

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR

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**CRIMINAL MISC. (PET.) (CRLMP) NO.1524 of 2011**

1. Sudama Dutt Sharma S/o Shri Devdutt Sharma,  
by caste Brahman.
2. Smt. Chandrika Sharma W/o Sh. Sudama Dutt  
Sharma, by caste Brahman.  
Smt. Manisha Sharma W/o Sh. Ritesh Sharma, by  
caste Brahman  
{All residents of House No.57/3, Mohan Colony,  
Banswara (Raj)}

...PETITIONERS

Versus

1. The State of Rajasthan.
2. Smt. Kirti W/o Sh. Hitesh Sharma D/o Sh. Nirbhay  
Shankar Pandya, by caste Brahman, resident of  
c/o Chitranjan Doshi, House No.92/7, Mohan  
Colony, Banswara (Raj.)

... RESPONDENTS

Date of Order :: 08.11.2016

**HON'BLE MR. P.K. LOHRA, J.**

Mr. RANJEET JOSHI, for the Petitioners.  
Mr. V.S. RAJPUROHIT, PP, for the Respondent-State.  
Mr. M.S. SONI, for the respondent-complainant.

O R D E R

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**BY THE COURT:**

Petitioners have laid this criminal misc. petition,  
under Section 482 Cr.P.C., seeking quashment of  
complaint under Section 12 of the Protection of Women  
from Domestic Violence Act, 2005 (for short, 'Act of  
2005') filed by second respondent-wife.

It is, inter-alia, averred in the petition that complainant entered into matrimony with Hitesh Sharma on 25<sup>th</sup> of February, 1994 and soon thereafter a matrimonial dispute cropped up between the spouses, which led to filing of complaint at the behest of second respondent against her husband, Hitesh Sharma, for offence under Sections 498A, 323, 406 and 504 IPC on 17<sup>th</sup> of October, 2010, who passed away during pendency of the same. Apart from that, the complainant also submitted a complaint against petitioners and her husband under Section 12 of the Act, 2005. In the complaint, petitioners No. 1 & 2, who are father-in-law and mother-in-law of the complainant respectively, were also arrayed and petitioner No.3, who is sister-in-law, was also impleaded as a party. In the original complaint, husband was also impleaded, however due to his death complaint against him abetted. By relying on the averments contained in the complaint, wherein she has categorically stated that she was forced to leave matrimonial home on 12<sup>th</sup> June, 1995, petitioners have pleaded in the petition that no case for domestic violence against the petitioners is made out within the four corners of Section 12 of the Act of 2005. Specific contention of the petitioners is that since 1995, the respondent-complainant is not living with petitioners, and therefore, the allegation of perpetrating domestic violence by them against her is per se a false and concocted fact and in case the proceedings in the matter are allowed to be continued, the same would result in miscarriage of justice. It is



also pleaded in the petition that by entertaining the complaint of second respondent, the learned Chief Judicial Magistrate, Banswara (for short, 'learned trial Court') has abused the process of the Court, and therefore, inherent powers are to be exercised for quashing the complaint itself.



The petition is pending since 2011. On 26<sup>th</sup> of November, 2012, the Court was pleased to admit petition and requisitioned the record. Later on, vide order dated 27<sup>th</sup> of April, 2013, further proceedings in Complaint Case No.14/2010, pending before the learned trial Court, were stayed.

Learned counsel for the petitioners, Mr. Joshi, has strenuously urged that a bare perusal of complaint under Section 12 of the Act of 2005 makes it abundantly clear it does not disclose the requisite ingredients for proceeding against the petitioners and the complaint has been designed to harass the petitioners, which is a glaring example of abuse of the process of the Court. Learned counsel further submits that although the Act of 2005 is a welfare legislation, which is essentially enacted to protect the rights of a woman, but then pre-requisite for taking shelter of the provisions of the Act of 2005 is that the woman has been subjected to domestic violence by her-in-laws, which is conspicuously missing in the instant case.

Learned counsel for the complainant, on the other hand, submits that the factum of matrimony between complainant and Hitesh Sharma is not in dispute and so

also relationship of petitioners with the complainant as such it is a clear case of domestic violence. Learned counsel for the complainant further submits that a cumulative reading of the averments contained in the complaint makes it crystal clear that complainant has not been subjected to domestic violence, therefore, no interference in exercise of inherent jurisdiction is warranted.



I have heard learned counsel for the parties and perused the entire record of the case.

The precise object of the Act of 2005 is to protect a woman against domestic violence and in appropriate cases, she is also entitled to claim right of residence. The right of residence can be claimed by wife in the property owned by her husband or joint property in which husband has a share and not otherwise. A bare reading of the complaint makes it abundantly clear that it does not disclose any specific instance of domestic violence against the petitioners as contemplated under Section 3 of the Act of 2005 except certain omnibus allegations against the petitioners. Moreover, there is no semblance of proof furnished by the respondent-complainant that her deceased husband was owning a residential house or had a share in the joint family property. In such a situation, a casual reference of the name of the family members i.e. petitioners in the complaint without there being any allegation of their active involvement in the matter is sufficient to conclude that complaint is in fact designed to harass

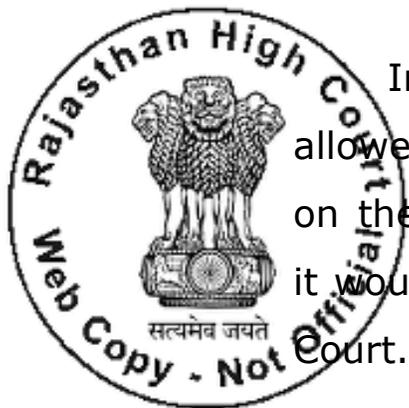
petitioners against the legislative intent. In absence of any concrete proof about domestic relationship with the petitioners i.e. the petitioners and respondent had been living in a shared household and she has been subjected to domestic violence, the maintainability of the complaint itself is under serious clouds. Reliance in this behalf can be profitably made to a decision of this Court in Hema alias Hemlata & Anr. Vs. Jitendra & Anr. [2010 Cr. Law Journal 1744].



There is yet another aspect of the matter that the respondent-complainant laid the complaint on 8<sup>th</sup> of February 2010 and during pendency of the complaint her husband expired on 17<sup>th</sup> of October 2010, as a consequence of which complainant against him was abated. In the considered opinion of this Court, therefore, learned trial Court has seriously erred in continuing proceedings against the present petitioners on wholly untenable grounds. On the face of it, when the complaint is bereft of pre-requisites of necessary ingredients prescribed under Section 12 of the Act of 2005, further proceedings in the matter against the petitioners is nothing but a futile exercise which warrants clogging of the same perpetually to secure ends of justice.

That apart, in the instant case, the discord/acrimony between the spouses started from 1995 and since then complainant is not living with the petitioners and even there was a matrimonial dispute going on between the spouses, is sufficient to conclude

that there is no iota of evidence to indicate that she has been subjected to domestic violence by the petitioners. Moreover, in the peculiar facts and circumstances of the case, any claim of residence staked by respondent-complainant against the petitioners is wholly untenable as per provisions of the Act of 2005.



In above view of the matter, if the proceedings are allowed to be continued before the learned trial Court on the complaint filed by the respondent-complainant, it would obviously result in abuse of the process of the Court.

Consequently, I feel persuaded to exercise inherent jurisdiction of this Court for quashment of entire proceedings.

Resultantly, the instant petition is allowed. Complaint No.14/2010 pending before Chief Judicial Magistrate, Banswara and the entire proceedings pursuant thereto are hereby quashed and set aside.

**( P.K. LOHRA ),J.**