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

% *Date of decision: 29th August, 2025*

+ CRL.M.C. 1442/2023 and CRL.M.A. 5526/2023, CRL.M.A. 5527/2023 & CRL.M.A. 2225/2025

SMT USHA SHARMA AND ANOTHER & ANR.....Petitioners

Through: Mr. Shailendra Bhardwaj and
Mrs.Aroma S. Bhardwaj, Advocates.

versus

SWATI SHARMA

.....Respondent

Through: Mr. Ashok Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ARUN MONGA, J. (Oral)

1. Petitioners herein seek quashing of an order dated 01.11.2022 passed by the learned Addl. Session Judge-02, Rohini Courts, Delhi in Criminal Revision no.188/2022, whereby the learned Judge allowed the respondent's revision setting aside an earlier order dated 13.09.2021 passed by the learned Metropolitan Magistrate, deleting petitioners' names from the array of respondents in an application under the Protection of Women from Domestic Violence Act, 2005 (for short hereafter the Act or DV Act) filed by their daughter-in-law, the respondent herein. The petitioners also seek quashing the consequential order dated 15.11.2022 passed learned MM/MAHILA COURT re-summoning the present petitioners to face the trial.



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2. Succinct background first. Petitioners are old aged parents of their deceased son, Apoorv Sharma, who was the husband of the Complainant/Respondent herein. The Petitioners' late son was married to the Respondent on 19.02.2011. Their son passed away on 26.12.2021.

2.1 During the lifetime of their son, the Respondent, sometime in August, 2021, initiated proceedings under Section 12 of the Act before the Mahila Court, Rohini, against five respondents including the petitioners.

2.2 The learned MM, Mahila Court, vide an order dated 31.08.2021 sought a report from the Protection Officer.

2.3 On 13.09.2021, the Protection Officer submitted the DIR, which clearly stated that the Petitioners never visited the complainant and lived separately.

2.4 The DIR also recorded that the petitioners (Respondent Nos. 2 and 3 in the application/complaint under the Act) had shifted out of the shared household in September 2019. Therefore, ultimately, only complainant's husband remained as the contesting respondent.

2.5 Accordingly, by a reasoned order dated 13.09.2021, the Ld. MM deleted the petitioners' names from the array of parties. Despite participating in the proceedings thereafter, the Complainant never objected to or challenged the deletion of the Petitioners by order dated 13.09.2021.

2.6 Subsequently, by an ex parte order dated 23.09.2021 (wrongly typed as 23.09.2022 in the impugned order), the Ld. MM restrained Respondent No. 1 (petitioners' son, since deceased) from alienating or creating third party interest in the Rohini property.

2.7 However, on 26.12.2021, the petitioners' son (husband of the



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Complainant) passed away. His death was duly recorded before the Ld. MM on 12.05.2022.

2.8 After an inordinate and unexplained delay of approximately 12 months, the Complainant/Respondent, on or about 26.08.2022 (exact date not mentioned), filed a Criminal Revision Petition No.188/2022 under Section 397 Cr.P.C., challenging the deletion of the Petitioners' names.

2.9 Nevertheless, without issuing notice to the Petitioners or affording them an opportunity of being heard, the Ld. ASJ, vide order dated 01.11.2022, set aside the order dated 13.09.2021 passed by the Ld. MM, whereby the petitioner's names had been deleted from the array of parties.

2.10 In compliance of the revisional order dated 01.11.2022, the Ld. MM, Mahila Court, Rohini, vide order dated 15.11.2022, issued summons to the Petitioners to appear in the proceedings under the DV Act. Hence the present petition.

3. Learned counsel for the petitioners would, inter alia, argue as under:-

3.1 The Ld. MM's order dated 13.09.2021 deleting the Petitioners' names was well-reasoned, based on the Protection Officer's DIR, and disclosed no error warranting revisional interference.

3.2 The scope of appeal is wider than revision. The Respondent, having failed to file an appeal under Section 29 DV Act within limitation, invoked revision belatedly as an afterthought to harass the Petitioners. The impugned order is thus without jurisdiction.

3.3 The impugned order was passed without notice or hearing to the Petitioners, though it directly affects their rights. This violates the settled principle that no adverse order can be made without affording an



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opportunity of hearing.

3.4 The Respondent's challenge to the 13.09.2021 order through revision was misconceived. The proper statutory remedy was appeal under Section 29 DV Act, not pursued within time. The impugned revisional order is therefore vitiated.

3.5 The DIR confirms that the Petitioners lived separately, never visited the complainant, and were uninvolved in the alleged incidents. The allegations were vague and unsupported, and the Ld. MM rightly deleted them from the proceedings.

3.6 The complainant's allegations were vague, unrelated to the reliefs claimed, and directed mainly against Respondent No.1 (husband). No specific, cognizable allegation was ever made against the Petitioners; hence no relief under the DV Act is maintainable against them.

3.7 The DIR disclosed no offence or act of domestic violence attributable to the Petitioners, further justifying their deletion.

3.8 The impugned order dated 01.11.2022 of the Ld. ASJ is bad in law, passed without jurisdiction, contrary to statutory provisions, in breach of natural justice, and despite absence of any specific allegation or material against the Petitioners.

4. Ld. Counsel for the Respondent opposes the petition on the ground that order passed by the learned Revisional Court is well reasoned and warrants no interference. He would also argue that the consequential order re-summoning the petitioners cannot be faulted with as the learned MM was duty bound to comply with the Revision court order.

5. At this stage, when this court was about to proceed with its decision,



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photographs of the respondent showing that she has got remarried after the death of her earlier husband (son of the petitioners) have been handed over by the learned counsel for the petitioners. The same are taken on record.

6. Learned counsel for the petitioners states that in addition to this, there is a videography also of the ceremony of marriage of the respondent.

7. In the aforesaid backdrop, I have heard the rival contentions and perused the case file including the impugned order passed by the learned Sessions and that of the learned Metropolitan Magistrate.

8. First and foremost, before proceedings further, for ready reference, both the impugned orders i.e. dated 01.11.2022 of the learned ASJ and order dated 15.11.2022 of the learned MM are reproduced below:

ORDER DATED 01.11.2022 BY Ld.ASJ

“Present:- Mr. N.S.Malik, Ld. Counsel for the revisionist.

1. The present revision petition has been preferred against the summoning order dated 13.09.2021(hereinafter referred to as impugned order), passed by Ld. MM.

2. Briefly stated that the factual matrix which gave rise to the present appeals are that marriage between the complaint Swati Sharma and son of respondent no. 1 namely Apoorv Sharma (now deceased) was solemnized as per Hindu rights and customs on 19.02.2011 at Delhi and one child was born out of the said wedlock on 25.03.2013. However, allegedly soon after the marriage the complaint was subjected to harassment and cruelty for bringing insufficient dowry and was constrained to leave her matrimonial house on 23.02.2017. Thereafter, she filed a complaint u/s 12 of the said Act and along with an application U/s 23 of the said Act on the grounds of domestic violence, whereby Ld.Trial court deleted the names of respondent no.2 to 6 from the array of parties.

3. As regards the powers of Revision U/s 397 Cr.P.C. the Hon’ble Supreme Court of India in the latest judgment dated 17.02.2022 in the case of Directorate of enforcement Vs. Gagandeep Singh 2022 SCC online Delhi 514 has reiterated the law that:

“the provision of revision in Cr.P.C. suggest that the court Shall limit itself to the findings sentence or order pass by the Subordinate court, against which the revisionist is seeking Relief before the court



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concerned and shall not go beyond the Analysis and observations made by the subordinate court.”

Section 397 Cr.P.C. unequivocally states that the High Court and Sessions Courts which is exercising its revisional jurisdiction shall apprise itself solely of the question of correctness, legality and propriety of the order of the subordinate court.

4. The Hon'ble Supreme Court in Directorate of enforcement Vs. Gagandeep Singh (supra) again emphasized that:

“in its revisional jurisdiction court will not proceed into the enquiry of the records, documents and other evidence in consideration before the Trial Court but shall constrain itself to the findings of the lower court in the impugned order and to the question whether there is any patent, illegality, error apparent on record or incorrectness.”

5. It is argued by ld. Counsel for the revisionist that the said impugned has been passed without hearing the parties.

6. The names of respondent no.2 (father in law), respondent no.3 (mother in law), respondent no.4 (brother in law/nandoi) had been deleted from the array of parties in a mechanical manner, whereas there are specific allegations of harassment and domestic violence against the said accused persons as well.

7. I have perused the trial court record and domestic incident report (DIR) dated 10.09.2021 filed by the L.D. Protection Officer. As per the said DIR, the complainant had been residing along with proposed accused/respondent no.2 &3 i.e. father in law and mother in law and husband (who has since reportedly expired) till September 2019 and left out only thereafter. The allegations date back immediately after the marriage from February 2011 and it appears that revisionist shared the household with respondent no.2 & 3 for almost a decade.

8. As there are specific allegations against respondent no. 2 &3 for causing cruelty for dowry, misappropriation of articles and also causing domestic violence in the petition as well as in the domestic incident report filed by the Ld. Protection Officer. In these circumstances, the impugned order dated 13.09.2021 is set aside to the extent that there appears to be prima facie enough material to proceed against respondent no. 2 & 3 in the present case.

9. As regards respondent no. respondent no.4 (brother in law/dever), respondent no.5 (married sister in law/nanad) and respondent no.6 (brother in law/nandoi), who have not shared the household with revisionist no interference is required and the impugned order is not interfered to this extent.

10. With these observations, the revision petition stands disposed off.

11. Revisionist is directed to appear before ld. Trial court on 15.11.2022, the date already fixed there.

12. TCR be sent back along with copy of this order.



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13. It is clarified that nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

14. Revision file be consigned to the Record Room.

Sd/-

Addl. Session Judge-02 (North)

Rohini Courts Delhi

01.11.2022.”

ORDER DATED 15.11.2022 BY MM

“Present: Sh. N.S. Malik, Ld. Counsel for the complainant

An order has been received from Ld Revisionist Court. As per which, this court has been directed to proceed the trial against R-2 and R-3.

Accordingly, trial will be proceeded against R-2 and R-3.

Notice be issued to R-2 and R-3 on filing of PF within 7 days through SHO for 20.02.2023.

Sd/-

MM/MAHILA COURT-01

NORTH ROHINI, DELHI/15.11.2022”

9. Having perused the two orders, *ibid*, it is borne out that the revision petition under Section 397 Cr.P.C. was filed after more than 10 months. Delay is not only inordinate, but wholly unexplained, and unsupported by any sufficient or plausible reason. A revision so belated, particularly when a specific statutory remedy by way of appeal under Section 29 of the DV Act was available, was *ex facie* not maintainable in law. The revision petition was clearly an afterthought intended only to harass the aged Petitioners. Further, the Revision Court was not even informed that the Petitioners' deletion had been ordered by the Ld. MM through a detailed and reasoned order based on the Protection Officer's DIR. On these short grounds alone, the revisional order deserves to be set aside. Let us examine the aforesaid in



greater detail in the succeeding part.

10. For ready reference section 29, *ibid*, is reproduced here in below :-

29. Appeal.: There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

Thus, Section 29 provides a clear statutory remedy of appeal to the Court of Session within thirty days from the date of the Magistrate's order or its service on the aggrieved person or respondent, as the case may be.

11. Sections 399 and 401 of the Cr.P.C. [440 and 442 of BNSS] are also relevant which read as under :-

Section 399 Sessions Judge's powers of revision:

- (1) In the case of any proceeding the record of which has been called for by himself the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Sub-Section (1) of section [401](#).*
- (2) Where any proceeding by way of revision is commenced before a Sessions Judge under Sub-Section (1), the provisions of Sub-Sections (2), (3), (4) and (5) of section [401](#) shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.*
- (3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.*

Section 401 High Court:

- (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections [386](#), [389](#), [390](#) and [391](#) or on a Court of Session by section [307](#) and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section [392](#).*



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- (2) *No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.*
- (3) *Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.*
- (4) *Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.*
- (5) *Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.*

12. Section 401(2) Cr.P.C. expressly prohibits any prejudicial order in revision proceedings unless the affected party is afforded an opportunity of being heard, either personally or through counsel. Further, Section 401(4) Cr.P.C. categorically bars revision proceedings at the instance of a party which had a statutory right of appeal but failed to exercise it.

13. In the present case, the Respondent had a statutory right of appeal under Section 29 of the DV Act against the order dated 13.09.2021 deleting the Petitioners' names. By virtue of Section 401(4) Cr.P.C., the revision petition was barred and could not have been entertained by the Sessions Court.

14. Even otherwise, Section 401(2) Cr.P.C. was violated. The impugned revisional order was passed to the grave prejudice of the Petitioners without issuance of notice or affording them any opportunity of hearing, either personally or through counsel. The order is completely silent on this aspect, making it ex facie unsustainable.

15. The Sessions Court thus committed a dual illegality: first, by



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entertaining a revision petition that was legally barred; and second, by passing an order adverse to the Petitioners without granting them any hearing. On both counts, the impugned revisional order dated 01.11.2022 is unsustainable in law and liable to be quashed.

16. The consequential order dated 15.11.2022 passed by the Ld. MM/Mahila Court re-summoning the Petitioners is purely derivative, having been passed in compliance with the defective revisional order dated 01.11.2022. Its fate necessarily follows that of the foundational order.

17. As a result of above discussion, the petition is allowed and the impugned revisional order dated 01.11.2022 and the subsequent impugned order dated 15.11.2022 passed learned MM/Mahila Court both are set aside.

18. In the parting, I cannot help but add, that the Respondent's conduct is nothing short of a textbook example of abusing the process of law. Apparently, dragging aged in-laws through endless litigation even after the death of their young son, and all while comfortably remarried, passes off as her idea of justice. The result ? Nothing but calculated harassment, needless hardship, and public humiliation for the Petitioners. To call the continuation of such proceedings unjust and untenable would be an understatement.

19. In fact, if there were ever a masterclass in abusing the process of law, the Respondent has surely authored it. Having lost no time in remarrying, she nevertheless clings to proceedings against her deceased husband's aged parents, as though widowhood confers upon her the perpetual right to harass them. Evidently, the Respondent sees no contradiction in moving on with her life while ensuring that the Petitioners are shackled to endless litigation,



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burden, and humiliation, while on the other hand they mourn the untimely death of their young son.

20. To dignify such conduct of the respondent with the word “justice”, which she ostensibly seeks, would be laughable. It is nothing, but pure harassment, dressed up in legal process. The respondent is thus fastened with costs of Rs. 50,000/- to be paid to the petitioners for making them causing them undue hardship and making them suffer the unnecessary litigation out of sheer vengeance and in blatant abuse of the benevolent provisions meant for protection of women from domestic violence

ARUN MONGA, J

AUGUST 29, 2025

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