Prabha Tyagi Vs Kamlesh Devi

Court: Uttarakhand High Court

Date of Decision: July 23, 2019

Acts Referred: Protection Of Women From Domestic Violence Act, 2005 â€" Section 2(e), 2(f), 2(g), 2(m), 3, 4(1), 7, 9, 10, 12, 12(1), 18, 19, 20, 21, 22, 26, 29
Protection Of Women From Domestic Violence Rules, 2006 â€" Rule 5

Hon'ble Judges: Sharad Kumar Sharma, J

Bench: Single Bench

Advocate: Parikshit Saini, M.S. Tyagi, Rajendra Tamta

Final Decision: Dismissed

Judgement

Sharad Kumar Sharma, J

1. The central legislature had framed an Act called as the Protection of Women from Domestic Violence Act, 2005, as enforced by virtue of the

Presidential assent as given on 13.12.2005 and as notified in the official gazette of India for the first time on 13.09.2005. The statement, object and

reasons of the Act provides that the Act intended to provide an effective protection of the women and protection of her rights, which are otherwise

guaranteed to the women by the Constitution of the country and who is deprived of the same as a consequence of victimization or a violence, which

has been committed against her in an eventuality, if she is residing in a family or for other connected matters related thereto, which are connected to

the residence of the women alleging violence in the family.

2. Meaning thereby, if a logical interpretation is given to the intention and purpose of Domestic Violence Act, it would always flow in the

circumstances, where the victim or the aggrieved person as defined under sub-section (1) of Section 4 of the Act, which means a women who is in a

domestic relationship. The Ã¢â‚¬Å“domestic relationshipÃ¢â‚¬ here though it has been defined under sub-section (f) of Section 2 of the Act, it would be

having a continuous process of a subsistence of a relationship and the violation alleged by the person aggrieved under the Act it has to be in an event

where the domestic relationship continues to persist any breakage or discontinuance of the consanguinity or marriage or through a relationship as dealt

with under sub-section (f) of Section 2, this Court for the reason to be assigned hereunder is of the view that the protection as contemplated under the

said Act to be extended to the aggrieved person has to be dealt with depending upon the circumstances, which is prevailing in a particular case and

precondition of existing domestic relation of Act of 2005. Section 4(1) and Section 2(f) are quoted hereunder:

Ã¢â‚¬Å“2(f) Ã¢â‚¬Å“domestic relationshipÃ¢â‚¬ 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;

4 Information to Protection Officer and exclusion of liability of informant.Ã¢â‚¬

(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information

about it to the concerned Protection Officer.Ã¢â‚¬â€‹

2. This case too involves a slightly distinct feature in order to attract the implications of the provisions contained under the Protection of Women from

Domestic Violence Act, 2005. It is a fact, which is admitted by the parties that the marriage of the present revisionist along with late Mr. Kuldeep

Tyagi was solemnized as back as on 18.06.2005, as per the Hindu rites and rituals and according to the case of the revisionist there had been

exchange of gifts and other articles including the ornaments in the course of marriage, but it is an unfortunate part of the case that the said matrimony

as solemenized between them on 18.06.2005 could not subsist for a very longer period on account of the ill fated day, i.e. 15.07.2005, when the car of

the husband of the revisionist met with an accident, which has resulted into the death of late Mr. Kuldeep Tyagi, i.e. even before the expiry of period

of month of marriage.

3. Thereafter, the post funeral rites were performed and after cremation of deceased Kuldeep Tyagi had taken place and consequently the dispute

between the family members of late Mr. Kuldeep Tyagi and the present revisionist is said to have been initiated when the present revisionist is said to

have filed an application before the Special Judicial Magistrate II, Dehradun, by way of Miscellaneous Case No. 78 of 2007 Ã¢â‚¬ËœPrabha Tyagi vs. Smt.

Kamlesh & 5 OthersÃ¢â‚¬â„¢ by invoking the provisions contained under Sections 18 to 20 and 22 of the Domestic Violence Act of 2005 by filing the

same on 24.07.2007.

4. What is relevant to be pointed out here that before proceeding further, is that the proceedings for the commission of the offences under the

Domestic Violence Act, 2005, or for the reliefs contemplated under Sections 18 to 20 and 22 of the Act, which was initiated by the revisionist by

moving an application before the Special Judicial Magistrate II by filing an application in that regard on 24.07.2007. While dealing with the counter

pleadings and the pleadings, which has been raised by the counsel for the parties, it becomes inevitable for this Court to deal with as to the manner in

which the proceedings under the Act of 2005 for the substantive relief provided under Sections 18 to 20 and 22 could be claimed by the aggrieved

person as defined under the Act.

5. As per the application, which was filed by the present revisionist, she has contended that after the marriage when her husband has met with the

accident and as a consequence thereto, since he has died the attitude and aptitude of the opposite parties to the application, who were the family

members of late Mr. Kuldeep Tyagi completely altered its complexion and they started treating the applicant revisionist with all atrocities and the

nature of atrocities, which has been dealt with in the application according to her it attracted the implications, which was falling from the provisions

contained Sections 18 to 20 and 22 of the Act of 2005 and thus according to her she has invoked Section 12 of the Act for the purposes of relief as

contemplated under the aforesaid provisions. The relief claimed in the application filed by revisionist in her application under Section 12 of Protection

of Women from Domestic Violence Act, 2005, protection under the Act from domestic violence and return of stridhan to her.

6. At the very initial stage, the learned counsel for the respondent had contended that the entire proceedings initiated by the revisionist has to be

splitted into two parts for its interpretation, i.e. procedural and substantive. The procedural part in the sense since that it was an application under

Section 12, in other words, the arguments of the learned counsel for the respondent was to the effect that if a substantive benefit under the Act is to

be provided then it becomes mandatory for the, Ã¢â‚¬Ëœaggrieved personÃ¢â‚¬â„¢ filing an application by invoking a provision contained under the Act to fulfill

its terms and conditions, so as to scrutinize as to whether the allegations leveled in the application under Section 12 satisfies the tests of domestic

violence as it has been defined under Section 2(g) of the Act.

7. The term domestic violence under Section 2(g) of the Act would include within its ambit the violence, which has been detailed under Section 3 of

the Act. For the said purpose and in order to elucidate further, it would be necessary to quote Section 3 of the Act:

Ã¢â‚¬Å“3. Definition of domestic violence.Ã¢â‚¬"For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute

domestic violence in case itÃ¢â‚¬

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and

includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful

demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.Ã¢â‚¬â€‹

8. The argument of the learned counsel for the respondent is that the very nomenclature of the Act when it speaks about a violence it is always in

relation to a, Ã¢â‚¬Ëœdomestic relationshipÃ¢â‚¬â„¢, amongst the persons, who are enjoying the domestic relation there has had to be satisfaction of an existing

domestic relationship as a pre condition to be specified for the purposes of invocation of Section 12 of the Act, for which the argument of the learned

counsel for the respondent is that in order to substantiate the commission of a domestic violence as dealt with under Section 3 of the Act, it becomes

incumbent on part of the applicant that the application filed under Section 12 should satisfy its pre conditions in order to enable the Magistrate

concerned dealing with the issue as to whether the action complained of at all happens to be a domestic violence or not, and for the said purpose the

legislature when it contemplates filing of an application under Section 12 of the Act has provided that in order to invoke the proceedings under Section

12 it is necessary for the Magistrate concerned that he Ã¢â‚¬Å“shallÃ¢â‚¬ take into consideration, Ã¢â‚¬Å“the domestic incident reportÃ¢â‚¬ in order to bring the set

of allegations leveled under Section 12 within the ambit of the provisions of domestic violence.

9. The reference to the word Ã¢â‚¬Ëœdomestic violenceÃ¢â‚¬â„¢ referred herein can further be elaborated by the definition of domestic incident report, which

has been defined under sub-section (e) of Section 2 of the Act, which is quoted hereunder:

Ã¢â‚¬Å“(e) Ã¢â‚¬Å“domestic incident reportÃ¢â‚¬ means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved

person.Ã¢â‚¬â€‹

10. In its simple terminology it means a report which is submitted by a competent officer in a prescribed form on the basis of a complained received.

Meaning thereby, to establish a violence there are three different stages, which are contemplated therein for the inception of the proceedings, which

takes place on the basis of the lodging of a complaint, but the covenants of the complaint in itself will not constitute to be a violence until and unless the

officer deals with the complaint in the manner, which is being prescribed herein would mean prescribed by the procedure or the rules framed

thereunder as defined under sub-section (m) of Section 2 of the Act, which is quoted hereunder:

Ã¢â‚¬Å“2(m) Ã¢â‚¬Å“prescribedÃ¢â‚¬â€ means prescribed by rules made under this Act;Ã¢â‚¬â€

11. It is only after the resorting of the procedure prescribed under the Act when the officer competent to investigate the complaint in order to prima

facie hold that there has been an event of violence he is required to submit a report under sub-section (e) of Section 2 of the Act, which is the

foundation and basis for the initiation of the proceedings under Section 12 of the Domestic Violence Act. In relation thereto, a reference to the proviso

to Section 12 becomes relevant, which is quoted hereunder: (with proviso quote)

Ã¢â‚¬Å“12. Application to Magistrate.Ã¢â‚¬

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate

seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any

domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without

prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed

by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the

aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the

amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any

other law for the time being in force, be executable for the balance amount, if any, left after s uch set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the

court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first

hearing.Ã¢â‚¬â€

12. The proviso in its specific term has casted a mandatory duty on the Magistrate that before he initiates the proceedings under the Domestic

Violence Act, he shall take into consideration the domestic incident report, for inception/initiation of the proceedings and its only after taking into

consideration of the domestic incident report means thereby that there has had to be a prior logical and rational application of the mind by the

Magistrate concerned before he initiates the proceedings under Section 12, in relation to a domestic violence as defined under the Act in order to

invoke the substantive provisions contained under Sections 18 to 20 and 22 of the Act, for the purposes of extension of benefit or the relief, which is

contemplated under it precondition is submission and consideration of Domestic Incident Report as defined under Section 2(e) of the Act of 2005.

13. This Court on going through the complaint as submitted under Section 12 of the Act by the revisionist is of a considered view that mere registration

of a case on 24.07.2007, will not in itself satisfy the condition of the first proviso to sub-section (1) of Section 12 of the Act, and that has been

deliberately mentioned under the law as a process to be resorted to in order to avoid any abuse of use of power under Section 12 of the Act. Meaning

thereby, what is being tried to be argued by respondent is that in the absence of there being any domestic violence report, no cognizance in relation to

the set of allegations as leveled in the application dated 24.07.2007, could not have been taken by the Magistrate concerned as the condition of

submission of domestic violence report is a precondition, which has to be satisfied.

14. There is another limb of argument, which has been extended by the counsel for the parties that in order to establish a commission of a violence

and to attract Section 12 and to grant the relief as contemplated therein, there has had to be a subsisting domestic relationship between the aggrieved

person and the person against whom the relief has been claimed, which is not existing in the instant case for the reason that immediately after the

accident, which has occurred on 15.07.2005 or as argued by the learned counsel for the respondent even immediately after the marriage on

18.06.2005 the revisionist started residing separately at the address, which has been given by her in the cause title of the application filed by her under

Section 12, whereas, on the other hand as far as the opposite party to the application are concerned, they all were the residents of Kasba Ulheda, Post

Thana Ulheda, which is altogether a different place then where the opposite party had resided. Hence, under that pretext, it has been argued that if

that be the situation where after the marriage and after the ill fated incident of 15.07.2005 the revisionist has not ever resided with the family members

of the late Mr. Kuldeep Tyagi, in that eventuality, the domestic violence as contemplated under the Act could not be said to have been committed by

the opposite party as alleged in the application as filed by the present revisionist and, hence, the application under Section 12 and consequential relief

claimed under Sections 18 to 20 and 22 would not be attracted in the absence of satisfying the preconditions contemplated under the proviso to Section

12 of the Act, i.e. Ã¢â‚¬ËœDomestic RelationshipÃ¢â‚¬â€‹ and Ã¢â‚¬Å“Domestic Incident ReportÃ¢â‚¬â€‹.

15. In support of his contention further the learned counsel for the revisionist had drawn the attention of this Court to a certain finding, which has been

recorded by the Appellate Court in an appeal under Section 29 of the Act, in the impugned judgment dated 11.07.2014 in relation to a admission, which

has been made by the respondents to the effect that after the death of her husband her name was recorded in the revenue records by way of

succession and admittedly according to her place of residence is shown to be 139 Awas Vikas, Roorkee, District Haridwar. Meaning thereby, much

distinct to the village Ulheda where the other members of the family of late Mr. Kuldeep Tyagi resided and they continued to reside separately.

16. It is submitted by the learned counsel for the revisionist that the argument of learned counsel for the respondent may not be sustained in view of

the provisions contained under Section 26 of the Act, wherein, it is provided that the reliefs as contemplated under the Domestic Violence Act is

independent to the reliefs, which could be claimed under Sections 18 to 22 or relief to be claimed in any other civil proceedings. This exception, which

has been carved out by Section 26 of the Act basically intended that claim of any relief under the aforesaid Sections of the Domestic Violence Act of

2005, will not create a cloud in the claim of an identical relief by the aggrieved person before any other competent forum or Family Court and the

relief under the Domestic Violence Act, would be in isolation and independent relief claimed in other proceedings, which could be drawn by the

aggrieved person for the same relief under other provisions of law available to the aggrieved person.

17. Learned counsel for the revisionist had submitted that for the purposes of commission of a violence or a precondition of submission of a domestic

violence report as contemplated under Section 12 may not be essential or a pre condition for the purposes of considering the application under Section

12 of the Act in view of the ratio as propounded by the judgments of the various High Courts on which he has placed reliance particularly that

reported in ILR 2009 Karnataka 4295 Ã¢â‚¬Ëœ Nayana Kumar vs. State of Karnataka & AnotherÃ¢â‚¬â„¢, wherein the counsel for the revisionist has made a

reference to the contents of paragraph 12 and 13 of the Act and has tried to interpret it from the view point that for the purposes of invocation of

Section 12 the necessity of initiation of the proceedings based on the domestic incident report, may not be a necessary precondition either from the

protection officer or from the service provider and it would not be obligatory on part of the Magistrate to necessarily to take note of the said domestic

incident report before passing any order on the application or its consideration as per law. Paragraph 12 & 13 of the judgment is quoted hereunder:

Ã¢â‚¬Å“12. In other words if there is a Domestic Incident Report that is received by the Magistrate either from the Protection Officer or from the Service

Provider, then it becomes obligatory on the part of the Magistrate to take note of the said Domestic Incident Report before passing an order on the

application filed by the aggrieved party. Therefore, the Section does not say that in every case an aggrieved person is bound to go before either the

Protection Officer or the Service Provider. On the other hand, the scheme of the Act makes it clear that it is left to the choice of the aggrieved person

to go before the Service Provider or the Protection Officer or to approach to the Magistrate under Section 12 of the Act.

13. It is only when the recourse is taken by the aggrieved person is to go before the Service Provider or the Protection Officer that the requirement of

Section 10 & 9 of the Act comes into picture in so far as the functioning of the service Provider or the Protection Officer is concerned and it is only

when the said authority decides to submit their report, report viz., Domestic Incident Report will have to be sent to the Magistrate in the required form

as mentioned in Rule 5 of the Rules 2006.Ã¢â‚¬‹

18. On a simple interpretation of the contents of paragraph 12 of the judgment would be that it is not so that the Court had diluted the necessity for

submission of the domestic violence report for the purposes of initiation of the proceedings under the Act. Only exception, which has been carved out

by the Court is to the effect that it will not be casting an obligation on the Court to determine the considerations made in the domestic violence report

as to be basis for the grant of relief based on the findings of the domestic incidents report. Meaning thereby, in other words, if this paragraph is

considered from a different perspective, atleast it makes it clear that there has had to be a domestic incident report, but how far it would be taken

cognizance of by the Court for the purposes of formulating its relief would be exclusively falling within the domain of the Court itself and it is not that it

has postulated that the furnishing of the domestic violence report is not necessary for the purposes of initiation of the proceedings by way of an

application filed under Section 12 of the Act of 2005.

19. Learned counsel for the revisionist in the light of the findings, which has been recorded in paragraph 13 of the judgment of Nayana Kumar (supra),

which is quoted hereunder, had tried to stress upon the implications flowing from Section 9 and 10 of the Act:

Ã¢â‚¬Å“13. It is only when the recourse is taken by the aggrieved person is to go before the Service Provider or the Protection Officer that the

requirement of Section 10 & 9 of the Act comes into picture in so far as the functioning of the service Provider or the Protection Officer is concerned

and it is only when the said authority decides to submit their report, report viz., Domestic Incident Report will have to be sent to the Magistrate in the

required form as mentioned in Rule 5 of the Rules 2006.Ã¢â‚¬‹

20. As far as the provisions contained under Sections 9 and 10 of the Act are concerned, they are neither a procedural provision nor a substantive

provision, it only lays down the scope of exercise of powers and duties by the Courts formed under the Act, which is required to be performed by the

protection officer or the service provider in order to establish the commission of a domestic violence as defined under the Act. The non-compliance of

any of the covenants of Section 9 and 10 or an inappropriate exercise of powers by the protection officer or the service provider as contemplated

under Section 9 and 10, this itself will not make the application under Section 12 as to be cognizable for granting of a relief claimed for by the

aggrieved person in isolation to the report of the domestic incident report provided under the Act.

21. There is another judgment on which reliance has been placed by the learned counsel for the revisionist as it has been rendered by and reported in

AIR 2011 (CC) 3336 Ã¢â‚¬Ëœ Shri Maroti vs. Sau. Gangubai & OthersÃ¢â‚¬â„¢, in particular, the learned counsel for the revisionist has made a reference to

paragraph 12 of the said judgment, which is quoted hereunder:

Ã¢â‚¬Å“12. Perusal of Section 26 of the Domestic Violence Act, indicate that relief under the Act is in addition to the relief which may be available in any

legal proceeding before Civil Court, Family Court or Criminal Court affecting the aggrieved person and the respondent. Section 12 which require

application before the Magistrate for obtaining order or reliefs under the Act contains proviso to the effect that before passing any order on such

application, the magistrate shall take into consideration any Domestic incident report received by him from the Protection Officer or the service

provider. The word 'any' in the proviso would indicate that if such report is received, if any, because before receiving such report it is essential that for

the area concerned State Government must have appointed Protection Officer. In view of the Section 7 of the act and such appointment must be

notified in the area for which such Protection Officer shall exercise powers and perform the duties in accordance with the Act, while service provider

is required to register himself under Section 10 of the Act. In the absence of notification of a Protection Officer or registered Service Provider, it may

not be possible for Magistrate to receive Domestic Incident Report before disposing of application made by the aggrieved person under Section 12 of

the Act. This question was dealt with by Karnataka High Court in the ruling of Narayankumar Vs. State of Karnataka & Anr reported in 2010 ALL

MR (Cri) Journal 158 wherein it is observed that thus;

In other words if there is a Domestic Incident Report that is received by the Magistrate either from the Protection Officer or from the Provider, then

it becomes obligatory on the part of the Magistrate to take note of the said Domestic Incident Report before passing an order on the application filed

by the aggrieved party. Therefore, the Section does not say that in every case an aggrieved person is bound to go before either the Protection Officer

or the Provider. On the other hand, the scheme of the act make it clear that it is left to the choice of the aggrieved person to go before the Service

Provider or the Protection Officer or to approach to the Magistrate under Section 12 of the Act.

Under these circumstances, it appears that an aggrieved person is not necessarily required to approach the Service Provider or the Protection Officer.

It is left to the choice of the aggrieved person to approach the Magistrate with an application under Section 12 of the Act. Therefore, one cannot say

the Magistrate must wait for notification for appointment of the Protection Officer for the area or registration of Service Provider before disposing of

the application under Section 12 of the Act filed by an aggrieved person. When aggrieved person has chosen to approach the Magistrate directly as

observed by the Karnataka High Court that the proviso Section 12 makes it clear that the Magistrate shall have to take in to account any incident

report received by him before passing any order of the application filed by the aggrieved person. In other words, if there is a Domestic Incident Report

that is received by the Magistrate either from the Protection Officer or from the Service Provider then only it is obligatory for the Magistrate to take

note of the same before passing final order of the application made by the aggrieved person.Ã¢â‚¬â€‹

22. After having gone through the intention and purpose of Section 26 to be read in correlation with the provisions contained under Section 10 and 12

of the Act, it only protects a right of an aggrieved person as safeguarded by Section 26, irrespective of drawing of proceedings under the provisions of

Domestic Violence Act and any stray observation made in the said paragraph will have no bearing as far as it relates to the extension of benefit as

claimed for by the revisionist under Section 18 to 20 and 22 of the Act in her application filed under the Domestic Violence Act filed before the

Special Judicial Magistrate.

23. Learned counsel for the revisionist has also made reference to a judgment as rendered by the Bombay High Court in a case of Ã¢â‚¬ËœNand Kishore

vs. KavitaÃ¢â‚¬â„¢ reported in 2009 SCC (online) Bombay 1156, wherein, while considering the implications of Section 12 of the Act in the said judgment,

the Court has held as to the manner in which the application under Section 12 has to be dealt with and what are the modalities, which are required to

be satisfied by the Court for extension of benefit by applying the procedural provisions contained under Section 12 of the Act. Paragraph 5 of the said

judgment is quoted hereunder:

Ã¢â‚¬Å“5. The point as regards calling of the report from the Protection Officer or Service Provider is concerned one will have to interpret provisions of

Section 12 of the Act and the said interpretation has to be in favour of the person, who is in need of maintenance and in particular interim

maintenance. Report from the Protection Officer or Service Provider has to be gathered and it would assist the Court for the purposes of doing

complete justice in the matter. At the same time, it is expected that the trial Court has to pass an interim order as early as possible. If the Trial Court,

who is required to pass an interim order, keeps on waiting to get the report of the Protection Officer or Service Provider, it would entail the delay and

the idea of considering the case of a needy person at the interim stage will be actually defeated. Therefore, I am inclined to observe that it is not

necessary in each an every case to obtain a report from the Protection Officer or Service Provider to decide the application for interim relief. If on the

basis of record before the Court, the Court is in a position to arrive at a just and proper conclusion, it will be open for the Court to do so and decide the

matter accordingly. In the present case, the applicant had filed reply to the application filed by non applicants and, therefore, necessary material was

before the learned trial Judge to decide the question, whether interim relief should be granted. The record has been considered and order has been

passed.Ã¢â‚¬â€‹

24. The interpretation given to the said judgment with regards to the determination of the claim in the light of the ratio propounded therein it is based

upon altogether a different factual backdrop and is not identical to the one involved in the instant case where (1) the husband died immediately before

one month of marriage, i.e. 15.07.2005, (2) admittedly when the revisionistÃ¢â‚¬â„¢s name was mutated against the property of her husband, and she has

shown her place of residence as to be a different place, (3) the persons against whom the complaint of domestic violence was alleged, they were

residing in a village Ulheda, Gurukul Narsan Thana Jhabreda and separately from the complainant, and as such the allegations of domestic violence

contained under Section 12 of the Act could not be substantiated and said to be made out against any specific person, who are named in the complaint

in question.

25. Lastly, the learned counsel for the revisionist has placed reliance and made reference to a judgment reported in 2012(3) SCC183 Ã¢â‚¬Å“V.D. Bhanot

vs. Savita BhanotÃ¢â‚¬. It was from the view point that in view of the findings, which has been recorded in paragraph 12 of the said judgment, which is

quoted hereinbelow, that in order to substantiate the claim by aggrieved person that there had occurred a domestic violence under the Act it is not

mandatory requirement that the person against whom the allegation has been leveled or the complainant, i.e. the aggrieved person, should be residing

together at the point of commission of a violence:

Ã¢â‚¬Å“We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the

parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and

20thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing

so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.Ã¢â‚¬â€‹

25. Ultimately the learned counsel for the revisionist has submitted that since as many as six complaints were filed before the Trial Court as against

six persons, who are held out to be liable for granting the benefit claimed under the complaint submitted by her by an order dated 12.05.2011 as

rendered in Criminal Case No. 78 of 2010 Ã¢â‚¬ËœPrabha Tyagi vs. Kamlesh and OthersÃ¢â‚¬â„¢. The Magistrate has issued the following directions:

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26. But, since the Appeal has been preferred only by one of the opposite parties to the complaint. Hence, this judgment is to be read only as in favour

of Kamlesh Devi and for rest of the opposite parties in the complaint, it is open for the revisionist to take an appropriate action as permissible under

law.

27. There cannot be any dispute in the preposition, which has been laid down by the HonÃ¢â‚¬â„¢ble Apex Court in the aforesaid judgment of U.D.

Bhanot (supra), but yet again there has had to be a distinction carved out because here the implications pertaining to living together and the

retrospective applicability of Section 12 was considered from the view point where the family have lived together earlier, i.e. prior to the enforcement

of the Act. This is not the circumstances, which is prevailing in the case at hand because admittedly according to the pleadings, which has been raised

by the revisionist herself, she has admitted to be residing separately from the place of her husband in a different place, i.e. 139 Awas Vikas Colony,

Roorkee, District Haridwar, and thus once she is residing separately right from the time of her marriage with late Mr. Kuldeep Tyagi, the conditions of

Section 12, which has held that living together would not be relevant is only under the circumstances when the provisions of Section 12 of the

Domestic Violence Act, 2005 has been sought to be made applicable retrospectively and not otherwise because logically and in common paralance for

the purposes of commission of an offence there has had to be a living together as a family to establish that there was a commission of violence as

contemplated under the Act, which is not the condition which stands satisfied in the instant complaint.

28. It is admitted case of the revisionist that after the death of her husband on 15.07.2005, since she was working as a teacher, she started living in

Dehradun since October 2005, as she got her services transferred there, since then she is residing away from her in-laws from the Ã¢â‚¬ËœTeerwiÃ¢â‚¬â„¢ of

Late Mr. Kuldeep Tyagi. She had in fact lived separately and there was no domestic living together rather she admitted in the proceedings before the

Magistrate that she is residing at 139, Awas Vikas Colony, Roorkee, District Haridwar. Thus, the Appellate Court has not accepted the stand that her

stridhan still stood in custody of her in-laws. Even the evidence of purchase that is the receipts all are of Roorkee. Apart from it there is no proof

brought on record by the revisionist that she has given her stridhan to her in-laws at Jhabrera.

29. Apart from it, the Appellate Court has held that there is no proof filed by the revisionist to the effect that after marriage she has taken leave from

her government job and resided with in-laws at Jhabrera during this period. It was held that revisionist has not produced any witness to prove that her

stridhan was with the in-laws and she resided with them in the village. Thus, where there was no proof of domestic living, it cannot be said that there

has occurred any domestic violence, in the absence of domestic violence report.

30. Consequently, the finding, which has been recorded by the Appellate Court while rejecting the complaint under Section 12 by the impugned

judgment dated 11.07.2014, cannot be faulted with as the Appellate Court has quite rationally considered the impact of residing together, the necessity

of satisfying the ingredients of commission of a violence and various other vitalities, hence, this Court is of the view that while exercising its revisional

power the appellate order dated 11.07.2017 do not called for any interference by this Court.

27. Consequently, the revision fails and is, accordingly, dismissed.