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**(2012) 07 DEL CK 0147**  
**In the Delhi High Court**  
**Case No : Criminal M.C. No. 2536 of 2011**

Kiran Kriplani

APPELLANT

Vs

Jethanand Jethwani

RESPONDENT

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**Date of Decision :** 04-07-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Protection of Women From Domestic Violence Act, 2005 — Section 12

**Citation :** (2013) 2 Crimes 213 : (2012) 193 DLT 300 : (2013) 2 KHC 715 :  
(2013) 4 RCR(Criminal) 66

**Hon'ble Judges :** V.K. Shali, J

**Bench :** Single Bench

**Advocate :** Ashok Kriplani, for the Appellant; A.K. Mishra, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.K. Shali, J.—This is a petition filed u/s 482 Cr.P.C., assailing the order dated 23.4.2011 passed by the learned Additional Sessions Judge. By the impugned order, the petitioner had assailed the validity of the order dated 21.12.2010 passed by the learned Magistrate, rejecting the application of the petitioner u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as Act).

2. I have heard the learned counsel for the parties and gone through the record.

3. Briefly stated, the facts of the case are that the petitioner is the married sister of the respondent, a resident of Kota, Rajasthan. The late father of the parties left an unregistered Will dated 24.1.1992, making both the parties beneficiaries. The petitioner claims that she was coerced to enter into a Settlement on 12.1.2002. She further alleges that she has been subjected to mental, emotional and economic agony by the respondent by not giving her share in their Kota Property as per the Will. A civil suit in this regard has also been filed in Delhi Courts.

4. The petitioner has filed a complaint against the respondent, alleging domestic violence when she was living along with her brother in the same property at Kota, Rajasthan. It was stated by her that the property, where she was living before her marriage, was owned by their father, which was bequeathed by virtue of their father's Will dated 24.1.1992 in favour of her brother and herself, however, the brother of the petitioner had obtained the signatures of the petitioner for settlement of the property by coercion. It has, therefore, been suggested since the petitioner, before her marriage, was living in a "shared accommodation" and was having a "domestic relationship", therefore, the respondent be prosecuted for having committed domestic violence. The learned Magistrate had rejected the contention of the petitioner that she was having a "domestic relationship" or that the parties were living in a "shared accommodation" by referring to the judgment of Harbans Lal Malik Vs. Payal Malik, and Vijay Verma Vs. State N.C.T. of Delhi and Another, and dismissed the petition. It was observed by the learned Trial Court that neither there was shared accommodation nor was there any domestic relationship between the petitioner and her brother, as she had got married in the year 1993 and was living in Delhi along with her husband.

5. The petitioner, feeling aggrieved, preferred an appeal provided under the Act.

6. The Appellate Court had passed a detailed order, upholding the viewpoint of the learned Trial Court that neither was there any "domestic relationship" nor was there any "shared accommodation" where the petitioner and the respondent were living.

7. The learned counsel for the petitioner has assailed the finding of the learned Trial Court by alleging that there is a domestic relationship between the petitioner and the respondent as well as they were living in a shared accommodation. For this purpose, he has relied upon the following judgments:-

1. Vaddeboyina Tulasamma and ors. -vs- Vaddeboyina Sesha Reddi (dead) by LRs, AIR 1977 SC 1944

2. Savita Bhanot -vs- Lt. Col. V.D. Bhanot, 2010 (2) JCC 965

3 Kusum Lata Sharma Vs. State and Another,

8. I do not agree with the contention of the learned counsel for the petitioner. The judgments, which have been referred to by him, are in the context of relationship of husband and wife and their matrimonial disputes. In the instant case, the petitioner had admittedly got married in the year 1993 and has been living in Delhi. The Act came into existence in the year 2005. It has also been admitted by the petitioner that there is a civil litigation going on between herself and the respondent, who happens to be her real brother, claiming a share in the property left by their late father.

9. In these circumstances, I feel that the filing of the complaint by the petitioner u/s 12 of the Act against her brother is only to compel him to settle the property

dispute with her. Therefore, the petitioner is misusing the provisions of law with some extraneous consideration. This cannot be permitted to be done. It is a gross abuse of the processes of law. Apart from this, there is a concurrent finding of fact which cannot be upset by the High Court only because it is a Superior Court. Neither I find there is any abuse of the processes of law in the impugned order, nor any order, in the interest of justice, is warranted to be passed. Accordingly, the petition is dismissed.