. 610/8, Nehru Nagar, Indore.

..... Respondent

Shri Aanand Soni, learned Counsel for the petitioner.

Shri A.S. Rathore, learned Counsel for the
respondent.

O R D E R

(Passed on 28.01.2016)

By this application under Section 482 of Cr.P.C., petitioner Preeti Badoniya is aggrieved by the complaint registered against her by respondent Neha Ujjaini.

02. Briefly stated the prosecution case are that petitioner Preeti's younger brother Rohit was married to respondent Neha on 24.02.2012 and for a period of two years and two months couple lived happily together. In the month of April 2014 respondent Neha

left the house of her husband and all attempts to take her back was futile. There is an application u/S.9 of Hindu Marriage Act before the Principal Judge, Family Court, Indore filed by her husband pending consideration, despite which respondent wife filed false complaint against her husband, mother-in-law and sister-in-law. Initially the complaint was filed against mother-in-law and husband for offence under Section 498-A/506/34 of IPC and 4 of Dowry Prohibition Act. However, consequently the complaint was filed before the Court of JMFC, Indore, against the present petitioner and her husband also; along with other relatives under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and the respondent wife also prayed for grant of interim maintenance under Section 23 of the Protection of Women from Domestic Violence Act. The report was called for Protection Officer and on 25.09.2014 notices were issued to the present petitioner also.

03. Counsel for the petitioner has vehemently urged the facts that the trial Court had erred in issuance of notice to the petitioner; primarily because the petitioner has never been in domestic relationship with the respondent Neha. He submitted that the petitioner had married with Manoj Badoniya prior to the marriage of the respondent i.e. in the year 2007 and she lived with her husband in a different locality in Indore. The question of the petitioner causing mental

and physical injury to the respondent Neha do not arise and the ingredients are not fulfilled as per Sec.2 (f) of the Protection of Women from Domestic Violence Act, 2005. The section mandates that the parties must have lived together, which is not the present case. The trial Court Judge erred in registering the complaint against the petitioner and not a single domestic incident has been alleged against the petitioner and in the present case only general and omnibus statements have been made. The case has been filed only to harass the petitioner Preeti with offence for demands of dowry and to put the brother of the present petitioner to social embarrassment because the case has been filed against her sister. To bolster his submissions, Counsel relied on Rohini Devanathan vs. K. Narasimhan II (2011) DMC 131, whereby the High Court of Karnataka while considering the definition 'shared household' of Sections 2(f), 2(s), 3, 12 of the Act has held that the petitioner and the respondent were not living together under the same shelter as per complaint itself and making allegations against the respondent by itself would not amount to domestic violence in absence of ingredient of shared household. There was also no proof of petitioner and respondent living together at any point of time, therefore, to issue proceedings against the petitioner due to the complaint filed by respondent would amount to abuse of process of

Court. Counsel further relied on Harbans Lal Malik & ors. vs. Payal Malik II (2010) DMC 202 **and** Hima Chugh vs. Pritam Ashok Sadaphule & ors. II (2013) DMC 649 (Del.), whereby, the Court of Delhi had considered that the domestic relationship of the father-in-law, brother-in-law and other near relations of husband were not in domestic relationship with petitioner. Counsel prayed that the impugned order taking cognizance against the present petitioner be quashed and to quash the Domestic Violence Case No.426/2014 pending before the JMFC, Indore.

04. Per contra, Counsel for the respondent has drawn attention to the fact that Nehru Nagar is quite close to L.I.G. Colony at Indore and the present petitioner was a frequent visitor to her mother's house and the petitioner used to harass the respondent by instigating her mother and brother, besides there are demands of dowry made by present petitioner also. Counsel fully supported the judgment passed by lower Court taking cognizance for offence under Section 2 of the Domestic Violence Act, moreover allegation of cruelty also made against the present petitioner. Counsel submitted that it was a matter of evidence and complaint cannot be quashed regarding the present petitioner also. He placed reliance in the matter of Sou. Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade and others (2011) CrilJ SC 1687 to indicate that the Apex Court had considered the ambit of

Section 2 (q) of Prevention of Women from Domestic Violence Act 2005 and it held that the legislation never intended to exclude female relatives of husband or male partner from ambit of complaint that can be made under provisions of Domestic Violence Act 2005 and no restrictive meaning has been given to expression "relative", nor has said expression been specifically defined in Domestic Violence Act, 2005 to make it specific to males only. Counsel prayed that the trial Court has allowed to proceed with the case against the present petitioner also.

05. Considering the above submissions, I find that the issue pertains to married sister-in-law Preeti having her own children; living, with her husband separately; and 'shared household' cannot be a term addressed to the petitioner since she cannot be held to be in a domestic relationship; with the aggrieved respondent wife Neha nor can be included in the term to be "a relative", who was in shared household. In the present case, it has been admitted that respondent wife is also already living separately with her parents for quite some time. Now considering the entire document, I find in the matter of **Sandhya Manoj Wankhade (supra)** that the Court to consider with expression respondent not covering 'female' in Section 2 (q) of the Domestic Violation Act 2005, however, the terms relatives has been held to exclude females also but in this light undoubtedly the petitioner may be a

female relative of the respondent but it cannot be said that she was a member of shared household; that would be stretching the definition too far; also, again she may visited the brother's house. It would not be proper to implicate the petitioner when she is living her life separately with her husband and did not live with shared household any point of time then the shared household of the husband and wife of the respondent Neha cannot said to be of shared household of petitioner Preeti even though she may be relative and happens to visit her brother and mother's house. In these circumstances, I find that the petition needs to be allowed and it is hereby allowed since allowing the prosecution is likely to cause a rift in the matrimonial life and happiness of the petitioner, which is totally under called for. Consequently the Domestic Violence Case No.426/2014 pending before the JMFC, Indore was far it is relates to the present petitioner Preeti is hereby quashed.

With the aforesaid observations and direction, the petition is allowed to the extent herein above indicated.

Certified copy as per rules.

(Mrs. S. R. Waghmare)
Judge

Jyoti