

**Surender Pathak Vs. Maya Devi**

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**SooperKanoon Citation :** [sooperkanoon.com/921021](http://sooperkanoon.com/921021)

**Court :** Delhi

**Decided On :** Sep-23-2011

**Judge :** Pradeep Nandrajog, J.

**Acts :** [Protection of Women from Domestic Violence Act 2005](#) - Section 12

**Appeal No. :** CRL.M.C. 1241/2010

**Appellant :** Surender Pathak

**Respondent :** Maya Devi

**Advocate for Def. :** Mr.Amit Singh, Adv.

**Advocate for Pet/Ap. :** Mr.Ajit Nair, Adv.

**Judgement :**

1. In the complaint filed under Section 12 of the [Protection of Women from Domestic Violence Act 2005](#), the respondent has alleged against the petitioner that after her late husband Sh.Harpal Singh died, she and the petitioner got married on 28.1.1992 and since then had lived as husband and wife at House No.B-115, Gali No.6, Subhash Vihar, Ghonda, Delhi-110053, which house she claims is the shared household and makes a grievance that on 30.9.2008, the petitioner threw her out and started living with another lady named Sangeeta.

2. The petitioner has been summoned in the said complaint and raises the issue in the instant petition that the summoning order as also the complaint be quashed on the premise that the complaint is motivated. He alleges that petitioner and the respondent are not husband and wife.

3. Learned counsel for the petitioner states that the respondent annexed no proof with her complaint of being married to the petitioner. Learned counsel states that if on mere assertions by women, men have to be summoned to face trial pertaining to the law of domestic violence, it would create a chaos and thus would urge that some prima facie proof in support of marriage needs to be filed when a complaint under the [Protection of Women from Domestic Violence Act 2005](#) is filed.

4. Now, if a wife is thrown out lock, stock and barrel from her matrimonial house, it may happen that proof of her marriage would lie in the house and till she has access thereto, she may not be able to furnish prima facie proof of the same, but at the trial may lead credible evidence.

5. Learned counsel for the petitioner responds by saying that at least in some record this fact could be mentioned, for example, a bank account, a passport, a driving license, a pan card, a credit card or the like, and which may be produced.

6. How many women in India possess such kind of documents?

7. Along with the counter affidavit filed, the respondent has filed photographs which she has obviously obtained from her daughter who got married on 26.11.2007. From the photographs it is apparent that the petitioner and the respondent are sitting at the wedding ceremony and performing rituals which are performed by the parents of a bride. For example, it is to be seen that holding rice in her hands with the palm cupped, respondent has extended her hands towards the petitioner who has put his hand above that of the respondent. Photographs show the petitioner and respondent making the ritual offerings at wedding ceremonies. The two are standing with their hands on the head of the bride and the groom, as is to be seen when parents bless the newly married couple. Photographs show that after the wedding rituals were over and the daughter was bid farewell along with the groom, the respondent is at the back of her daughter in

tears and the petitioner, with the grief of a daughter parting company writ large on his face is seen escorting the daughter of the respondent. Another photograph shows the crying daughter placing her head on the shoulder of the petitioner akin to what we normally see when the girl leaves from the house after marriage.

8. I have repeatedly asked learned counsel for the petitioner whether he claims the photographs to be fabricated or contrived. Counsel admits the authenticity of the photographs but states that the petitioner participated in the wedding as a neighbour.

9. The photographs did not show a male neighbour participating in the marriage of the daughter of a female neighbour.

10. Besides, the CD of the marriage which has been produced and perused shows complete participation by the petitioner as a father in a marriage ceremony.

11. Highlighting that the daughter in question is the one born to the respondent from her previous husband, I conclude by holding that the respondent has prima facie shown evidence that the petitioner and she were having a relationship as husband and wife.

12. Prima facie evidence being shown by the respondent to justify her claim, rest being a matter of evidence, the petition is dismissed imposing costs in sum of ₹11,000/- upon the petitioner which he shall pay to the respondent.

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